

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 29, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-3388-CR

Cir. Ct. No. 01-CT-415

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALLEN F. RINGELSTETTER,

DEFENDANT-APPELLANT.

APPEAL from judgment of the circuit court for Columbia County:
DANIEL GEORGE, Judge. *Affirmed.*

¶1 VERGERONT, P.J.¹ Allen Ringelsetter appeals the judgment of conviction for operating while intoxicated, third offense, in violation of WIS. STAT. § 346.63(1)(a). He contends the trial court erred in denying his motion to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

suppress evidence on the ground that the officer did not have probable cause to arrest him. We conclude there was probable cause and therefore affirm.

¶2 The arresting officer, Michael Rufer of the City of Columbus Police Department, was the only witness to testify at the hearing on the suppression motion. He testified that on October 13, 2001, at 1:17 a.m., he was patrolling on South Charles Street in the City of Columbus. At that time he noticed a car traveling northbound with a rear license plate light that was not illuminated. He began following the car, turned on his emergency lights, and followed the car two or three blocks until it pulled into a driveway on West Prairie Street. He parked his squad car behind the car.

¶3 Officer Rufer approached the parked vehicle and spoke first to the passenger as she exited the vehicle. He then proceeded to the driver's side of the vehicle. He asked the driver for his license, which identified the driver as Ringelstetter, and Officer Rufer informed Ringelstetter that he had stopped him because the license plate light was not operating and was not illuminating the license plate. Officer Rufer asked Ringelstetter to stay in the vehicle and went to his squad car, where he wrote a formal warning for the unlit license plate.

¶4 During this initial contact with Ringelstetter, Officer Rufer observed that Ringelstetter's eyes were glassy, his speech was slurred, and there was a strong odor of alcohol coming from him. After the officer delivered the warning to Ringelstetter, he asked Ringelstetter to step out of the vehicle to perform field sobriety tests. Ringelstetter complied and walked, without trouble, across the gravel driveway to the back of his vehicle.

¶5 The first test Officer Rufer administered was the horizontal gaze nystagmus test. For this test Officer Rufer was trained to recognize six clues that indicate intoxication, and he observed all six clues. The second test was recitation of the alphabet. Ringelstetter was able to recite all the letters; however, Officer Rufer noticed he slurred the letters during the recitation. The third test was to count backwards from 100 to 80. Ringelstetter did not miss any numbers or “double up” on any numbers; however, he stopped counting at 86, failing to follow the officer’s directions correctly. The officer also noticed a slur in Ringelstetter’s speech. After administering these tests, Officer Rufer placed Ringelstetter under arrest for operating a motor vehicle while under the influence of an intoxicant.²

¶6 The trial court determined there was probable cause to arrest Ringelstetter based on the officer’s observations of glassy eyes, slurred speech, and the odor of alcohol, and on the results of the field sobriety test: all six clues in the horizontal gaze test, slurred speech while reciting the alphabet, and failing to follow directions when counting backwards.

¶7 On appeal Ringelstetter renews his argument that the officer lacked probable cause to arrest him. In reviewing a decision on a suppression motion, we uphold the trial court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). However, whether those facts satisfy the standard of probable cause is a question of law, which we review de novo. *State v. Truax*, 151 Wis. 2d 354, 360, 444 N.W.2d 432, 435 (Ct. of App. 1989). The inquiry is whether the

² The officer also administered a preliminary breath test. The trial court sustained objections to the officer’s testimony on that, and those rulings have not been appealed.

arresting officer's knowledge at the time of arrest would lead a reasonable police officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant. *State v. Babbitt*, 188 Wis. 2d 349, 356, 525 N.W.2d 102, 104 (Ct. App. 1994). The State need not show evidence sufficient to prove guilt beyond a reasonable doubt, nor even to show that guilt is more probable than not. *Truax*, 151 Wis. 2d at 360, 444 N.W.2d at 435. Rather, we look to the totality of the circumstances, *Babbitt*, 188 Wis. 2d at 356, 525 N.W.2d at 104, to determine whether the objective facts would "lead a reasonable officer to believe that guilt is more than a possibility." *Truax*, 151 Wis. 2d at 360, 444 N.W.2d at 435.

¶8 Applying this standard, we conclude that Officer Rufer did have probable cause to arrest Ringelstetter for driving under the influence of an intoxicant. When Officer Rufer first made contact with Ringelstetter, he noticed that his eyes were glassy, his speech was slurred, and there was an odor of alcohol emanating from him. In addition, all three of the field sobriety tests gave some indication of intoxication: six out of six clues on the horizontal gaze nystagmus test, slurred speech, and failure to follow the officer's directions when stopping at 86 in counting backwards from 100 to 80. These circumstances would lead a reasonable police officer to believe it was more than a possibility that Ringelstetter was under the influence of an intoxicant.

¶9 The defendant argues that because these indicators of intoxication were absent, there was not probable cause to arrest: Ringelstetter was not driving erratically when he was pulled over, and he did not stumble or lose his balance. However, the presence or absence of specific indicators of intoxication is not determinative, because probable cause is based on the totality of the circumstances. In this case the fact that the officer did not see Ringelstetter driving

erratically or stumbling does not negate the reasonable inferences of intoxication arising from other observations the officer made.

¶10 We do not agree with the defendant that *State v. Swanson*, 164 Wis. 2d 437, 475 N.W.2d 148 (1991), supports his position. In *Swanson*, the officer did not observe glassy eyes and slurred speech, and, since that officer did not perform field sobriety tests, there were no indicators of intoxication from such tests. *Id.* at 453.

¶11 Because the trial court correctly concluded there was probable cause to arrest Ringelstetter, it properly denied his motion to suppress evidence.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

