

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 26, 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. 03-0046-CR

Cir. Ct. No. 02CT000032

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM R. SEVERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Iowa County:
WILLIAM D. DYKE, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ William R. Severson appeals from a judgment convicting him of operating while intoxicated. He pled no contest to the charge after the trial court denied his motion to suppress evidence from field sobriety

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.

tests. The only issue on appeal is whether the arresting officer had a reasonable suspicion that Severson was intoxicated when she asked him to exit his car for further investigation. We conclude that Severson's continued detention was warranted on the facts available to the officer and affirm.

FACTS

¶2 On April 7, 2002, Sergeant Rose Shriver was driving east on High Street in Mineral Point, Wisconsin when she observed Severson pull out of a parking spot and travel west on High Street. Although no traffic lines marked lanes on the street, she believed he crossed over into the on-coming traffic lane. To avoid a collision, she pulled her squad car to the side of road where parking spaces existed. After Severson passed her, she turned her car around and followed him for one block. Then she turned on her emergency lights and stopped his car. The time was approximately 1:42 a.m.²

¶3 When Sergeant Shriver approached the vehicle, she asked Severson if he knew why she had stopped him. He replied that he did not. At that time, she noticed that his eyes were bloodshot. She asked him for his drivers license, which he supplied. She returned to her squad car to process his information, but the computer system was not working properly. She then walked back to Severson, who had remained in his car.

¶4 The parties dispute what occurred next. Sergeant Shriver's Criminal Complaint reports the following:

² We note that the time changed for daylight savings on this morning.

I walked back up to the SEVERSON vehicle and asked SEVERSON why he was driving his car on the wrong side of the street. SEVERSON stated because he was drunk. I asked SEVERSON to turn his car off and step out.

Sergeant Shriver testified at Severson's hearing on his motion to suppress. She described what happened when she returned to Severson's car as follows:

Q: What conversation did you have with him?

A: Again, as I approached back up to the vehicle, I asked the gentleman if—if—why he was driving on the wrong side of the road, and he stated to me that he—he just pulled out of a parking spot because he had been sleeping, and he pulled out and he just pulled over too far and didn't realize how far over the wrong side that he was.

Q. He made that statement?

A. Yes.

Q. Okay. Did he make any other statements to you?

A. Not at that time, no.

Q. What happened next?

A. Next I then asked him if he would step out of the vehicle so I could talk to him some more.

Q. Prior to him stepping out of the vehicle, did he make any admissions?

[SEVERSON]: Objection, asked and answered.

[STATE]: I didn't ask for if he made any admissions.

[SEVERSON]: If he made any statements.

[STATE]: I am asking if he made any admissions now.

THE COURT: Objection overruled. Please continue.

Q. Prior to you asking him to exit the vehicle, did he make any admissions to you?

A. He stated that he was drunk.

Q. Did he come out and state that, or was that in reply to a question?

A. No. He just came out and plainly stated that.

Q. Did you ask him to exit the vehicle then?

A. Yes, I did.

¶5 Sergeant Shriver then continued to detain Severson to evaluate his sobriety. Because Severson does not challenge the probable cause for his arrest, we will limit our discussion to those facts probative of whether Sergeant Shriver had a reasonable suspicion that he was intoxicated.

STANDARD OF REVIEW

¶6 The parties dispute some of the facts in this case. We “apply the ‘clearly erroneous’ test to the trial court’s findings regarding those facts, and then examine those findings and the undisputed facts independently.” *State v. Wilks*, 117 Wis. 2d 495, 501, 345 N.W.2d 498 (Ct. App. 1983), *aff’d*, 121 Wis. 2d 93, 358 N.W.2d 273 (Wis. 1984), *cert. denied*, 471 U.S. 1067 (1985). We will search the record for evidence to support the trial court’s findings of fact. *Becker v. Zoschke*, 76 Wis. 2d 336, 347, 251 N.W.2d 431 (1977). We review de novo the application of constitutional principles to those facts. *State v. Vorburger*, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829.

DISCUSSION

¶7 Severson concedes that Sergeant Shriver had a reasonable suspicion that he was intoxicated if she heard him admit he was drunk before she asked him

to get out of his car. He argues, however, that the record clearly shows that the trial court found that Sergeant Shriver did not hear Severson admit he was drunk until after she asked him to exit the car. He relies upon the following portion of the trial court's oral decision to support his position:

It is not unreasonable at all to ask a person to get out of their vehicle when conducting that brief stop. The gentleman had difficulty in getting out of the car. The officer helped him out of the car. Then he had difficulty with his balance. On two occasions he indicated that he was drunk. I believe the totality of circumstances here is sufficient to allow the Court to rule as it does ... that ... the motion to suppress is denied

He argues that the trial court recited the facts of the case in chronological order, rather than randomly reciting the probative facts of the total circumstances. Accordingly, the recitation shows that the trial court found that Severson made two inculpatory statements after he exited the car.

¶8 Severson contends that the record supports this finding because Sergeant Shriver testified that he made no statement about his sobriety before exiting the car. He argues that the State's coaxing prompted Sergeant Shriver to testify later that she had heard Severson admit he was drunk before he got out of the car. He argues that, although her testimony was contradictory, the trial court had discretion to believe Sergeant Shriver's initial, exculpatory testimony.

¶9 We reject both of Severson's arguments. First, the record does not clearly establish that Sergeant Shriver's testimony at the hearing was contradictory. The State asked her if Severson made any statements; then it asked her if he made any admissions. Severson objected on the grounds that Sergeant Shriver had already answered this question. The trial court overruled his

objection. This ruling implies that the trial court considered statements to be distinct from admissions. Thus, no contradiction occurred.

¶10 Second, the trial court never implied that its recitation of facts was chronological; rather, the sentence following shows that the trial court was also contemplating the totality of the circumstances. We will not impute Severson's reasoning to the trial court.

¶11 The trial court is the arbiter of the credibility of witnesses. *Kleinstick v. Daleiden*, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976). It was entitled to believe Sergeant Shriver's testimony even though her testimony was conflicting. *See Id.* at 442-45. That testimony supports a finding that Severson confessed to being drunk before exiting his vehicle. Even when findings are inadequate, we may affirm if the evidence clearly supports the trial court's conclusion. *Zander v. Eau Claire*, 87 Wis. 2d 503, 518, 275 N.W.2d 503 (Ct. App. 1978). The evidence supports a finding that Severson confessed to being drunk before exiting his car. Severson admits that this finding dooms his appeal.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

