

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 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. 03-0621-CR

Cir. Ct. No. 02-CF-30

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DONALD HALL, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
EDWARD F. VLACK, Judge. *Affirmed.*

Before Cane, C.J., Hoover P.J., and Peterson, J.

¶1 PETERSON, J. Donald Hall, Jr., appeals a judgment convicting him of operating a motor vehicle while intoxicated, fifth offense. He argues he was arrested without probable cause and therefore evidence obtained as a result of the arrest should have been suppressed. We disagree and affirm the judgment.

BACKGROUND

¶2 On January 19, 2002, officer Bradley Coplan was dispatched to the scene of a fight at a Kwik Trip Store in the Village of Baldwin. Upon his arrival at the Kwik Trip, Coplan spoke to two people, Bryan Hein and Barbara Finocchiaro. They stated that there was no fight, but that a man named “Don,” who they had picked up hitchhiking, had left with their vehicle. Coplan determined that Hein and Finocchiaro had been drinking.

¶3 Hein gave Coplan the license plate number of the vehicle, as well as described its make, model and color. When Coplan ran the number through dispatch, he found the vehicle was registered to someone named Hernandez. Hein claimed he was the new owner of the car and pulled out stub registration paperwork that was in the name of Hernandez but was not signed. Coplan related the vehicle information to dispatch to have other officers look for the vehicle.

¶4 Sergeant Martin Jensen overheard Coplan’s communication to dispatch and observed a car on the interstate matching the vehicle’s description. The vehicle was not speeding or driving erratically. Jensen confirmed with dispatch that this was the vehicle reported stolen. He then activated his emergency lights and pulled the vehicle over. Jensen then waited for backup. After another squad arrived, the officers ordered Hall out of the vehicle, handcuffed him and arrested him.

¶5 Jensen walked Hall to the back of the vehicle and searched him. He asked Hall if he had been drinking and Hall said he had not. However, Jensen noticed that Hall’s speech was slurred and that he had difficulty walking. At the preliminary hearing, Jensen testified that he found empty cups that smelled of alcohol, but contained no liquid. At the suppression hearing, however, Jensen

testified he found a container with ice and a liquid that smelled of alcohol. Jensen concluded Hall's driving was impaired and that he was driving while under the influence of an intoxicant. At the jail, Hall refused field sobriety and breath tests.

¶6 The State charged Hall with both operating a motor vehicle while intoxicated and operating a motor vehicle without the owner's consent. The latter charge was eventually dismissed. Hall moved to suppress evidence obtained as a result of the arrest, arguing Coplan did not have probable cause to stop him. The court denied the motion. Hall pled guilty and was convicted. He now appeals, arguing the court should have granted his motion to suppress.

DISCUSSION

¶7 When reviewing a trial court's ruling on a motion to suppress, this court will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). Here, Hall alleged there was no probable cause for his arrest. Whether probable cause to arrest exists based on the facts of a given case is a question of law we review independently of the trial court. *State v. Truax*, 151 Wis. 2d 354, 360, 444 N.W.2d 432 (Ct. App. 1989). We look to the totality of the facts and circumstances to determine whether probable cause to arrest exists. *Dane County v. Sharpee*, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990).

¶8 Hall contends Hein and Finocchiaro were unreliable so that there was not sufficient probable cause to believe a crime had been committed. First, Hall argues Hein and Finocchiaro had been drinking. Second, he notes that Coplan had been dispatched to the scene of a fight, but Hein and Fioncchiaro stated there was no fight. Third, Hall claims there was no proof Hein owned the

vehicle. Because of these three things, Hall argues a reasonable officer would not have been able to conclude the vehicle was stolen.

¶9 First, whether Hein and Finocchiaro were drinking is inconsequential. There is no indication that they were intoxicated, nor is there any indication drinking impaired their ability to know the vehicle was stolen.

¶10 Second, the dispatcher reported there was a fight at the Kwik Trip. Hein and Finocchiaro told Coplan there was no fight. The record does not show the basis for the dispatch report. There is no indication who reported the fight. It is possible that Hein's and Finocchiaro's interpretation of a fight was different from the dispatcher's or from the person who reported a fight. At any rate, the fact that Hein and Finocchiaro denied there was a fight is not relevant to their claim that the vehicle was stolen.

¶11 Third, Hein did not have definitive proof of his ownership of the vehicle. Thus, Hall argues that a reasonable officer would instead have inferred Hein's statements regarding ownership were unreliable. However, Hein was able to produce what the circuit court characterized as "very specific" information regarding the vehicle. Hein described the make, model and color of the vehicle, provided the license plate number, and showed Coplan registration paperwork that matched the information Coplan received from dispatch. This was sufficient for Coplan to reasonably conclude that Hein was the new owner of the vehicle, as Hein claimed.

¶12 When an officer is confronted with two reasonable competing inferences, one justifying arrest and the other not, the officer is entitled to rely on the reasonable inference justifying an arrest. *State v. Tompkins*, 144 Wis. 2d 116, 125, 423 N.W.2d 823 (1988). Here, based on the totality of the circumstances,

Coplan reasonably believed Hein's vehicle had been stolen. Thus, when Jensen confirmed that the vehicle he saw was the one reportedly stolen, he had probable cause to pull over and arrest Hall.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.