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You are hereby notified that the Court has entered the following opinion and order:

2016AP1202-CR

State of Wisconsin v. Kevin L. Carson
(L.C. #2014CF426)

Before Kessler, Brash and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Kevin L. Carson appeals from a judgment of conviction for three felonies: hit and run involving great bodily harm, operating while intoxicated (5th offense), and knowingly operating while revoked (causing great bodily harm). *See* WIS. STAT. §§ 346.67(1), 346.74(5)(c),

346.63(1)(a), and 343.44(1)(b) & (2)(ar)3. (2015-16).¹ Carson, who pled guilty after his suppression motion was denied, raises a single issue on appeal: whether the arresting officer had probable cause to arrest Carson. We conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We reject Carson’s challenge to his arrest and summarily affirm.

Before pleading guilty, Carson moved to suppress his custodial statement and the results of field sobriety tests and a chemical blood test on grounds that he was arrested without probable cause and, therefore, that evidence was “fruit of the poisonous tree.” *See Wong Sun v. United States*, 371 U.S. 471, 484-88 (1963). The trial court conducted an evidentiary hearing at which a single police officer, Kirk Will, testified concerning the suppression motion. The trial court explicitly found the officer’s testimony was credible and reasonable. The trial court further found that while the evidence was “highly circumstantial,” it provided probable cause for arrest.

On appeal, Carson does not challenge the trial court’s credibility determination or factual findings, which this court upholds unless they are clearly erroneous. *See State v. Blatterman*, 2015 WI 46, ¶16, 362 Wis. 2d 138, 864 N.W.2d 26 (“[W]e uphold a [trial] court’s findings of historical fact unless they are clearly erroneous.”). Thus, we must determine whether the unchallenged facts provided probable cause to arrest, which is a question subject to our “independent review.” *See id.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

“Probable cause to arrest is the quantum of evidence within the arresting officer’s knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime.” *State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999). Courts must consider “the totality of the circumstances within the arresting officer’s knowledge.” See *State v. Kutz*, 2003 WI App 205, ¶11, 267 Wis. 2d 531, 671 N.W.2d 660. To determine whether probable cause exists, we apply an objective standard. See *id.*, ¶12. We “consider the information available to the officer from the standpoint of one versed in law enforcement, taking the officer’s training and experience into account.” See *id.* In addition, “[t]he officer’s belief may be predicated in part upon hearsay information, and the officer may rely on the collective knowledge of the officer’s entire [police] department.” *Id.* If there are two reasonable competing inferences, the officer may rely on the reasonable inference that justifies arrest. *Id.*

With those standards in mind, we consider the key facts known to the officer at the time of the arrest. Carson’s appellate brief provides a summary of those facts:

At 12:24 AM a multiple vehicle crash was reported at the intersection of N. Mayfair Road and Watertown Plank Road.^[2] Two black males were seen fleeing from the striking vehicle.

At 12:31 AM a phone call was placed to 911 and the caller stated that his car had just been stolen by two subjects in the Mayfair Mall parking lot.^[3] The caller gave a home address of 3882 N. 6th Street to the dispatch worker and described the stolen

² Will testified that at the crash scene he saw one person trapped in a vehicle with “pretty serious injuries.” Another officer later told him the victim had “a lacerated spleen and maybe a fractured spine.”

³ Will said that the dispatcher indicated the caller was a male who did not give his name.

car as a silver Buick.⁴] The call disconnected and dispatch made repeated unsuccessful attempts to recall the number that had called.

Wauwatosa Police Officers ... were dispatched to the accident scene. During scene investigation the driver of one of the vehicles indicated she observed two individuals exit the Cadillac that had struck her vehicle and leave the scene heading north on N. Mayfair Road. The driver described the two individuals as young black male subjects. A search of the Cadillac located at the scene of the accident revealed a Wisconsin ID card, automobile registration for the Cadillac, a bottle of medication and three traffic citations all carrying Mr. Carson's name.⁵ While Officer Will was attempting to locate the two black males dispatch alerted Officer Will to the 911 call, and [indicated] that despite repeated attempts dispatch could not reach the caller.

Officers Will and [another officer] went to the 3882 N. 6th Street address approximately an hour and a half after the accident. Mr. Carson's mother informed the officers that her son was not at the residence and the officers left.

Shortly thereafter, within approximately five minutes, Mr. Carson called dispatch, stated he had been woken up by his mother and [was] told the police had been at the residence looking for him. He alerted dispatch he was at the house, and that his car was parked in front of his house. The dispatch worker told her she'd spoken to him earlier in the evening and that he had reported his car stolen, which Mr. Carson denied. The dispatch worker alerted the police to return to the home, and asked Mr. Carson to meet them at his door, which he did.

Mr. Carson denied calling 911. Dispatch repeated the phone number that was the source of the call to Officer Will, and Mr. Carson's mother confirmed it was her cell number. Officers checked her phone and saw a return call from Wauwatosa Police dispatch listed at 12:34 AM. There was no 911 call entry listing on the phone for any outgoing 911 call.

Mr. Carson denied calling 911 and stated that he was asleep prior to police arriving. While speaking with Mr. Carson, Officer

⁴ Will testified that he believed that the 911 call and the accident were connected. He explained: "In my experience oftentimes hit-and-runs where the occupants flee, shortly after a stolen car report can come in, [and] is usually false."

⁵ The citations were issued to Carson the day before the automobile accident.

Will detected an odor of intoxicants and observed that Mr. Carson had bloodshot and glassy eyes. When asked if he had been drinking at all during the previous evening, Mr. Carson answered that he was home sleeping.

Mr. Carson was arrested and placed in handcuffs for hit and run causing great bodily harm.

Following his arrest, after his conveyance in cuffs to the Wauwatosa Police Department, Mr. Carson was given field sobriety tests.

We conclude that the totality of the circumstances known to the officer would lead any reasonable officer to believe that Carson “probably committed ... a crime.” *See Secrist*, 224 Wis. 2d at 212. A person violates WIS. STAT. § 346.67(1) if he or she operates a vehicle on a highway, is involved in an accident that causes damage to another vehicle or person, and fails to immediately stop and remain at the scene. *See id.*; *see also* WIS JI—CRIMINAL 2670 (2014). Of those elements, Carson disputes only whether there was probable cause to believe that he was the person who operated the vehicle and fled the scene. We conclude that the facts known to the officer provided probable cause that Carson was that driver and had violated § 346.67(1).⁶

Specifically, Carson owned the car, had personal belongings in the car (including his identification card and traffic citations issued to him one day earlier), and resembled the limited physical description given by witnesses. In addition, a 911 call was placed from Carson’s mother’s cell phone and the male caller gave the dispatcher an address that happened to be

⁶ Carson also presents an argument disputing whether there was probable cause to arrest him for operating a motor vehicle while impaired. We agree with the State that it was required “to establish only that Will had probable cause to believe that Carson had committed *a crime* at the time of arrest” and that the officer’s observations of Carson’s sobriety did not impact whether there was probable cause to arrest Carson for hit-and-run causing great bodily harm. Therefore, we do not discuss whether the officer had probable cause to arrest Carson for any other crimes, including those involving intoxication.

Carson's address. Approximately ninety minutes after the accident, both Carson and the cell phone used to place that 911 call were at Carson's home. Carson denied placing the 911 call and drinking alcohol, but it appeared likely that he was the man who had placed the call (given the phone's proximity to Carson) and that he had been drinking (given the odor of intoxicants around Carson and his "bloodshot and glassy" eyes).

Carson offers numerous reasons why the officer could not know for certain that Carson was the driver, and he suggests that "while Officer Will arguably possessed the requisite level of suspicion to locate Mr. Carson and investigate further, without more, Will's observations did not amount to probable cause to arrest." Carson also notes that witnesses provided only a limited physical description of the two men who ran from the car. He disputes the suggestion that he must have been the driver because he owned the car and "his belongings were inside the car," noting: "Clearly, Milwaukee County has enough stolen cars to prove such a tenuous concept false." In addition, Carson contends there was no "direct evidence" that he was the individual who called 911, and he notes that "[n]o testimony was taken regarding whether Officer Will asked Mr. Carson's mother if she had used the phone that evening, whether she had placed or received calls, [and] whether the phone was in her possession throughout the evening."

Carson's arguments do not persuade us that the officer lacked probable cause to arrest Carson. The officer did not need to know for certain that Carson was the driver. Rather, the issue is whether the totality of the circumstances demonstrated probable cause—a much lower standard than beyond a reasonable doubt. *See Secrist*, 224 Wis. 2d at 212 ("There must be more than a possibility or suspicion that the defendant committed an offense, but the evidence need not reach the level of proof beyond a reasonable doubt or even that guilt is more likely than not.").

The record here more than adequately establishes probable cause for the officer to arrest Carson. Therefore, we reject Carson's challenge to his arrest and affirm the judgment.

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals