

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2015

Diane M. Fremgen
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. 2014AP2269
STATE OF WISCONSIN**

Cir. Ct. No. 2013CV683

**IN COURT OF APPEALS
DISTRICT II**

VILLAGE OF GERMANTOWN,

PLAINTIFF-RESPONDENT,

V.

ARTHUR E. LEGGETT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: JAMES G. POURROS, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Arthur Leggett appeals his OWI and Operating a Motor Vehicle with a Prohibited Alcohol Concentration convictions. The issue is whether there was evidence that Leggett “operated” or “drove” the vehicle. He argues that the police lieutenant who detained him did not have probable cause to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.21(2)(c) (2013-14). All references to Wisconsin Statutes are to the 2013-14 versions unless otherwise indicated.

believe he operated the car. We agree with the circuit court that the lieutenant had probable cause because he saw Leggett operating a car via a closed circuit camera system. Therefore, we affirm.

Facts

¶2 On September 15, 2012, at about 11:51 p.m., a Village of Germantown police lieutenant received a call from dispatch while he reviewed reports at his desk. The dispatcher had noticed an unknown vehicle in the employee parking lot while she monitored the police department's security cameras. A sign marked this lot as restricted for use by "authorized police personnel only." The lieutenant walked to the dispatch desk and looked at the car on a monitor. He did not recognize it.

¶3 The lieutenant saw that the car's reverse lights were on, and it was parked next to a fence but not in a parking spot. The lieutenant observed the vehicle maneuvering and surmised that the driver was trying to back up and leave the parking lot. The lieutenant watched things unfold on the monitor for a short time, then immediately walked out to the parking lot to speak with the driver. When the lieutenant walked up to the car, he heard the engine running. He identified the driver as Arthur Leggett.

¶4 The lieutenant noticed that Leggett smelled like alcohol, had bloodshot eyes, and slurred his speech. Leggett also struggled to find his driver's license in his wallet. Based on these observations, the lieutenant thought Leggett was intoxicated and decided not to let him leave. Leggett never denied that he drove the vehicle to the parking lot. The lieutenant called an officer in training to the scene who then carried out field sobriety tests and arrested Leggett.

¶5 A municipal court judge found Leggett guilty of OWI and Operating a Motor Vehicle with a Prohibited Alcohol Concentration. However, Leggett appealed to the circuit court for review and also moved to suppress all the evidence the Village of Germantown used against him. At a suppression hearing, Leggett argued that the lieutenant did not have probable cause to arrest him for operating the motor vehicle. The circuit court denied Leggett's motion. Then, a jury found Leggett guilty of OWI and Operating a Motor Vehicle with a Prohibited Alcohol Concentration. Leggett appeals the circuit court's denial of his motion to suppress.

Analysis

¶6 A review of a motion to suppress presents this court with a question of constitutional fact. *State v. Knapp*, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899. First, we evaluate the circuit court's findings of fact under a clearly erroneous standard. *Id.* Second, we evaluate whether the circuit court properly applied those facts to constitutional principles de novo. *Id.* Neither party disputes the circuit court's findings of fact, so here we only address a question of law that we review independently.

¶7 Leggett argues that the evidence is insufficient for a police officer to have had probable cause to believe he committed a crime. Probable cause in an OWI case exists when a reasonable police officer believes the defendant was operating a vehicle while intoxicated given the totality of the circumstances and everything the officer knew at the time. *State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). In this appeal, Leggett argues that the lieutenant did not have any evidence he operated the vehicle.

¶8 However, Leggett can only show the lieutenant lacked probable cause to suspect him of OWI if no evidence, either direct or circumstantial, existed to show that he touched “any controls of the vehicle necessary to put it in motion.” See *Village of Cross Plains v. Haanstad*, 2006 WI 16, ¶24, 288 Wis. 2d 573, 709 N.W.2d 447. In *Haanstad*, the defendant merely sat in the driver’s seat of a parked, running vehicle, which another person had driven to that location, while intoxicated. *Id.*, ¶23. Because there was no evidence Haanstad turned the car on or recently drove it, the court held the Village could not prove the essential element that she operated the car. *Id.*, ¶¶23-25. On the other hand, in *Milwaukee County v. Proegler*, 95 Wis. 2d 614, 618, 291 N.W.2d 608 (Ct. App. 1980), the defendant drove on an interstate highway while intoxicated before he pulled his car over on an emergency ramp, parked, and fell asleep in the driver’s seat. The police found Proegler still sitting in the driver’s seat with the car’s engine running and the lights on, though it was in park. *Id.* This court affirmed the circuit court’s decision finding Proegler guilty of OWI. *Id.* at 628-29. We held that someone “operates” a car simply by starting the engine. *Id.* Both these cases set a low bar for determining what someone needs to do to operate a motor vehicle.

¶9 This case shares many more similarities with *Proegler* than it does with *Haanstad*. The most striking piece of evidence is that the lieutenant actually saw the car with the reverse lights on and the driver trying to maneuver out of the parking lot. Obviously, when Leggett put the car in reverse, he touched the controls necessary to put the vehicle into motion and did more than just sit in the driver’s seat. See *Haanstad*, 288 Wis. 2d 573, ¶24. This means the lieutenant saw Leggett operating the car, then observed him with bloodshot eyes and slurred speech. Therefore we hold that, given the totality of the circumstances and everything he knew at the time, the lieutenant clearly had probable cause to arrest

Leggett for OWI. Leggett argues that the lieutenant lacked probable cause because he never asked anyone at the scene who drove the car to the parking lot. However, it is not the law that an officer must make this inquiry in every case where there is an issue about “operation.” More to the point, the lieutenant had direct evidence that Leggett operated the vehicle based on what he saw through the police station camera system. It simply does not matter whether Leggett or someone else drove the car to the parking lot. We affirm.

By the Court.—Judgment affirmed.

This decision will not be published in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.