

**COURT OF APPEALS
DECISION
DATED AND FILED**

MAY 5, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-3469-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL H. WOESHNICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: ROBERT A. HAWLEY, Judge. *Affirmed.*

ANDERSON, J. Michael H. Woeshnick appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OMVWI) in violation of § 346.63(1)(a), STATS. Woeshnick disputes whether the court had subject matter jurisdiction because, in his view, the criminal complaint was invalid for not alleging an offense. We reject this argument and affirm.

On February 20, 1998, Woeshnick was arrested for his fourth offense of OMVWI. He takes issue with the sufficiency of the complaint to confer

subject matter jurisdiction. He initiated this argument before the trial court, which denied his motion, and reasserts this argument on appeal.

After losing his pretrial motion to dismiss the complaint as defective, Woeshnick waived a jury trial and consented to a trial on stipulated facts. He was found guilty and was sentenced to sixty days in jail with Huber privileges. Additionally, Woeshnick's driver's license was revoked for twenty-four months.

Woeshnick maintains that the complaint does not allege the "place" element of the OMVWI charge. Therefore, because the complaint omits an essential element of the offense, subject matter jurisdiction was not conferred by the complaint. A criminal complaint is "a written statement of the essential facts constituting the offense charged." Section 968.01(2), STATS. To be viable, a complaint must establish probable cause that a crime was committed by the defendant. *See* § 968.03(1), STATS. The sufficiency of a complaint is a question of law that we review de novo. *See State v. Manthey*, 169 Wis.2d 673, 685, 487 N.W.2d 44, 49 (Ct. App. 1992).

The complaint stated the following:

On or about the 20th day of February 1998, at the City of Oshkosh, Winnebago County, Wisconsin, **MICHAEL H. WOESHNICK** ... did unlawfully operate a motor vehicle while under the influence of an intoxicant. Contrary to ... [s]ec. 346.63(1)(a), Wis. Stats.

As the complaint continues, it also charges Woeshnick with violating § 346.63(1)(b), STATS., by operating a motor vehicle while having 0.08 grams of alcohol in 210 liters of his breath. The penalties for convictions on these charges were also described.

The complaint was subscribed and sworn to before an assistant district attorney and approved for filing. The affidavit in support of the criminal complaint stated:

B. HANSON, your complainant states that he is an Officer with the University of Wisconsin Oshkosh Police Department and has had an opportunity to review the attached police reports and documents supporting this complaint which are kept in the normal and ordinary course of business which your affiant believes to be truthful and reliable and have proven so on numerous occasions in the past and believes them to be accurate and reliable.

The attached documents included the OMVWI citation, the intoxilyzer test record, the offense/incident report written by the arresting officer, and Woeshnick's criminal record.

In his appeal, Woeshnick argues that the complaint does not charge him with violating all the elements of OMVWI. Specifically, he notes that an allegation that the conduct occurred in a prohibited place is missing. He contends that § 343.63(1), STATS., applies only to conduct occurring on "highways" or "premises held out to the public for use of their motor vehicles." *See* §§ 346.02(1), 346.61, STATS. Therefore, proving that the conduct occurred in a prohibited place is essential for obtaining a conviction, so without that information, there is no offense alleged.

Although the "place" of the prohibited conduct appears several times in the documents attached to the complaint, Woeshnick finds fault with the phrasing that the complainant used to incorporate these documents into the complaint. Instead of specifically incorporating the documents by reference, Woeshnick argues that the complainant simply referred to the attached reports and indicated that the complainant believed them to be truthful. This, he maintains,

does not make the reports part of the criminal complaint, and therefore, the complaint is insufficient.

“[W]hen the complaint is based on other than eyewitness observations of the complainant himself [or herself], the reliability of the ‘information’ on which he [or she] bases his [or her] ‘belief’ must be established.” *State v. Knudson*, 51 Wis.2d 270, 274, 187 N.W.2d 321, 324 (1971). There must be something in the complaint which shows why the informant should be believed. *See id.* In such a case, the complainant must establish: “(1) The underlying circumstances from which he [or she] concludes that the informant is reliable; and (2) that the underlying circumstances or manner in which the informant obtained his [or her] information is reliable.” *Id.* (quoted source omitted). The “underlying circumstances” must be established from the complaint itself, which may include “affidavits or transcripts of testimony [which] are specifically incorporated by reference in the complaint.” *State v. Williams*, 47 Wis.2d 242, 252, 177 N.W.2d 611, 617 (1970). “The complaint must be considered in its entirety, and be given a common sense reading.” *Knudson*, 51 Wis.2d at 275, 187 N.W.2d at 324.

A common sense reading of the complaint in this case demonstrates that the primary and essential source of information on which the complainant relied was Woeshnick’s criminal record and other documents submitted by the arresting officer. A complaint need not contain an “encyclopedic listing of all evidentiary facts upon which the state intends to rely”; the essential facts constituting the offense charged are sufficient. *See State v. Chinavare*, 185 Wis.2d 528, 534, 518 N.W.2d 772, 774 (Ct. App. 1994) (quoted source omitted). The complainant in this case swore that he “had an opportunity to review the attached police reports and documents supporting this complaint.” We conclude that this was sufficient to incorporate the attached documents by reference.

Our analysis does not end there, however. When a complainant bases a complaint on someone else's eyewitness observations, the personal and observational reliability of that information must be established. *Cf. Knudson*, 51 Wis.2d at 274, 277, 187 N.W.2d at 324-325. Here, Officer Stanley Zitek, the arresting officer, both observed and participated in the facts as set forth in the police report and, consequently, those alleged in the complaint. Information based on the personal observations of police officers made while acting in their official capacity is considered trustworthy. *See P.A.K. v. State*, 119 Wis.2d 871, 888, 350 N.W.2d 677, 686 (1984). Although the police report was not made under oath, it was signed by Zitek. If it was falsified, it would subject him to felony prosecution for misconduct in public office under § 946.12, STATS. Lastly, the complainant affirmed that he had the opportunity to review the attached police reports and documents, that such documents are kept in the ordinary course of police business, that such information has proven on numerous occasions in the past to be both truthful and reliable and that he believed these documents were truthful, reliable and accurate.

We conclude that this complaint was signed by the complainant on the basis of information from another officer whose reliability was established. Therefore, the complainant was justified in relying on it. Although Woeshnick opted for a stipulated trial rather than challenging the officer who prepared the police report and documents, the fact that the officer would have had to come forward to testify at the trial "is [a] sufficient safeguard to test the question of personal jurisdiction of the particular accused." *Knudson*, 51 Wis.2d at 278, 187 N.W.2d at 326.

We also find that the complaint and the attached documents provide a sufficient factual basis to allege an offense. A criminal complaint is sufficient if

it answers the following questions: who is charged, what is the person charged with, when and where did the alleged offense take place, why is this particular person being charged and who says so. *See State v. Gaudesi*, 112 Wis.2d 213, 219-20, 332 N.W.2d 302, 305 (1983). Documents supporting the complaint specifically stated that on at least two occasions Woeshnick was operating a vehicle on a highway—Wisconsin Street in the city of Oshkosh. As a result, the complaint clearly put Woeshnick on notice of all the factual particulars of the charged offenses, including the “place” of the prohibited conduct.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

