

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 19, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-3070

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

VILLAGE OF TWIN LAKES,

PLAINTIFF-RESPONDENT,

v.

DONALD F. HANSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Kenosha County: MARY KAY WAGNER-MALLOY, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Donald F. Hansen asserts that there was insufficient evidence presented at the hearing on his motion challenging the probable cause to arrest him for drunk driving. We affirm because there was

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98). Additionally, all further references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

sufficient evidence to support the conclusion of a reasonable officer that Hansen was operating a vehicle while intoxicated.

¶2 Hansen was cited by Village of Twin Lakes Officer Timothy Becker for a first offense operating a motor vehicle while intoxicated contrary to Village Ordinance § 10.04.020(a) adopting WIS. STAT. § 346.63(1)(a). Hansen filed a motion to suppress evidence due to a lack of probable cause to support his arrest. After a brief evidentiary hearing, the circuit court denied the motion. Later, the parties stipulated to the facts, and the circuit court found Hansen guilty. This appeal ensued.

¶3 Becker was the sole witness at the evidentiary hearing. The officer was on routine patrol when he saw the vehicle being operated by Hansen straddle the center line for three or four car lengths. Becker testified that Hansen stopped appropriately at a stop sign and did not drive erratically when he left the stop sign. After he left the stop sign, Becker activated his emergency lights and stopped Hansen, who properly stopped his vehicle. As Hansen left his vehicle, Becker noted that “[h]is balance was very unsteady.” When Becker talked with Hansen he detected “a strong odor of alcohol on his breath and person,” and his speech was slurred. Becker testified that when he asked Hansen if he knew why he had been stopped, Hansen “just went ugh, ugh, like that, and threw his hands up like he had no idea.” After Hansen admitted that he had had a couple of beers, Becker asked him to perform field sobriety tests.

Q Did he pass those field sobriety tests?

A No, he didn't.

Q Do you recall how many field sobriety tests you had Mr. Hansen perform?

A I believe there were three.

Q Did he pass any of them?

A No.

Q And what did you do at that point?

A At that point I stopped testing and placed him under arrest for operating a motor vehicle while under the influence of an intoxicant.

MR. LEWIS [Village Attorney]: I don't have any further questions, Your Honor.

¶4 At the close of the hearing, Hansen conceded that Becker had a reasonable articulable suspicion for the initial traffic stop. But, he argued that there was insufficient evidence to show that Becker had probable cause for an arrest. The circuit court denied the motion to suppress, stating:

That after administering three sobriety tests to Mr. Hansen, the officer's assessment was that he failed those tests. He observed the slurred speech, an admission of having had a few beers, a strong odor of alcohol and poor balance. Based on that, the Court does believe that he had probable cause to arrest.

¶5 On appeal, Hansen again concedes that there was a reasonable, articulable suspicion that supports the initial traffic stop. He contends that the Village did not meet its burden of establishing probable cause for the arrest. He insists that without evidence of the officer's observations of his performance of the field sobriety tests, there is no factual basis in support of probable cause to arrest.

¶6 The facts relative to the question of probable cause are not disputed. Whether undisputed facts constitute probable cause to arrest is a question of law, which we review without deference to the circuit court. *See State v. Babbitt*, 188 Wis. 2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994). In conducting this review, we look to the totality of the circumstances to determine if the arresting officer's knowledge at the time of the arrest would lead a reasonable officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant. *See State v. Nordness*, 128 Wis. 2d 15, 37, 381 N.W.2d 300 (1986).

Probable cause to arrest is to be judged by “the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.” *State v. Truax*, 151 Wis. 2d 354, 360, 444 N.W.2d 432 (Ct. App. 1989). The standard for probable cause is low. The conclusion must be based on more than a suspicion that the defendant committed a crime, but the evidence need not even reach the level that guilt is more likely than not. *See State v. Mitchell*, 167 Wis. 2d 672, 681-82, 482 N.W.2d 364 (1992).

¶7 Hansen does not dispute that he failed the three field sobriety tests administered by Becker. Rather, he argues that the failure of the prosecutor to explore the details of the three tests made it impossible for the circuit judge to find there was probable cause for an arrest. We conclude that it is not necessary for the court to have detailed testimony on the type of field sobriety tests administered and the results.

¶8 “The purpose of the field sobriety test is to make a preliminary determination of whether the defendant is intoxicated.” *Babbitt*, 188 Wis. 2d at 359. However, field sobriety tests are not always necessary to establish probable cause. *See State v. Kasian*, 207 Wis. 2d 611, 622, 558 N.W.2d 687 (Ct. App. 1996). “[T]he question of probable cause is properly assessed on a case-by-case basis. In some cases, the field sobriety tests may be necessary to establish probable cause; in other cases, they may not.” *Id.*

¶9 The Village has the burden of persuasion at a suppression motion hearing. *See State v. Wille*, 185 Wis. 2d 673, 682, 518 N.W.2d 325 (Ct. App. 1994). At the hearing, the Village presented evidence that Hansen exhibited five indicia of drunk driving. First, Hansen operated his vehicle straddling the center line for three or four car lengths. Second, as he exited the vehicle, Hansen’s

balance was very unsteady. Third, Becker detected a strong odor of alcohol on Hansen's breath and person. Fourth, his speech was slurred. Fifth, Hansen admitted to having consumed a couple of beers. These five indicia, without the administration of field sobriety tests, would have been enough to permit a reasonable officer to conclude that Hansen was operating a vehicle while intoxicated. *See id.* at 684.

¶10 In addition, the Village did present testimony from Becker that Hansen was asked to perform three field sobriety tests and failed them. Hansen did not cross-examine the officer or in any other manner challenge his conclusion that Hansen performed the tests in an unsatisfactory manner. In this appeal, Hansen does not provide any legal authority to support his proposition that at a suppression hearing the prosecution must offer detailed testimony of the results from field sobriety tests to corroborate the officer's conclusion that the driver was operating a vehicle while under the influence of an intoxicant. We may decline to review issues inadequately briefed or arguments unsupported by references to legal authority. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶11 The circuit court fulfilled its obligations at the suppression hearing. It took "evidence in support of suppression and against it, and [chose] between conflicting versions of the facts." *Wille*, 185 Wis. 2d at 682. It determined "the credibility of the officers and other witnesses." *Id.* Finally, the court found "historical facts" and determined that probable cause existed based on those facts. *See id.* The circuit court reached this conclusion by applying the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. *See Truax*, 151 Wis. 2d at 360.

¶12 Probable cause hinges on the question of whether the facts and circumstances would allow a reasonable officer to believe that guilt is more than a possibility. Probable cause cannot be determined by a checklist of requirements. Probable cause involves an officer's evaluation of the entire situation at hand and a determination based upon that evaluation of the probability that an offense was committed. *See Babbitt*, 188 Wis. 2d at 356-57. Looking at the totality of the circumstances, this court believes that a reasonable officer in Becker's position could have reasonably concluded that Hansen committed an OWI offense. Accordingly, Hansen's arrest was lawful, and therefore the conviction is affirmed.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

