

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 22, 2006**

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. 2005AP1809-CR**

**Cir. Ct. No. 2005CT199**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD A. HALLADA,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Brown County:  
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Richard Hallada appeals a judgment of conviction for operating a motor vehicle while intoxicated, third offense. Hallada contends

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

he was arrested when an officer transported him away from the scene of a traffic stop before performing field sobriety tests. We affirm the judgment of conviction because the officer had probable cause before transporting Hallada.

## FACTS

¶2 At approximately 2:40 a.m. on January 15, 2005, City of Green Bay police officer Jeffrey Schilling was stopped at a red traffic light. When the left turn arrow turned green, he noticed a blue Ford truck accelerate rapidly from its stop. Schilling followed the truck and, while attempting to catch up, estimated its speed at sixty-five miles per hour. The speed limit was thirty miles per hour.

¶3 Upon catching up to the truck, Schilling activated his emergency lights, but the truck did not stop. Shilling then used his siren, after which the truck entered a Cub Foods parking lot. The truck came to a stop in two parking stalls, and the truck's driver, Hallada, exited the vehicle. Shilling ordered him to get back in and wait.

¶4 When Shilling approached Hallada, he noticed the smell of intoxicants and that Hallada was speaking with a "thick tongue" and slurring his words. Because it was a "bitterly cold" January night, Schilling asked Hallada if he would perform field sobriety tests at a hospital and Hallada agreed to do so. Schilling then frisked and handcuffed Hallada before placing him in his squad car and transporting him to the hospital. Schilling told Hallada that he was not under arrest. He also testified that he was not aware of a closer place to perform the field sobriety tests at that time of night, and the hospital was approximately a ten-minute drive away. After field sobriety tests, Hallada was cited for operating while intoxicated and a blood test was performed. The blood test indicated a blood alcohol content of 0.19%.

¶5 Hallada filed a motion to suppress any evidence obtained after the transport to the hospital. He asserted that there was no probable cause to arrest him when he was handcuffed, frisked, and transported to the hospital. The circuit court found that Hallada was not arrested until after the field sobriety tests at the hospital. The court found that Hallada consented to the transport and Schilling's actions were reasonable. Hallada then pled guilty, was convicted, and now appeals.

### DISCUSSION

¶6 The State does not argue that Schilling had probable cause to arrest Hallada before he was transported to the hospital. Rather, it contends he was arrested after field sobriety tests were performed at the hospital. Apparently, the State believes that field sobriety tests are necessary to establish probable cause. We disagree.

¶7 Whether probable cause exists based on the facts of a given case is a question of law that we review independently. *State v. Kaisan*, 207 Wis. 2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996). Probable cause exists where the totality of the circumstances within the arresting officer's knowledge at the time of arrest would lead a reasonable officer to believe the defendant has committed a crime. *State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). We are not bound by an officer's subjective assessment or motivation. *Kaisan*, 207 Wis. 2d at 621.

¶8 Contrary to the belief of the State, field sobriety tests are not always necessary to establish probable cause. *See id.* at 622. Whether field sobriety tests are necessary will depend on the facts of a particular case. *Id.* In *Kaisan*, we concluded that there was probable cause where an officer discovered the defendant at an accident scene and observed a strong odor of intoxicants and slurred speech.

*Id.* at 622-23. No field sobriety tests were performed. *Id.* at 622. Here, Hallada was driving well over the speed limit, failed to respond to police emergency lights, and parked his vehicle in two parking stalls. These facts, combined with Hallada's odor of intoxicants, "thick tongue," and slurred speech constituted probable cause to believe that Hallada was driving while intoxicated. *See id.*

*By the Court.*—Judgment affirmed.

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

