COURT OF APPEALS
DECISION
DATED AND RELEASED

February 21, 1996

No. 95-2210-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KENNETH F. KRANTZ,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed*.

BROWN, J. Kenneth F. Krantz appeals convictions of operating a motor vehicle under the influence of an intoxicant and operating a motor vehicle with a prohibited blood alcohol concentration (BAC). *See* § 346.63(1)(a) and (b), STATS. Krantz argues that the complaint failed to establish probable cause that he operated a motor vehicle on a public highway because it did not set forth the specific facts supporting the charges. Krantz further argues that the trial court erred when it denied his motions to suppress

the intoxilyzer results and related evidence. The trial court found that the affidavit he filed to support the motions breached a local court rule requiring that the affidavit specifically describe the grounds for a motion.

The facts supporting the complaint are as follows. On January 15, 1995, at approximately 2:37 a.m., a University of Wisconsin-Whitewater police officer observed Krantz's car cross the centerline and operate in the opposite lane of traffic. Based on Krantz's driving, the officer attempted to stop him, but Krantz continued to operate his vehicle for about one-half mile before he finally pulled over. Once pulled over, Krantz parked his car irregularly.

Krantz's speech and behavior while he was talking to the officer indicated that he might be intoxicated. Krantz consented to field sobriety tests, which he failed. The officer arrested Krantz for operating a motor vehicle while intoxicated.

At the police station, the officer explained the testing process and had Krantz take an intoxilyzer exam. His results indicated a .12% BAC. The officer then issued the citations.

At a status hearing on February 28, 1995, the trial court ruled on the motions at issue in this appeal. First, Krantz moved to dismiss the criminal complaint because the "probable cause section" failed to adequately establish that he operated a motor vehicle on a public highway. While the charging portion of the complaint detailed the particulars of where and when the officer observed the driving, the "probable cause section" simply stated that the officer

observed Krantz operate a motor vehicle. The trial court denied the motion noting that the complaint referenced the police report, which better detailed how the arresting officer observed Krantz driving on West Main Street. The trial court stated: "Even though they do it by reference, I don't have any problem with that."

Krantz now argues that the complaint, a standard-form document, did not provide a factual basis establishing that he operated a motor vehicle upon either a public highway or premises held open to the public. He maintains that only the charging portion of the complaint alleged that he was driving on West Main Street and the "probable cause section" only contained conclusory statements that what was said in the charging portion was true. The sufficiency of a complaint is a question of law that we review independently. ***State v. Manthey***, 169 Wis.2d 673, 685, 487 N.W.2d 44, 49 (Ct. App. 1992).

The function of a complaint is to inform. Its purpose is to allege facts from which a reasonable person could conclude that the defendant probably committed a crime. ***State v. O'Connell***, 179 Wis.2d 598, 604, 508 N.W.2d 23, 25 (Ct. App. 1993). A complaint is sufficient if it answers five questions: (1) who is charged? (2) what is the person charged with? (3) when and where did the alleged offense take place? (4) why is this particular person being charged? and (5) who said so? ***Id.*** The test is one of "minimal adequacy, not a hypertechnical but in a common sense evaluation." ***Ritacca v. Kenosha County Court***, 91 Wis.2d 72, 82, 280 N.W.2d 751, 756 (1979) (quoted source omitted).

We conclude that this complaint was sufficient because answers to the five questions can be found within the *four corners* of the document. Even without referencing the police report, the complaint informs us that Krantz was charged with operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited BAC. It also states the date of these offenses, January 15, 1993, and that they occurred on West Main Street in Whitewater. Finally, the complaint described how the officer saw Krantz "operating vehicle left of center line" and that Krantz "parked on sidewalk." This information informs us why the officer believed Krantz had committed these offenses.

We now turn to Krantz's second argument. At the February hearing, the trial court also addressed his motions to suppress evidence because of an unlawful stop and arrest. The trial court, however, did not immediately dismiss these motions on the merits; rather, it rejected them at this hearing because the affidavits supporting the motions violated the local court rule requiring specific factual allegations. The trial court afforded Krantz's attorney two weeks in which to refile the motions if accompanied by an "appropriate[ly] detailed affidavit" which "set[s] forth on its face the basis for the motions to suppress, with case law." Since Krantz never supplied these amended affidavits, the trial court later denied his motions.

Krantz now attacks the procedure relied on by the trial court. He seems to suggest that this court rule is unconstitutional because it shifts the burden of proof to the defendant to establish that the State's evidence is not

admissible. *See* ***State v. Verhagen***, 86 Wis.2d 262, 265-66, 272 N.W.2d 105, 106 (Ct. App. 1978).

The State responds, however, that Krantz never raised this argument to the trial court and thus has waived his right to pursue it on appeal. We agree.

We must apply the general rule against raising new issues on appeal. *See* ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). While Krantz's argument is not frivolous, and this court has the discretion to address newly raised constitutional claims, *see* ***L.K. v. B.B.***, 113 Wis.2d 429, 448, 335 N.W.2d 846, 856 (1983), *appeal dismissed*, 465 U.S. 1016 (1984), we have absolutely no factual record with which to measure the appropriateness of this local court rule. *See* ***id.*** Accordingly, we deem this issue waived.

By the Court.—Judgment affirmed.

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