COURT OF APPEALS
DECISION
DATED AND FILED

October 29, 2026

Samuel A. Christensen
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 Nos. 2025AP1199
2025AP1200

Cir. Ct. Nos. 2025TR26
2025TR27

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

COUNTY OF JEFFERSON,

PLAINTIFF-RESPONDENT,

V.

JUAN CARLOS GARCIA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County: THERESA A. BECK, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] Juan Carlos Garcia appeals a judgment of conviction for operating a vehicle while under the influence of alcohol, as a first

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b), (c) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

offense, following a trial to the circuit court. Garcia argues that the court erred in denying his motion to suppress, which was based on Garcia's argument that law enforcement officers arrested him without probable cause. I conclude that the arresting officers had probable cause to suspect Garcia had driven while impaired by alcohol. Accordingly, I affirm.

BACKGROUND

¶2 On November 24, 2024, Garcia was pulled over by a Jefferson County Sheriff's Department deputy. Garcia was then arrested and transported to a hospital for a blood draw. Garcia was issued citations for operating while under the influence of alcohol and operating with a prohibited alcohol concentration, contrary to Jefferson County ordinances adopting WIS. STAT. § 346.63(1)(a) and (b). I use "OWI" as shorthand to refer to both offenses.

¶3 Garcia moved to suppress evidence on the grounds that he was arrested without probable cause. A hearing on this motion was held jointly with a trial to the circuit court on the two offenses. The court denied Garcia's motion. The court then determined that the County met its burden to prove the two offenses by clear, convincing, and satisfactory evidence. The court entered a judgment of conviction on the operating under the influence citation.

¶4 Garcia appeals.

DISCUSSION

¶5 This court's "'review of an order granting or denying a motion to suppress evidence presents a question of constitutional fact.'" ***State v. Gore***, 2025 WI App 11, ¶17, 415 Wis. 2d 279, 18 N.W.3d 198 (quoting ***State v. Tullberg***, 2014 WI 134, ¶27, 359 Wis. 2d 421, 857 N.W.2d 120). "'We review a question of

constitutional fact under a two-step inquiry: First, we will uphold the circuit court's findings of fact unless those findings are clearly erroneous. Second, we conduct an independent, de novo analysis of the application of constitutional principles to the facts found.'" ***Id.*** (quoting ***State v. Blackman***, 2017 WI 77, ¶25, 377 Wis. 2d 339, 898 N.W.2d 774).

¶6 "Probable cause is a 'flexible, common-sense measure of the plausibility of particular conclusions about human behavior.'" ***State v. Lange***, 2009 WI 49, ¶20, 317 Wis. 2d 383, 766 N.W.2d 551 (quoted source omitted). "The question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances." ***Id.*** "Probable cause to arrest for operating while under the influence of an intoxicant refers to that quantum of evidence within the arresting officer's knowledge at the time of the arrest that would lead a reasonable law enforcement officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant." ***Id.***, ¶19. For purposes of determining what was within the arresting officer's knowledge, courts are to consider the collective knowledge of the officer's department, so long as there was "'police-channel communication to the arresting officer'" and the officer acted "'in good faith'" on the basis of the communication. *See* ***State v. Rissley***, 2012 WI App 112, ¶19, 344 Wis. 2d 422, 824 N.W.2d 853 (quoting ***State v. Mabra***, 61 Wis. 2d 613, 625-26, 213 N.W.2d 545 (1974)).

¶7 Pertinent here, WIS. STAT. § 346.63(1)(a) prohibits operating a motor vehicle while "[u]nder the influence of an intoxicant." A person is "under the influence" when the person is "'less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle.'" *See* ***State v. McAdory***, 2021 WI App 89, ¶51, 400 Wis. 2d 215, 968 N.W.2d 770 (quoting ***State v. Hubbard***, 2008 WI 92, ¶11, 313 Wis. 2d 1, 752 N.W.2d 839).

Suppression Hearing Evidence

¶8 The following facts were found by the circuit court, based on the testimony of two deputies involved in Garcia's arrest, a dashcam video from one of the deputies, and body camera videos from both deputies. Garcia does not argue that the court clearly erred in making any explicit or implicit factual finding.

¶9 Deputy Ashley Nedanovski of the Jefferson County Sheriff's Office was on patrol in a marked squad vehicle when dispatch informed her that a citizen had reported seeing a red truck bearing blue collector plates taking unusually wide turns and otherwise driving erratically. Nedanovski responded to this dispatch by positioning her vehicle on the road in Johnson Creek where the truck had reportedly been observed, and a few minutes later she saw a truck matching the reported description.

¶10 Nedanovski followed the truck northbound. She observed it move onto a lane line, but without crossing that line. The truck entered into a marked left turn lane at an intersection regulated by a traffic light and came to a stop at the intersection, despite the fact that the truck faced a green light. While the truck remained stopped, several southbound vehicles passed through the intersection. But even after those vehicles passed by, and nothing else prevented the truck from proceeding with a left turn, the truck remained stopped at the green light until the light turned red. At some point, while the truck was still stopped in the left turn lane, its driver opened the driver's side door and, in the words of the court, "stuck the upper part of their body out," "appeared to [look] behind," and then closed the door.

¶11 After the light turned green, the truck drove forward, but it did not turn left, as would have been appropriate for the turn lane it was in. Instead, it

merged back toward the right and proceeded straight in a northbound lane. Nedanovski followed the truck across the intersection and turned on her emergency lights, and then her siren. The truck pulled over.

¶12 Nedanovski made contact with the driver of the truck, Garcia, who was the truck's sole occupant. During this initial contact, Nedanovski smelled the odor of intoxicants coming from Garcia. She also observed the following: Garcia's speech was notably slow and slurred; his eyes were bloodshot; and his movements were unusually slow.

¶13 Although the circuit court did not include in its findings a reference to this topic, I note that Nedanovski gave the following undisputed testimony. Nedanovski asked Garcia why he had not turned left back at the traffic light. He answered that he had "felt uncomfortable with [Nedanovski's] lights on behind him." Nedanovski told him multiple times that her lights, meaning the emergency lights on her police vehicle, were not activated until after Garcia proceeded north to the other side of the intersection. Garcia's response was to repeat that he had been "uncomfortable with [Nedanovski] and [her] lights on behind him."

¶14 When asked where he was coming from, Garcia initially answered that he was traveling from his residence, and he named a street as the location of his residence. Nedanovski testified that this explanation did not make sense to her, given Garcia's direction of travel. After Nedanovski again asked where Garcia was coming from, he told her that he was coming from Whitewater—

which was not the area he had identified for his residence—where he had been painting. The court observed that he appeared to have paint on one hand.[2]

¶15 Nedanovski asked Garcia twice whether he had been drinking, and Garcia did not directly answer the question either time.

¶16 Nedanovski called in a deputy who was then in training, Mike Roehl, to take over conducting the traffic stop. Roehl arrived and made contact with Garcia while he was still seated in the truck. Roehl also smelled the odor of intoxicants and he observed Garcia's eyes to be bloodshot and noticed that he slurred his speech. Roehl also observed, once Garcia was out of the truck, that he was unsteady on his feet.

¶17 Roehl sought to administer field sobriety tests to Garcia, though only one test was fully completed, a horizontal gaze nystagmus test. In Garcia's favor, I assume without deciding that Roehl's observations of Garcia during the testing do not contribute to a determination of probable cause to arrest Garcia. This is based on ambiguity in the circuit court's findings regarding whether Roehl administered the nystagmus test in accordance with standards designed to make the test reliable and Roehl's testimony that the failure to administer the test according to such standards undermines the validity of the test's results. But I do take into account something that occurred after the one complete test was over.

[2] The circuit court did not appear to place significant weight on Garcia's exchange with Nedanovski regarding his direction of travel. On appeal, Garcia appears to dispute that his answers to questions about his travels that night were suspicious. The State notes Nedanovski's testimony that what Garcia told her about where he was coming from did not make sense to her, but the State does not rely on this evidence in its argument. I assume without deciding that Garcia's statements to Nedanovski about where he was coming from or where he was going to do not support probable cause to arrest.

Garcia went to pick up a hat, which he had placed on the ground for purposes of attempting part of the test, and in going to pick it back up he "stumbled a bit."

¶18 Roehl told Garcia that he was going to administer another field sobriety test, a walk-and-turn test. Garcia got into what Roehl referred to as an "instructional stance," as directed by Roehl. But then, contrary to Roehl's direction, Garcia got out of the stance before he was told to do so. Garcia repeatedly asked questions about the walk-and-turn test and became argumentative with the officers present. At this point, multiple officers placed Garcia under arrest.[3]

Analysis

¶19 I conclude that the circuit court's factual findings are not clearly erroneous and that they establish that there was probable cause to believe that Garcia had committed an OWI offense at the time of his arrest. The deputies were collectively aware of the following in support of that conclusion.

¶20 According to a citizen report relayed to the deputies, Garcia had taken unusually wide turns and otherwise driven erratically. *See* ***State v. Kennedy***, 2014 WI 132, ¶22, 359 Wis. 2d 454, 856 N.W.2d 834 (erratic driving is one factor that can support probable cause to arrest for a drunk driving-related violation).

[3] There is no dispute that, at some point before Garcia's arrest, a police officer from the Village of Johnson Creek arrived on the scene, but timing of this officer's appearance is not clear from the record. Accompanying Deputy Roehl was a training officer from the same sheriff's department as Roehl and Nedanovski. The Johnson Creek police officer and the third deputy did not testify at trial and neither party argues that they had any relevant interactions with Garcia.

¶21 Garcia's stopping and inexplicably remaining in the left turn lane, partially getting out of his truck to look back, and merging back into the northbound lane going straight constituted a series of unusual behaviors that could be reasonably viewed by an officer in Nedanovski's position as supporting an inference of impaired judgment while driving. Garcia also gave a vague explanation for why he engaged in this behavior at the traffic light. He told Nedanovski that the lights from her police vehicle made him "uncomfortable." But he did not elaborate on which lights he meant or how they could have affected his comfort in proceeding with a left turn, even after Nedanovski pointed out to him that she did not activate her emergency lights until after he passed through the intersection.

¶22 Beyond this suspicious conduct, Garcia smelled of intoxicants, his eyes were bloodshot, his speech was slurred, and his movements were notably slow—each a sign of intoxication. *See* ***Kennedy***, 359 Wis. 2d 454, ¶22. Considered together, these four indicia can be interpreted as signs of significant intoxication, not just having consumed some amount of alcohol.

¶23 Then there were the facts that Garcia evaded answering Nedanovski's questions about whether he had been drinking and that he was unsteady on his feet, which a reasonable officer could consider a sign of impairment (putting to the side the results of the horizontal nystagmus gaze test). *See* ***id.*** (fact that driver "stumbl[ed]" after getting out of vehicle supported probable cause to arrest).

¶24 Together, the unusual driving behavior at the traffic light plus the indicia supporting a reasonable inference of significant intoxication provide an ample basis for probable cause to arrest.

¶25 Garcia argues that the facts here resemble those in ***State v. Faruzzi***, in which this court concluded that there were some factors indicating possible impairment, but that these were insufficient to rise to the level of probable cause. ***State v. Faruzzi***, No. 2019AP167-CR, ¶¶17-25, unpublished slip op. (Sept. 25, 2019).[4] I now summarize the pertinent facts from ***Faruzzi***, explaining how they are materially distinguishable from this case.

¶26 In ***Faruzzi***, "[a]n identified witness reported that Faruzzi and another person were fighting and other reports indicated that they *might be intoxicated*," but there were no other facts supporting the suspicion of intoxication. ***Id.***, ¶¶17, 21 (emphasis added). Here, in contrast, the citizen report provided the detail of a truck matching Garcia's truck making wide turns and engaging in erratic driving, which relate directly to the level of impairment of the observed driver's ability to control the vehicle. *See* ***Kennedy***, 359 Wis. 2d 454, ¶22. Garcia notes that the citizen informant here did not testify, but he does not develop an argument supported by legal authority that the citizen's report of erratic driving does not provide at least some support for probable cause. *See* ***State v. Kolk***, 2006 WI App 261, ¶¶12-13, 298 Wis. 2d 99, 726 N.W.2d 337 (discussing reliability standards for citizen informants).

¶27 Faruzzi drove 15 miles per hour over the speed limit, but there was no evidence that he engaged in "reckless driving with telltale signs of an impairment of the ability to safely control the vehicle under OWI, *e.g.*, arbitrary

[4] Garcia cites to ***State v. Faruzzi***, No. 2019AP167-CR, ¶¶17-25, unpublished slip op. (Sept. 25, 2019), as persuasive authority under WIS. STAT. RULE 809.23(3)(b) ("[A]n unpublished opinion issued on or after July 1, 2009, that is authored by … a single judge under [WIS. STAT. §] 752.31(2) may be cited for its persuasive value.").

lane changes, off-road traveling, sluggish turns, etc." ***Faruzzi***, No. 2019AP167-CR, ¶17. In contrast here, the citizen report of erratic driving took on added significance in light of the officer's direct observation of Garcia's unusual series of moves related to the left turn lane. A reasonable officer in Nedanovski's position could interpret this series of unusual driving events as erratic driving behavior. In particular, the facts that Garcia partially got out of the truck to look behind him in the direction of Nedanovski's marked vehicle and that he gave a vague answer as to why he did not turn left raised a reasonable inference that he was conscious of his guilt for driving while impaired.

¶28 In ***Faruzzi***, the State did not argue that Faruzzi "had any marked problems walking, talking, or maintaining his balance" "throughout the interactions between [police] and Faruzzi," or that Faruzzi had poor performance in any of the field sobriety tests. ***Id.***, ¶20. Faruzzi had glassy, bloodshot eyes and bore only a "light" odor of alcohol. ***Id.***, ¶¶4, 6, 18, 21. Here, Garcia displayed multiple signs of intoxication, including at least some stumbling, even without taking into consideration the field sobriety testing.

¶29 Garcia emphasizes that the record here lacks evidence of impairment based on field sobriety testing. As noted above, I assume without deciding that no results of the testing could support probable cause. Garcia acknowledges that evidence of drunk driving observed during a field sobriety test is not necessary to establish probable cause to arrest for OWI. *See* ***Washburn County v. Smith***, 2008 WI 23, ¶33, 308 Wis. 2d 65, 746 N.W.2d 243. Instead, Garcia contends that, in those cases in which evidence from field sobriety tests was determined not to be necessary to establish probable cause, there was stronger evidence of impairment from other sources than was present in this case. *See, e.g.*, ***Lange***, 317 Wis. 2d 383, ¶¶24, 34 (probable cause existed when evidence included facts that the

defendant drove more than 50 miles per hour over the speed limit and drove his vehicle off the road and into a utility pole, and when field sobriety testing was not feasible).

¶30 I reject this argument because, for the reasons explained above, there is evidence here not merely of a small degree of alcohol consumption, but evidence of intoxication to the point of impairment. Garcia does not cite any case law which suggests that the evidence here is not sufficient to show that there was probable cause to believe that Garcia's level of intoxication rendered him "under the influence" for purposes of WIS. STAT. § 346.63(1)(a).

¶31 Garcia also notes the absence of several other factors here that are sometimes present in cases involving suspected impairment. For example, the circuit court found that he did not fully cross over a lane line before he stopped in the left turn lane, distinguishing this case from those in which a driver improperly crosses highway lines. But I am not persuaded that the absence of any of these factors, or all of them collectively, outweigh the factors noted above that support probable cause to arrest.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.