COURT OF APPEALS
DECISION
DATED AND FILED

February 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2916-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CARL A. KNOLL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County: WILLIAM F. HUE, Judge. *Affirmed.*

EICH, C.J.[1] Carl Knoll appeals from a judgment convicting him of operating a motor vehicle while intoxicated. The only issue is whether the arresting officer had probable cause to arrest him for the offense—specifically whether there was probable cause to believe Knoll was operating his vehicle on

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[1] This appeal is decided by a single judge pursuant to § 752.31(2)(f), STATS.

"premises held out to the public for use of their motor vehicles" within the meaning of § 346.61, STATS. We are satisfied that probable cause to arrest existed, and we affirm the judgment.

The officer, Jefferson County Deputy Sheriff Mark Miller, was dispatched to a private residence, where he found Knoll passed out in the driver's seat of his car on the front lawn adjacent to a county highway. The car's engine was running and its headlights and brake lights were on. Opening the door, Miller noticed an odor of intoxicants and, when Knoll awakened and took his foot off the brake pedal, the car began to move. Miller reached inside, moved the gearshift lever to "Park," and turned off the ignition. According to Miller, Knoll's speech was slurred and his eyes were glassy and bloodshot. He was uncooperative and he became aggressive when Miller began to administer field sobriety tests, which Knoll failed. When a preliminary breath test indicated a blood-alcohol level of .11 percent, Miller placed Knoll under arrest.

According to Knoll, the facts known to and observed by Miller at the time were insufficient to give him probable cause to believe Knoll had been driving his car, while intoxicated, on the road adjacent to the lawn where Miller found him. He claims "absolutely no evidence [was] introduced as to how [he] had gotten to the lawn," or how long he had been there. Probable cause, however, is not a matter of trial-type proof, nor is it a sufficiency-of-the-evidence test. It is, as its name implies, a question of probability and plausibility.

> [It] is neither a technical nor a legalistic concept; rather, it is a flexible, common-sense measure of the plausibility of particular conclusions about human behavior—conclusions that need not be unequivocally correct or even more likely correct than not. It is enough if they are sufficiently probable that reasonable people—not legal technicians—

> would be justified in acting on them in the practical affairs of everyday life.

State v. Pozo, 198 Wis.2d 705, 711, 544 N.W.2d 228, 231 (Ct. App. 1995) (citations and quoted sources omitted). Probable cause to arrest exists

> where the officer, at the time of the arrest, has knowledge of facts and circumstances sufficient to warrant a person of reasonable prudence to believe that the [person arrested] is committing, or has committed, an offense. As the very name implies, it is a test based on probabilities; and, as a result, the facts faced by the officer need only be sufficient to lead [him or her] to believe that guilt is more than a possibility. It is also a commonsense test. The probabilities with which it deals are not technical: They are the factual and practical considerations of everyday life on which reasonable and prudent men and women, not legal technicians, act.

Dane County v. Sharpee, 154 Wis.2d 515, 518, 453 N.W.2d 508, 510 (Ct. App. 1990) (quoted sources and internal quotation marks omitted). We measure the quantum of information that constitutes probable cause to arrest by the facts of the particular case, ***State v. Wilks***, 117 Wis.2d 495, 502, 345 N.W.2d 498, 501 (Ct. App. 1984), and in making that measurement, we look to the totality of the circumstances within the officer's knowledge at the place and time of the arrest. ***State v. Koch***, 175 Wis.2d 684, 701, 499 N.W.2d 152, 161 (1993).

Without question, probable cause existed to believe that Knoll was intoxicated; not only did his appearance and conduct so indicate, but he scored .11 percent on the preliminary breath test. He was found passed out and seated alone in the driver's seat of his car, with the engine running, the transmission in gear, the headlights on, his foot on the brake, and, as indicated, his car was sitting in a residential front lawn just off the highway. In our opinion, the totality of the circumstances could reasonably lead Deputy Miller to conclude, using a common-

sense measure of the plausibility of conclusions about human behavior—conclusions that need not be unequivocally correct, or even more likely than not—that more than a mere possibility existed that Knoll's car had neither been dropped from the sky onto a stranger's front lawn nor parked hours before, but had been driven by him while he was intoxicated.

We thus reach the same conclusion as the circuit court: Miller had probable cause to arrest Knoll for driving while intoxicated.

By the Court.–Judgment affirmed.

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