

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2014

Diane M. Fremgen
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. 2013AP2755

Cir. Ct. No. 2013TR941

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN THE MATTER OF THE REFUSAL OF ALPESH D. SHAH:

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALPESH D. SHAH,

DEFENDANT-APPELLANT.

APPEAL from order of the circuit court for Milwaukee County:
REBECCA F. DALLET, Judge. *Affirmed.*

¶1 FINE, J. Alpesh D. Shah appeals the trial court's order finding that his refusal to submit to a chemical test of his blood was not reasonable. Although other matters were discussed before the trial court, the only issue on this appeal is whether the police had probable cause to arrest him. We affirm.

I.

¶2 Two Milwaukee County deputy sheriffs testified at the trial court's evidentiary probable-cause hearing, Christopher Leranath, and James Jarvis. As Shah notes in his reply brief, "the facts at issue on this appeal are undisputed," and "Shah relies solely on the deputies' testimony for the probable-cause issue."

¶3 Deputy Leranath told the trial court that at around 8:30 in the morning in early December of 2012, he was driving his squad car in Milwaukee when he saw the car that Shah was driving "pass a marked squad car that was stopped in the median" to take care of a light pole that had fallen. Leranath testified that he was "going approximately 60 miles an hour" when he saw Shah "pass my squad car and the other marked squad that was in the median parked in the median with his red lights on, past my squad at a high rate of speed and continue to accelerate." The speed limit was fifty-five. Shah was driving "[a]pproximately 84 miles an hour."

¶4 After about a quarter of a mile, Deputy Leranath turned on his red lights and pulled Shah over. From a distance, Leranath had also seen Shah "deviate out of his lane" two times.

¶5 Leranath was in his "full duty uniform" and walked over to the car Shah was driving. Shah was alone in the car, and was sitting in the driver's seat. Leranath asked him to roll down his window, and, when he did, Leranath "noticed a strong smell of marijuana emanating from the -- from the car." Deputy Leranath told Shah that he was speeding. According to Leranath, Shah agreed.

¶6 Deputy Leranath told the trial court that Shah "had really red, bloodshot eyes, glassy eyes." According to Leranath, this is "a common side effect

of someone who could -- could have possibly been smoking marijuana.” When the State asked if there was anything other than Shah’s eyes that indicated that Shah “may have been using marijuana,” Deputy Leranath responded: “His driving, basically blowing by two marked squad cars, not seeing either -- either of the squad cars” and the “the strong odor of marijuana coming from the vehicle.” Although Leranath agreed with Shah’s trial lawyer that he did not smell marijuana coming from Shah, Leranath told the trial court that this was “[b]ecause [the smell of marijuana] was so overpowering in the car, I couldn’t no longer smell it on him.” Leranath did not notice any odor of alcoholic beverage coming from Shah, and Shah’s speech was normal.

¶7 When Shah got out of the car, Deputy Leranath saw a “glass pipe” in the car’s center console. The pipe was “almost full of marijuana, and it was burnt on top, freshly burnt; and there was also a glass cylinder jar with marijuana in it also in the center console.” Leranath was trained and had experience identifying and smelling marijuana.

¶8 Deputy Jarvis arrived to “conduct a standardized field sobriety test,” but it was not done. Jarvis testified that he, too, “smelled the strong odor” of marijuana coming from the car. Jarvis also told the trial court that Shah said that “he had drank four to five beers and had his last drink approximately” an hour past midnight. Deputy Leranath arrested Shah.

II.

¶9 A person may not drive a car on our highways while he or she is either under the influence of an intoxicant or other drug. *See* WIS. STAT. § 346.63. Further, a person may not drive a car on the highway if he or she “has a detectable amount of a restricted controlled substance in his or her blood,” even though he or

she might not be impaired. WIS. STAT. § 346.63(1)(am). Thus, an officer has probable cause to arrest a person for driving a car on our highways if it appears from the totality of the objectively reasonable circumstances that the driver is either under the influence of an intoxicant or other drug, or while he or she “has a detectable amount of a restricted controlled substance in his or her blood.” *See State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300, 308 (1986). We review *de novo* the legal issue whether Shah’s arrest was supported by probable cause. *See State v. Butler*, 2009 WI App 52, ¶15, 317 Wis. 2d 515, 527, 768 N.W.2d 46, 51.

¶10 Significantly, probable cause to arrest does not require “proof beyond a reasonable doubt or even that guilt is more likely than not.” *State v. Welsh*, 108 Wis. 2d 319, 329, 321 N.W.2d 245, 251 (1982), *vacated on other grounds*, 466 U.S. 740 (1984). Rather, it is enough for a reasonable officer to objectively conclude that the “defendant probably committed [the offense].” *State v. Koch*, 175 Wis. 2d 684, 701, 499 N.W.2d 152, 161 (1993). In essence, probable cause starts the ball rolling—it is not the endpoint of guilt.

¶11 What the deputies saw the morning Deputy Leranthe stopped Shah fully supports Shah’s arrest, and the trial court so found in its oral decision. Since this is the only issue presented to us on this appeal, we affirm.

By the Court.—Order affirmed.

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

