

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 23, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3342-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM E. STEVENSON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County:
RICHARD J. CALLAWAY, Judge. *Affirmed.*

SUNDBY, J. In a trial to the court, the court found defendant-appellant William Stevenson guilty of operating a motor vehicle while under the influence, second offense, contrary to § 346.63(1)(a), STATS. The issue which Stevenson presents was not presented at trial. In a pre-trial motion, Stevenson sought to "suppress" evidence that he had refused to submit to field sobriety tests. Stevenson's "suppression" theory was that the police lacked probable cause to arrest him and could not gain probable cause from involuntary field

sobriety tests. We¹ conclude that the police did have probable cause to arrest Stevenson and affirm the judgment.

On January 29, 1994, at approximately 12:56 a.m., Madison police officer Jane Stoklasa was dispatched to investigate a two-car accident at the intersection of West Washington Avenue and Broom Street. At the suppression hearing, Officer Stoklasa testified that Stevenson smelled of intoxicants; his speech was slurred; his eyes were very bloodshot and half-closed; his face was red; he had difficulty maintaining his balance; and his answers to some of her questions were not responsive.

Because of the road conditions, Officer Stoklasa transported Stevenson to the Madison police station approximately four blocks away to conduct field sobriety tests. Stevenson repeatedly stated he wished his attorney to be present.

At the station, Stevenson refused to perform field sobriety tests, reiterating that he wasn't going to do anything without his attorney present. Officer Stoklasa then informed Stevenson that he was under arrest for operating a motor vehicle while under the influence.

At close of testimony at the suppression hearing, the trial court found that Officer Stoklasa had probable cause to arrest Stevenson for operating while under the influence. However, the court did not base its finding of probable cause on Stevenson's failure to perform the field sobriety tests. The court held:

The Court will deny the motion to suppress. Certainly there was probable cause. This officer ... testified that within a few seconds of her arriving, she smelled an odor of intoxicants, poor balance and slurred speech, and

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS. "We" and "our" refer to the court.

having to ask several times to repeat, to discover what some of the things were that occurred.

The thrust of Stevenson's argument is that the police officer did not have probable cause to arrest him without conducting field sobriety tests and that he could not be compelled to perform those tests. We agree that the defendant could not be required to perform field sobriety tests. However, Officer Stoklasa had ample evidence to arrest defendant for operating while under the influence. Field sobriety tests are merely evidence. It is customary procedure for the police to conduct field sobriety tests, not because the defendant is entitled to have such tests performed or because the police lack probable cause to arrest without such tests, but simply because the results of field sobriety tests provide strong evidence of intoxication. However, where an operator refuses to perform field sobriety tests, the arresting officer may still arrest the operator if the officer has probable cause to arrest. In this case, the trial court correctly concluded that Officer Stoklasa had probable cause to arrest Stevenson based on her personal observations of his condition and behavior.

Stevenson claims that under *Terry v. Ohio*, 392 U.S. 1 (1968), and Wisconsin's codification of *Terry*, § 968.24, STATS., a police investigation must take place where the person is stopped. Stevenson argues that the United States Supreme Court on multiple occasions has emphasized that police may investigate a person only at the site of the detention, not at the police station. See *Dunaway v. New York*, 442 U.S. 200, 212 (1979); *Hayes v. Florida*, 470 U.S. 811 (1985); *Brown v. Illinois*, 422 U.S. 590 (1975). However, these cases involved situations in which the police lacked probable cause to arrest the defendant. That is not Stevenson's case; Officer Stoklasa could have arrested Stevenson at the scene of the accident and transported him to the police station. The performance of field sobriety tests not only could have aided the officer in her investigation but could have substantiated Stevenson's claim that he was not operating while under the influence. If, as is implicit in his argument, he was not intoxicated, the field sobriety tests would presumably have cleared him and he would not have been arrested. By refusing to submit to field sobriety tests, Stevenson could not erase the observations of his personal condition and behavior made by Officer Stoklasa. It was upon those observations that Stevenson was convicted, not the officer's unsuccessful attempt to require Stevenson to perform field sobriety tests.

By the Court.—Judgment affirmed.

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