COURT OF APPEALS
DECISION
DATED AND RELEASED

June 10, 1997

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. 96-3353-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL F. HOBART,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Price County: PATRICK J. MADDEN, Judge. *Affirmed.*.

LA ROCQUE, J. Michael Hobart appeals a judgment of conviction for possession of a controlled substance, contrary to § 161.14(4)(t), STATS., 1993-94, based upon evidence of a chemical test showing the presence of THC in his blood. The issues are as follows: (1) Does a criminal complaint that alleges only a positive THC blood test result establish probable cause to believe Hobart ***knowingly*** possessed a controlled substance; (2) does an arrest for the civil offense of operating a snowmobile while under the influence of an intoxicant permit a

warrantless search for evidence; (3) assuming a search and seizure of blood pursuant to a valid arrest based upon probable cause that Hobart operated under the influence of an alcohol beverage, is a further test for THC reasonable and within the permitted limits of the Fourth Amendment. This court answers these questions in the affirmative and therefore affirms the judgment.

BACKGROUND

A Price County sheriff's deputy responded to an accident involving a snowmobile and a truck shortly before midnight in March 1995 and learned that Hobart had already been transported to the Flambeau Hospital. Another officer was dispatched to the hospital to determine if "alcohol had been a factor" in the accident. On appeal, Hobart does not challenge the sufficiency of the evidence to support his arrest for operating the snowmobile while under the influence of alcohol. He was arrested after the officer and the treating physician smelled alcohol on Hobart's breath, and, when Hobart refused to consent to a chemical test for intoxication, the officer ordered blood withdrawn as a search incident to an arrest. The blood was tested at the Wisconsin Laboratory of Hygiene, and revealed the presence of THC in the sample. Hobart was charged with possession of THC and convicted at trial. He appeals.

DISCUSSION

The first issue is whether the criminal complaint states probable cause to believe Hobart ***knowingly*** possessed THC. The standard of review for probable cause to establish the essential facts constituting the offense charged is well established in Wisconsin law, and it is unnecessary to set it forth again here. *See* ***State v. White***, 97 Wis.2d 193, 295 N.W.2d 346 (1980), and cases cited therein. The sufficiency of the complaint is a question of law this court decides de

novo. *See* ***State v. Manthey***, 169 Wis.2d 673, 685, 487 N.W.2d 44, 49 (Ct. App. 1992). Where reasonable inferences may be drawn establishing probable cause that support the charge, and equally reasonable inferences may be drawn to the contrary, the criminal complaint is sufficient. ***Id.*** at 688-89, 487 N.W.2d at 51. When examining a criminal complaint to determine whether it states probable cause to believe the defendant committed the crime charged, it must meet the test of minimal adequacy, not in a hyper-technical but in a common sense way. ***State ex rel. Evanow v. Seraphim***, 40 Wis.2d 223, 226, 161 N.W.2d 369, 370 (1968).

If Hobart means to suggest that the only reasonable inference from the presence of THC in his blood is one of innocence, such as may occur when the substance is attributable to residue from "second-hand smoke," this court disagrees. There exists another equally reasonable and common sense inference that the residue reflects his knowing and voluntary act of smoking marijuana.

Alternatively, if Hobart means to suggest that THC in his blood implies only that he ingested marijuana smoke at a time and place different from that charged in the complaint, his challenge fails for the same reason. If there are competing inferences, the magistrate is entitled to draw the inference favorable to sustaining the complaint.

Hobart next takes issue with the State's right to conduct a search and seizure for a non-criminal offense. It is well settled that the Fourth Amendment standards do not bar non-criminal searches and seizures for traffic regulation violations. ***Gustafson v. Florida,*** 414 U.S. 260, 265; ***State v. King,*** 142 Wis.2d 207, 210, 418 N.W.2d 11, 12 (Ct. App. 1987).

The final issue is whether, under the circumstances set forth earlier, there exists a violation of the Fourth Amendment because of the search beyond a

test for the presence of alcohol. Hobart's challenge relates to the absence of probable cause to believe he had operated a snowmobile while under the influence of THC. Because the Fourth Amendment protects "people, not places," the test is whether there is an expectation of privacy upon the part of one on which he may "justifiably" rely. *See* ***Katz v. United States***, 389 U.S. 347, 353 (1967). Thus, in Hobart's circumstances, the question is whether he had a reasonable expectation of privacy upon which he could have justifiably relied, so that his blood sample could not be subjected to chemical tests beyond a test for the presence of alcohol. This court thinks he did not.

As the State notes in its argument, the violation for which Hobart was arrested makes it unlawful to operate a snowmobile while "under the influence of an intoxicant." *See* § 350.101, STATS. "'Intoxicant' means any alcohol beverage, controlled substance analog or other drug or any combination thereof." Section 350.01(9), STATS. Because the officer had probable cause to believe Hobart had operated his machine while under the influence, it would appear that a search and seizure for evidence of that offense would allow a search for both drugs and alcohol. The touchstone for analyzing a search challenged under the Fourth Amendment is reasonableness. Because there was sufficient reason to believe Hobart operated a vehicle while under the influence of "intoxicants," it was not unreasonable to include an analysis for both drugs and alcohol. The public interest in highway safety is great, and the intrusion upon Hobart's privacy was minimal. This court concludes that the search here did not violate the Fourth Amendment.

By the Court.—Judgment affirmed.

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