

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 12, 2004

Cornelia G. Clark
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. 03-2364-CR
STATE OF WISCONSIN**

Cir. Ct. No. 02CT002233

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT J. BROWN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
JAMES R. KIEFFER, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Robert J. Brown appeals from a conviction of operating a motor vehicle while under the influence of an intoxicant, second offense, contrary to WIS. STAT. § 346.63(1)(a). Brown contends that the criminal

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

complaint did not factually establish his identity as the offender. We disagree and affirm the judgment.

¶2 *Facts.* On November 6, 2002, at approximately 3:00 a.m., Brown was stopped by Officer David Wentlandt, a Village of Butler police officer, who was on patrol at that time in the vicinity of the intersection of Arden Place and 124th Street. Wentlandt testified that he made the traffic stop because he used radar to detect that the car was speeding and observed unsafe lane deviation.

¶3 Wentlandt testified that during the stop he noticed that Brown was slurring when he spoke. Wentlandt proceeded to give Brown a field sobriety test, which, in Wentlandt's opinion, Brown failed. Brown was then placed under arrest and taken to Community Memorial Hospital in Menomonee Falls, where a chemical test of his blood revealed a test result of .212%.

¶4 The State filed its criminal complaint on November 12, 2002, and subsequently amended the complaint on December 7, 2002. The complaint stated, "The arresting officer initiated a traffic stop and made contact with the operator of the vehicle who was identified as Robert J. Brown, DOB: 04/16/1961, hereinafter referred to as the defendant." Brown moved for the dismissal of both complaints, citing the failure of the State to allege "facts establishing probable cause to believe that the person ostensibly committing the offenses is, in fact ... Brown." Because of the amended filing, a hearing was not held on the original motion. On January 17, 2003, the trial court heard and denied the motion to dismiss the amended complaint.

¶5 Brown was tried and found guilty of one count of operating a motor vehicle while under the influence of an intoxicant, second offense. His sentence

included fines, thirty days in jail, a mandated alcohol and other drug abuse assessment, and revocation of his driving privileges.

¶6 On appeal, Brown contends that the trial court erred in denying his motion to dismiss. Brown asserts that the criminal complaint was insufficient because it failed to factually establish his identity and that his name and birth date were conclusions, not facts. The State argues that the complaint was sufficient because it contained probable cause to establish that Brown was the operator of the vehicle.

¶7 *Standard of Review.* A criminal complaint must establish probable cause in order for the court to have jurisdiction over the person of the defendant. *State v. White*, 97 Wis. 2d 193, 197, 295 N.W.2d 346 (1980). Whether a criminal complaint is legally sufficient is an issue of law, reviewed on appeal de novo. *State v. Adams*, 152 Wis. 2d 68, 74, 447 N.W.2d 90 (Ct. App. 1989). A challenge to a complaint is not made moot by a subsequent trial if the issue has been preserved for appeal. *Id.* at 73.

¶8 *Discussion.* Where a complaint is challenged, Wisconsin law requires the complaint to allege facts that are “themselves sufficient or give rise to reasonable inferences which are sufficient to establish probable cause.” *State ex rel. Evanow v. Seraphim*, 40 Wis. 2d 223, 226, 161 N.W.2d 369 (1968) (citing *State ex rel. Pflanz v. County Court*, 36 Wis. 2d 550, 557, 153 N.W.2d 559 (1967)). A complaint is legally sufficient where it answers the following five questions: “(1) Who is charged?; (2) What is the person charged with?; (3) When and where did the alleged offense take place?; (4) Why is this particular person being charged?; and (5) Who says so? or How reliable is the informant?” *Adams*, 152 Wis. 2d at 73-74 (citation omitted). While there is no perfect model for this,

the court looks to whether the complaint meets the “test of minimal adequacy, not in a hypertechnical but in a common sense evaluation, in setting forth the essential facts establishing probable cause[.]” *Seraphim*, 40 Wis. 2d at 226. The parties contend that the only question in dispute is whether the criminal complaint answered the question: “Who is charged?”

¶9 We conclude that this complaint was sufficient because it answered the question of who is charged within the four corners of the document.² As set forth in *Seraphim*, the court deals not only with the facts stated, but with reasonable inferences that can be drawn therefrom. *Id.* at 228. Brown argues that the complaint states the assertion that “the operator of the vehicle ... was identified as Robert J. Brown, DOB: 04/16/1961,” but did not state how that identification was made, who made it, and when. “In particular, it does not state that the ‘operator’ identified himself, either verbally or by production of a driver’s license or some other form of recognized identification.” Brown concludes, therefore, that the complaint fails to answer the question of who is charged. We disagree.

¶10 We conclude that the inference that appropriate steps were taken to confirm the identity of Brown is reasonable in this case. The complaint states Brown’s name. In and of itself this is sufficient to identify who is charged. Brown is breaking with precedent when he asks for a dissertation of every step made in determining who is charged; he is asking for an “encyclopedic listing of

² The criminal complaint is a self-contained charge that must set forth facts “within its four corners that are sufficient, in themselves or together with reasonable inferences to which they give rise, to allow a reasonable person to conclude that a crime was probably committed and the defendant is probably culpable.” *State v. Adams*, 152 Wis. 2d 68, 73, 447 N.W.2d 90 (Ct. App. 1989) (citing *State v. Haugen*, 52 Wis. 2d 791, 793, 191 N.W.2d 12 (1971)).

all evidentiary facts upon which the state intends to rely.” *Id.* at 229. Brown is not entitled to this; he is only entitled to the essential facts constituting the crime charged. *State v. Becker*, 51 Wis. 2d 659, 663, 188 N.W.2d 449 (1971). Further, the complaint does two other things of note from which reasonable inferences can be made that Brown is the one charged. First, the complaint lists Brown’s date of birth. Clearly the officer would have seen something, presumably a driver’s license, which would have identified Brown. However, as stated, the court need not go this far. Second, the complaint does not name any other passengers in the car at the time of the traffic stop. This would indicate that there could be no confusion as to who had been the driver of the vehicle. When read as a whole, the complaint is deemed to have sufficiently answered the question of who is charged for probable cause purposes.

¶11 Brown contends that the State’s allegations that “Robert J. Brown” was the operator and that the operator’s date of birth was April 16, 1961, were not facts, but conclusions. Once again, the complaint need not be an “encyclopedic listing of all evidentiary facts upon which the state intends to rely.” *Seraphim*, 40 Wis. 2d at 229. The name of the individual is a fact. Brown appears to suggest that in order for the complaint to be sufficient in this case, the complaint must state that the officer looked at the driver’s license and compared each of the features listed on the license with those of Brown: his photo, his weight, his eye and hair color, and so forth. A listing of each of the identification characteristics on the license is not necessary in the complaint.³ Judicial precedent rightly points out that such an investigation is unnecessary. *See, e.g., id.* at 226.

³ *See, e.g., State v. White*, 97 Wis. 2d 193, 203-04, 295 N.W.2d 346 (1980); *State ex rel. Cullen v. Ceci*, 45 Wis. 2d 432, 441 n.3, 173 N.W.2d 175 (1970); *State v. Becker*, 51 Wis. 2d (continued)

¶12 *Conclusion.* A complaint that states the defendant’s name and date of birth is sufficient to establish who is charged. As stated in *Seraphim*, “We hold that the essential facts are set forth in this complaint making clear to the [defendant] that he is charged with a crime, what the crime is, when and where the offense is alleged to have taken place, why he is believed to have committed the [crime] and who said so.” *Id.* at 230.

By the Court.—Judgment affirmed.

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

659, 663, 188 N.W.2d 449 (1971); *Haugen*, 52 Wis. 2d at 799; *State v. Williamson*, 109 Wis. 2d 83, 88-89, 325 N.W.2d 360 (Ct. App. 1982), *aff’d in part and rev’d in part*, 113 Wis. 2d 389, 335 N.W.2d 814 (1983); *State v. Hoffman*, 106 Wis. 2d 185, 198, 316 N.W.2d 143 (Ct. App. 1982).

