

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 20, 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. 2014AP1492

Cir. Ct. No. 2014CV37

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN THE MATTER OF THE REFUSAL OF KENNETH D. COGDILL:

CITY OF PORTAGE,

PLAINTIFF-RESPONDENT,

v.

KENNETH D. COGDILL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Columbia County:
DANIEL GEORGE, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Kenneth Cogdill appeals an order of the circuit court finding that his refusal to submit to a chemical test of his blood was not

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

reasonable. Cogdill's sole contention on appeal is that his driver's license should not have been revoked, because the investigating officer lacked probable cause to believe that he had been operating a motor vehicle while under the influence of an intoxicant (OWI). For the reasons discussed below, I affirm.

BACKGROUND

¶2 The following facts are taken from the refusal hearing. Jamie Lee Prochot testified that she was working at the Ridge Motor Inn in Portage on the morning of March 14, 2013. Prochot testified that at approximately 6:45 a.m., she made contact with Cogdill, whom she was familiar with, and four other men in room 105. Prochot testified that around 7:00 a.m., Cogdill, and three other men, exited the front door of the Inn. Prochot testified that after Cogdill left the building, she observed him get inside a Ford F-150 and drive “[e]rratic[ally]” around the Inn's parking lot. She also observed Cogdill pull the F-150 “up[] behind” another vehicle, connect the F-150 to that vehicle with a rope with the help of other men, and then pull that vehicle with the F-150 into a different vehicle. Prochot testified that she called the police and that when the police arrived, she informed them that “the occupants in room 105 had driven around the parking lot” and were responsible for pulling a vehicle in the parking lot into another vehicle. Prochot further testified that the officers went to room 105 and that when they returned, they asked her to look at some driver's licenses to see if she was able to identify if either license belonged to the driver of the F-150. Prochot testified that the police showed her Cogdill's driver's license and the license of another man, and that she identified Cogdill as the driver of the F-150.

¶3 Officer Jason Stenberg testified that on March 14, 2013, he responded to a complaint at the Ridge Motor Inn involving multiple individuals,

some vehicles and “intoxication.” Officer Stenberg testified that when he arrived at the Inn, he observed two vehicles parked against each other in the parking lot. Officer Stenberg testified that he spoke with a guest who was standing at the Inn’s front desk and that the guest informed him that “two of the individuals” involved in an incident involving the vehicles were staying in room 105. Officer Stenberg testified that he went to room 105, where he found Cogdill and another guest, Michael Topper. Officer Stenberg testified that he believed that Cogdill was under the influence of an intoxicant based on Cogdill’s slurred speech and mannerisms. Officer Stenberg testified that Topper informed him that the F-150 belonged to him but that he had not been driving it, and that Cogdill “admit[ted] to driving the truck” and to consuming alcohol after he had driven the truck. Officer Stenberg testified that he took Topper’s and Cogdill’s driver’s licenses and showed them to Prochot. Officer Stenberg testified that Prochot pointed to Cogdill’s license and identified him as the driver of the F-150. Officer Stenberg testified that he then returned to room 105 where he asked Cogdill to perform field sobriety tests. He testified that Cogdill then stated that he had driven the truck home from work but denied driving the truck anytime thereafter, and that he refused sobriety testing.

¶4 The circuit court concluded that Officer Stenberg had probable cause to believe that Cogdill had been operating a motor vehicle while under the influence of an intoxicant and entered an order revoking Cogdill’s driving privileges for a period of twelve months. Cogdill appeals.

DISCUSSION

¶5 A driver who refuses to submit to a chemical test that is required under Wisconsin’s implied consent law is subject to penalties that include

revocation of the driver's operating privileges. WIS. STAT. § 343.305(9)(a), (9)(d) and (10)(a). The driver may request a hearing on his or her revocation. Section 343.305(9)(a)4. At a refusal hearing, the court considers: (1) "[w]hether the officer had probable cause to believe the [defendant] was ... operating a motor vehicle while under the influence of alcohol"; (2) whether the officer properly informed the defendant of his or her rights and responsibilities under the implied consent law; and (3) whether the defendant refused to permit the test. Section 343.305(9)(a)5. On appeal, Cogdill's sole argument is that the circuit court erred in concluding that the arresting officer had probable cause to believe that he was guilty of OWI.

¶6 The elements of an OWI violation are: (1) the defendant drove or operated a motor vehicle; and (2) the defendant was under the influence of an intoxicant at the time the defendant drove. *See* WIS. STAT. § 346.63(1)(a).² Whether an arresting officer had probable cause to believe a defendant is guilty of OWI is a question of law this court reviews de novo. *See Washburn Cnty. v. Smith*, 2008 WI 23, ¶16, 308 Wis. 2d 65, 746 N.W.2d 243. Probable cause "exists where the totality of the circumstances within the arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe, in this case, that the defendant was operating a motor vehicle while under the influence of an intoxicant." *State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986).

¶7 Cogdill asserts that the information before Officer Stenberg "did not rise [to] the level of probable cause" because "the record is unclear as to what

² WISCONSIN STAT. § 346.63(1)(a) provides: "No person may drive or operate a motor vehicle while: (1) Under the influence of an intoxicant"

information Officer Stenberg possessed when he placed [him] under arrest.” I disagree.

¶8 Testimony at the revocation hearing established that when Officer Stenberg arrived at the Ridge Motor Inn, he was aware that he was investigating a complaint concerning “intoxication.” Officer Stenberg observed two vehicles “parked touching each other” in the parking lot, and he was informed that the occupants of room 105 were responsible for doing that and had been driving a vehicle around the Inn’s parking lot. In room 105, Officer Stenberg encountered Cogdill, whom he described as having slurred speech and mannerisms similar to someone who is intoxicated. Cogdill admitted that he had been drinking and that he had driven the F-150. Officer Stenberg showed Cogdill’s driver’s license to Prochot, who identified Cogdill as the driver of the F-150.

¶9 Probable cause to arrest does not require “proof beyond a reasonable doubt or even that guilt is more probable than not.” *State v. Popke*, 2009 WI 37, ¶14, 317 Wis. 2d 118, 765 N.W.2d 569. Rather, the facts “need only be sufficient to lead a reasonable officer to believe that guilt is more than a possibility.” *County of Dane v. Sharpee*, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990) (quoted source omitted). I conclude that facts before Officer Stenberg, as recited above, were sufficient to lead a reasonable officer to believe that it was “more than a possibility” that Cogdill had driven the F-150 and that he was under the influence of an intoxicant at the time he did so. *See* WIS. STAT. § 346.63(1)(a). Accordingly, I affirm the order of revocation.

CONCLUSION

¶10 For the reasons discussed above, I affirm.

By the Court.—Order affirmed.

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

