**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

January 13, 2000

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 99-1380-FT**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GWENDOLYN K. MOODY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Rock County: EDWIN C. DAHLBERG, Judge. *Affirmed.*

¶1 EICH, J.[1] Gwendolyn K. Moody appeals from a judgment, rendered upon a jury verdict finding her guilty of operating a motor vehicle while intoxicated (first offense). She claims the circuit court erred in (a) allowing certain statements in evidence and (b) denying her motion to dismiss the charges

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (1997-98).

for lack of evidence corroborating her "confession." We reject both arguments and affirm the judgment.

¶2 Several City of Beloit police officers were dispatched to an apartment building, where they found Moody, outside on a cold night, in a state of excitement—crying and yelling—in front of the building. She smelled strongly of intoxicants, her speech was slurred and her balance poor. She was placed in a squad car, and one of the officers asked her what had happened. She replied that she had hit something with her car and that she had a flat tire. She denied that she had hit a person; she said it was just something in the roadway. Another officer found an abandoned car with a flat tire stopped in a traffic lane approximately 200 yards from where Moody had been standing. Moody was taken to the police station where she was administered various sobriety tests (which she failed) and scored .21 on an Intoxilyzer machine. She was charged with a civil traffic violation: driving while intoxicated and/or with a prohibited blood-alcohol level. As indicated, the jury found her guilty and she was ordered to pay a forfeiture and suffer the temporary suspension of her driver's license. Other facts will be discussed below.

¶3 Moody argues first that she is entitled to a new trial because the circuit court erred in allowing one of the officers to testify that, after finding the automobile in the roadway (with an Illinois license plate) he confirmed with Illinois authorities that it was registered to Moody. She claims the officer's testimony was hearsay which the circuit court erroneously allowed. Specifically, she argues that it didn't meet the exceptions to the hearsay rule for public records

and records of regularly conducted activity under WIS. STAT. §§ 908.03(6) and (8) (1997-98)[2]—the only exceptions, Moody says, "which could conceivably apply."

¶4 We need not address the claimed error, for even if the circuit court was wrong in allowing the officer's statement regarding the car registration, it was harmless beyond any reasonable doubt. We will not reverse for error unless it appears probable from the record "that the result [of the trial] would have been different had the error not occurred." ***McCrossen v. Nekoosa-Edwards Paper Co., Inc.***, 59 Wis. 2d 245, 264, 208 N.W.2d 148 (1973). In this case, as we have noted above, Moody told the officers that she had hit something with her car and had a flat tire.[3] And there is no question that the car about whose registration the officer testified, which was found close to where Moody was standing when first approached by the officers, had a flat tire. In light of this evidence, we are satisfied that there is no reasonable probability that the result of Moody's trial would have been different had the officer's car-registration testimony been excluded.

¶5 Finally, Moody argues that her statement to the offices that she had "hit something" is a "confession" which is inadmissible in the absence of some corroborating evidence. The only authority she provides for her position is a non-specific citation to ***State v. Fry,*** 129 Wis. 2d 301, 385 N.W.2d 196 (1985). In ***Fry***, we referred to the rule of ***State v. Verhasselt,*** 83 Wis. 2d 647, 661, 266 N.W.2d 342 (1978), that "conviction of a crime may not be grounded on the admission or

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[3] Moody argues that it was error to allow that statement into evidence because she had not been "given ***Miranda*** warnings" prior to making it. The black-letter rule in Wisconsin is that ***Miranda*** is inapplicable to civil forfeiture cases such as first-time drunk driving. *See* ***Village of Menomonee Falls v. Kunz***, 126 Wis. 2d 143, 146-48, 376 N.W.2d 359 (Ct. App. 1985).

confessions of the accused alone." ***Fry***, 129 Wis. 2d at 306.[4] This case, however—unlike ***Fry***, and ***Verhasselt***—is a civil case and Moody has offered no authority extending the ***Fry/Verhasselt*** rule to statements against interest made by a party in a civil trial.

*By the Court.*—Judgment affirmed.

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

[4] We went on to hold in ***State v. Fry***, 129 Wis. 2d 301, 385 N.W.2d 196 (1985), that the rule only applied in a criminal trial and was not applicable to a preliminary hearing "where the only issue is probable cause." ***Id.*** at 306.