COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2209 **Cir. Ct. No. 01-CT-740**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK A. LANGENHUIZEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

¶1 PETERSON, J.[1] Mark Langenhuizen appeals a judgment of conviction of operating a motor vehicle with a prohibited alcohol concentration. He claims the trial court erred by admitting blood test results because a laboratory

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

assistant withdrew Langenhuizen's blood in violation of WIS. STAT. § 343.305(5)(b). We disagree and affirm.

BACKGROUND

¶2 In July 2001, Langenhuizen was arrested by Town of Freedom police officer Chris Nechodom for operating a motor vehicle while under the influence, second offense, and operating a motor vehicle with a prohibited blood alcohol concentration. At the jury trial, Nechodom testified that he took Langenhuizen to the emergency room at Appleton Medical Center for a blood sample to be taken. He witnessed the sample being taken and filled out the proper paperwork, including a Blood/Urine Analysis form. He then took the box containing the blood sample to the post office.

¶3 Sharon Gilbertson, a laboratory assistant, took Langenhuizen's blood. She testified that she had taken the blood sample identified in the Blood/Urine Analysis form, which the State wanted to admit as an exhibit. She testified she took the blood using a kit provided by the State. She took the tube of blood and sealed it multiple times. This tube and a form were then put in the box given to Nechodom.

¶4 Langenhuizen objected to admission of the Blood/Urine Analysis form, arguing that the blood sample was taken in violation of WIS. STAT. § 343.305(5)(b), which allows a blood draw only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician.

¶5 Langenhuizen contended that the laboratory assistant was not one of the people designated by the statute. As a result, Langenhuizen maintained the

State did not lay the proper foundation for admission of the blood sample. The circuit court disagreed, however, finding that Gilbertson was acting under the direction of a physician because she was working in a hospital emergency room and drawing blood. The court therefore admitted the State's exhibit.

¶6 Langenhuizen was found not guilty of operating a motor vehicle under the influence of an intoxicant, but was found guilty of operating a motor vehicle with a prohibited blood alcohol concentration. He now appeals.

STANDARD OF REVIEW

¶7 We review a circuit court's decision to admit evidence under a discretionary standard. If the circuit court "examined the relevant facts; applied a proper standard of law; and using a demonstrative rational process, reached a conclusion that a reasonable judge could reach," we affirm its decision. ***State v. Sullivan,*** 216 Wis. 2d 768, 780-81, 576 N.W.2d 30 (1998).

DISCUSSION

¶8 WISCONSIN STAT. § 343.305(5)(b) provides:

> Blood may be withdrawn from the person arrested for violation … to determine the presence or quantity of alcohol, a controlled substance, a controlled substance analog or any other drug, or any combination of alcohol, controlled substance, controlled substance analog and any other drug in the blood *only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician*. (Emphasis added.)

Langenhuizen renews his argument that Gilbertson does not fall within any of these categories. He argues that the results of the blood test should thus be excluded because § 343.305(5)(d) provides that "the results of a test administered

in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant … or any issue relating to the person's alcohol concentration." (Emphasis added.)

¶9 The record reveals the following about Gilbertson:

> She is employed by Thedacare Labs at Appleton Medical Center;
>
> She has been employed there for twelve years as a laboratory assistant;
>
> Her duties include collecting blood samples;
>
> She withdrew Langenhuizen's blood in Nechodom's presence; and
>
> She used a State blood kit to withdraw the blood.

The reasonable inferences from the officer's testimony are: (1) Gilbertson worked at the hospital; (2) it was her job to withdraw blood; and (3) she was under the general supervision of the hospital in doing her job.

¶10 We can take judicial notice that: (1) Appleton Medical Center is a reputable, well-regarded hospital in the community; and (2) hospital employees with medical responsibilities, such as patient care and the invasive taking of bodily fluids and tissues are under the general direction of at least one physician. *See* WIS. STAT. § 902.01(2)(a), (6) (courts may take judicial notice of any fact "not subject to reasonable dispute" because it is "generally known within the territorial jurisdiction of the trial court"[;] "[J]udicial notice may be taken at any stage of the proceeding.").

¶11 Although the extent of the general supervision was not proven by testimony here, as it was in ***State v. Penzkofer***, 184 Wis. 2d 262, 516 N.W.2d 774 (Ct. App. 1994), ***Penzkofer*** teaches that the "direction," as that term is used in

WIS. STAT. § 343.305(5)(b), need not be over-the-shoulder supervision. ***Id.*** at 265-66.

¶12 We conclude the trial court's decision to admit the evidence was reasonably made based on a proper standard of law and in accordance with the facts of record. *See* ***Sullivan***, 216 Wis. 2d at 780-81.

By the Court.—Judgment affirmed.

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