COURT OF APPEALS
DECISION
DATED AND FILED

January 27, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2620-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN C. SCHROEDER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: PATRICK L. WILLIS, Judge. *Affirmed.*

SNYDER, P.J. John C. Schroeder appeals from his conviction of operating a motor vehicle while intoxicated (OWI) pursuant to § 346.63(1)(a), STATS.[1] Schroeder contends that the trial court erred by admitting a blood analysis

[1] The jury also returned a verdict of guilty to operating a motor vehicle with a prohibited blood alcohol content (BAC) contrary to § 346.63(1)(b), STATS.; however, a judgment of conviction was only entered on the OWI charge.

report into evidence without requiring the person who withdrew the blood sample to testify at his jury trial. He argues that the person's testimony is necessary to establish both his or her qualifications to draw evidentiary blood and as a foundation for admission of the report into evidence. We conclude that the test evidence was admissible and affirm the judgment.

The relevant facts are undisputed. Schroeder was arrested for OWI on October 26, 1997, and transported to Two Rivers Community Hospital to obtain a sample of his blood for evidentiary testing. Officer Kevin Dymond was present during the withdrawal of Schroeder's blood sample by Joni Cady and sent it to the State Laboratory of Hygiene for analysis.[2] Cady did not appear and testify at the March 26, 1998 jury trial.[3]

Schroeder first contends that the blood alcohol analysis report should not have been admitted into evidence because Cady did not personally establish that she was a person authorized to withdraw blood under § 343.305(5)(b), STATS. Section 343.305(5)(b) reads in relevant part:

> Blood may be withdrawn from the person arrested for [an OWI] violation … to determine the presence or quantity of alcohol … in the blood only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician.

Over Schroeder's objections, the trial court allowed Cady's supervisor, Shirley Scriver, to testify that Cady was a medical technologist.

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[2] The analysis of Schroeder's blood sample indicated an alcohol concentration of 0.26% of alcohol by weight.

[3] The prosecutor explained that the State had attempted to serve a subpoena on Cady but had failed because she was on maternity leave.

Whether § 343.305(5)(b), STATS., requires the person withdrawing OWI evidentiary blood to appear and personally testify that he or she is qualified to do so presents a question of statutory interpretation. We review such questions of law de novo. *See* ***State v. Wilson,*** 170 Wis.2d 720, 722, 490 N.W.2d 48, 50 (Ct. App. 1992). We consider matters outside of the statutory language only if the statute is ambiguous. *See* ***State v. Kenyon,*** 85 Wis.2d 36, 49, 270 N.W.2d 160, 166 (1978).

We are not persuaded that Cady was statutorily required to appear at Schroeder's jury trial and testify that she was a medical technician. While § 343.305(5)(b), STATS., unequivocally requires that Cady be qualified to withdraw blood, it does not specifically address the manner of establishing that qualification. Cady's medical technician status was established by Scriver who testified that she was the medical technology laboratory manager at Two Rivers Community Hospital, that Cady was a medical technologist, that she had hired Cady in 1994 as a medical technologist and that she had been Cady's direct supervisor since that time. We are satisfied that Scriver's uncontested testimony sufficiently established that Cady was a medical technologist qualified to withdraw OWI evidentiary blood from Schroeder under § 343.305(5)(b).

Schroeder also contends that absent Cady's testimony, the blood analysis report was without the necessary foundation to be admitted as evidence.[4] We disagree. In ***State v. Disch,*** 119 Wis.2d 461, 470, 351 N.W.2d 492, 497 (1984), our supreme court held that a "blood test derived from a properly

[4] Schroeder argued alternatively to the trial court that the State lost the test's presumption of accuracy by its failure to obtain the testimony of the medical technician. That issue is not briefed or argued and therefore is abandoned on appeal. *See* ***Reiman Assocs., Inc. v. R/A Adver., Inc.,*** 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 (Ct. App. 1981).

authenticated sample by legislative fiat is admissible." A blood analysis is judicially recognized as a scientific method, the result of which carries a prima facie presumption of accuracy. *See* ***id***. at 473-74, 351 N.W.2d at 498-99. When a chemical test result is challenged on the basis of noncompliance with underlying procedures, the result nonetheless carries a "prima facie presumption of accuracy" and is admissible. *See* ***City of New Berlin v. Wertz,*** 105 Wis.2d 670, 674, 314 N.W.2d 911, 913 (Ct. App. 1981). Schroeder's challenge goes to the weight of the blood alcohol evidence and not to its admissibility. *See* ***id***. at 675 n.6, 314 N.W.2d at 913.

We conclude that the evidence is sufficient to establish that Cady was a medical technologist qualified to withdraw Schroeder's blood sample for OWI evidentiary purposes and that under the law established in ***Disch*** and ***Wertz***, the trial court properly admitted the blood analysis report into evidence without Cady's supporting testimony.[5] We therefore affirm the judgment of conviction.

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[5] Although the blood analysis report in this case was admissible without the supporting testimony of the medical technician, we note the limitation expressed by the ***Wertz*** court:

> Our holding should not be construed as a limitation on the power of the trial court to exercise control over the receipt of evidence …. A situation may arise where the party objecting to the admissibility of the [blood alcohol] test convinces the court that the accuracy of the test is so questionable that its results are not probative and, therefore, not admissible as relevant evidence …. Or the court may, in some cases, conclude that accuracy of the test is so questionable that its probative value is outweighed by its prejudicial effect.

City of New Berlin v. Wertz, 105 Wis.2d 670, 674-75, 314 N.W.2d 911, 913 (Ct. App. 1981).

By the Court.—Judgment affirmed.

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