

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2663-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD K. NUMRICH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
LEE S. DREYFUS, JR., Judge. *Affirmed.*

¶1 SNYDER, J.¹ Richard K. Numrich appeals from a conviction for driving with a prohibited alcohol concentration (PAC) contrary to WIS. STAT. § 346.63(1)(b). Numrich contends that the State failed to adequately authenticate

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

his blood test results by presenting sufficient evidence that it was drawn by a qualified medical professional pursuant to WIS. STAT. § 343.305(5)(b). Because we determine that the evidence was sufficient, we affirm the trial court's decision.

¶2 Numrich was arrested on October 12, 1997, on suspicion of driving while under the influence of alcohol. A jury trial was held on May 18 and 19, 1999. At trial, Village of Menomonee Falls Police Officer Kevin Von Bank stated that Numrich consented to a blood test after being transported to Community Memorial Hospital. Von Bank testified that he

advised hospital staff that [he] would need a medical technologist, who's qualified to draw blood and does this on a regular basis as part of his [or her] employment with the hospital. Shortly thereafter a medical technologist, I'm not sure if that's his correct title, the man's name is Brian Henke, responded to our room and drew three vials of blood. The three vials were in this kit, this standardized kit, provided by the State Lab of Hygiene and from -- from Mr. Numrich in my presence.

Von Bank indicated that he witnessed Numrich's blood being drawn and that after the vials were filled Henke sealed and labeled them. Von Bank also explained that a Blood/Urine Analysis form was completed.

After the blood was drawn, I filled out the [Blood/Urine Analysis] form in the areas that I'm required to fill out. I turned this form over to Mr. Henke, who printed his name and authorized it with his signature as the person who collected the blood sample

¶3 At the close of evidence, the State moved into evidence the Blood/Urine Analysis form and Numrich objected. He complained that the State failed to show that the person who drew his blood was "a physician, registered nurse, medical technologist, physician assistant or person acting under the

direction of a physician.” WIS. STAT. § 343.305(5)(b).² The court rejected Numrich’s argument and permitted the form’s admission. Numrich was ultimately convicted of driving with a PAC.

¶4 On appeal, Numrich renews his sufficiency of the evidence argument, claiming that Von Bank’s testimony that he observed Henke administer the blood test was not enough to authenticate the blood test results. He asserts that it was clear error for the court to rely on testimony that Henke was a medical technologist.

¶5 In order for the trial court to admit Numrich’s blood test results, the State needed to authenticate that a qualified medical professional drew his blood sample. *See City of New Berlin v. Wertz*, 105 Wis. 2d 670, 676, 314 N.W.2d 911 (Ct. App. 1981) (“The trial courts may ... refuse to admit breathalyzer test results unless the requirement of ... authentication under sec. 909.01, Stats., [has] been met.”). Authentication is a condition precedent to admissibility and is satisfied by the proponent of the evidence showing sufficient proof to support a finding by the court that “the matter in question is what its proponent claims.” *See id.* (quoting § 909.01). Questions regarding the sufficiency of the evidence are afforded deference and are left to the discretion of the trial court. *See State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

¶6 We are satisfied that the State’s evidence was sufficient to establish that Henke was a qualified medical professional under WIS. STAT.

² WISCONSIN STAT. § 343.305(5)(b) provides in pertinent part:

Blood may be withdrawn from the person arrested for violation of s. 346.63 (1) ... 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.

§ 343.305(5)(b). Von Bank testified that he requested that the hospital staff provide him a medical technologist “who’s qualified to draw blood and does this on a regular basis as part of his [or her] employment with the hospital.” Henke appeared and drew Numrich’s blood. While Von Bank did not specifically confirm that Henke was in fact a “medical technologist” by title, the trial court had sufficient reason to believe that he was such a person. First, Von Bank had expressly requested a medical technologist. Second, after Henke took Numrich’s blood, he signed his name on the Blood/Urine Analysis form indicating that he was an “Officer, Physician or Technologist” who collected the specimen. Next to his signature, Henke wrote the letters “MT.” Finally, Numrich did not present any evidence raising a doubt as to Henke’s qualifications.

¶7 We cannot say that the State’s evidence was “so lacking in probative value and force that no trier of fact, acting reasonably,” could have concluded that Henke was a qualified medical professional to administer a blood test. *See Poellinger*, 153 Wis. 2d at 507. Accordingly, we affirm the trial court’s decision.

By the Court.—Judgment affirmed.

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

