COURT OF APPEALS
DECISION
DATED AND FILED

May 4, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2624-CR **Cir. Ct. No. 2004CT22**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRIS M. HOLLAND,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. *Affirmed.*

¶1 BROWN, J.[1] This is a review of a judgment for operating a motor vehicle with a prohibited alcohol concentration—second offense. Prior to trial, the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All statutory references are to the 2003-04 version unless noted otherwise.

defendant, Chris M. Holland, inter alia, moved to suppress the chemical test results on grounds that the officer did not offer him an alternative test when requested, and Holland so testified at a pretrial hearing. At the close of testimony, the trial court accepted the officer's testimony that Holland did not request an alternative test. Holland was found guilty at the subsequent trial and now claims that the court's pretrial finding was error because the court did not accept Holland's testimony regarding the request for an alternative test even though it did accept as credible a portion of Holland's other testimony. Holland faults the trial court for not explaining this inconsistency. For the reasons we explain below, this issue lacks merit, and we affirm.

¶2 The whole of Holland's argument rests upon a false premise—that before a trial court may accept the credibility of a witness' testimony in some respects but not in other respects, the court must explain why. Otherwise, Holland contends, the credibility finding is inherently inconsistent and is, presumably, clearly erroneous.

¶3 Holland is wrong on the law. First and foremost, it is certainly allowable for the fact finder to believe some of the testimony of one witness and reject other such testimony of that witness. *See* ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Second, and just as important, there is no case law that mandates a trial court to give reasons why it has found credible some of the testimony of the witness but found other testimony of the witness not to be credible. Holland has not cited any cases to support his claim and we have not found any in our independent research. There is good reason for this. "Credibility determinations are quintessentially decisions that need not be based on articulated reasons." Henry L. Chambers Jr., *Reasonable Certainty and Reasonable Doubt*, 81 MARQ. L. REV. 655, 695 n. 154 (1998). Credibility decisions are arrived at

after observing the demeanor of the witness and an opportunity to gauge the persuasiveness of the testimony. ***Kleinstick v. Daleiden***, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976). Decisions made upon these foundations simply cannot easily be articulated. Consequently, the trial court had no duty to state why it believed some of Holland's testimony but not all of it.

¶4 Moreover, we agree with the State that the credibility determinations of the trial court were not at all inconsistent. The trial court found Holland to be credible when he testified that he had trouble hearing the officer when the officer was reading the Informing the Accused Form to him. Nonetheless, the court also found that Holland understood what was being said to him. The trial court further found that the officer was credible when he testified that Holland did not request an alternative test. This finding logically means that, conversely, it was not convinced by Holland's testimony that he asked the officer for an alternative test but the request was refused. We see nothing inconsistent or contradictory about these two findings. The trial court was making findings about what the history was concerning this case. It accepted the undisputed historical account that Holland had trouble hearing when the form was being read, but did not accept the separate historical account that Holland asked for and was refused an alternative test. These two historical accounts occurred in a sequential continuity of time and findings of fact are to be made on each historical account. They cannot be considered inconsistent. We affirm.

By the Court.—Judgment and order affirmed.

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