

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 18, 2018**

Sheila T. Reiff  
Clerk of Court of Appeals

**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.

**Appeal No. 2017AP2130**

**Cir. Ct. No. 2017CV53**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**CITY OF BERLIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICARDO A. ADAME,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Green Lake County: MARK T. SLATE, Judge. *Affirmed.*

¶1 GUNDRUM, J.<sup>1</sup> Ricardo A. Adame appeals from his judgment of conviction for operating a motor vehicle while under the influence of an intoxicant

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

and with a prohibited alcohol concentration. He contends his conviction should be vacated and this matter dismissed because the circuit court “erroneously admitted the blood test result into evidence.” We disagree and affirm.

### ***Background***

¶2 Following an August 7, 2016 traffic stop, Adame was arrested for operating a motor vehicle while under the influence of an intoxicant. He was charged with that offense and operating a motor vehicle with a prohibited alcohol concentration, and a jury trial was held on the charges. At trial, various exhibits were entered into evidence and testimony was presented by the arresting police officer, a medical technologist, and a chemist supervisor at the Wisconsin State Laboratory of Hygiene (“laboratory”). The relevant evidence presented is as follows.

¶3 Exhibits 1, 2, and 4, respectively an “Informing the Accused” form, an “Alcohol/Drug Influence Report,” and a “Blood/Urine Analysis” form/“Laboratory Report”<sup>2</sup> that each identify on their face that they are related to Adame’s August 7, 2016 arrest, were received into evidence at trial. Exhibits 1 and 2, which were completed by the arresting officer, indicate Adame was arrested by the Berlin Police Department for operating while intoxicated at 3:03 a.m. on August 7, 2016. Exhibit 4 identifies the same violation date and time for Adame.

¶4 The evidence presented at trial further indicates that after his arrest Adame was transported to a private exam room at Theda Clark Medical Center in

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<sup>2</sup> The front side of Exhibit 4 identifies that side as a “State of Wisconsin Blood/Urine Analysis Alcohol/Other Drugs” form and the back side identifies that side as a “Laboratory Report” from the “Wisconsin State Laboratory of Hygiene Forensic Toxicology Laboratory.”

Berlin where a medical technologist drew two tubes of Adame's blood, filled out Section D of Exhibit 4, noting that she drew the blood at 3:26 a.m. on August 7, 2016, and signed her name. The technologist testified she followed standard protocol with both tubes, which included "identify[ing] the patient" as Adame; drawing two tubes of blood; writing Adame's name, date, time and her own initials on labels; putting a label "over the top of" one tube and then wrapping another label around the tube; and doing "the same thing" with the second tube. She then wrapped each tube "in one of the absorbent papers," "put those two tubes in the bag, seal[ed] that bag up, put it ... in the little box, [and] g[a]ve that to the officer." She testified that her usual protocol is to write the time of the blood draw on Exhibit 4 after the draw is completed, and she confirmed she then "seal[s] it up" and "give[s] it to the officer." The officer testified that while in Adame's presence the officer sealed the box and then took it back to the police department and "turn[ed] it over to [the] administrative assistant to be mailed to the state hygiene lab."

¶5 Under Section F of Exhibit 4—"Laboratory Information"—the exhibit states: "Specimen Received By" and has "Randy Boyes" handwritten in. Also handwritten is the date of August 9, 2016, and time of 11:20 a.m. Under the Section F line "Specimen Condition/Seal/Label/Comments," Exhibit 4 states: "Two tubes, labeled and sealed" and "Analyst verification L. Sweeney 8-10-16." Exhibits 2 and 4 show that the "Agency Case" number listed on Exhibit 2—16BPD1870—is the same as the "Police Number" and "Case Number" on the front and back of Exhibit 4 respectively.

¶6 A chemist supervisor in the toxicology section of the laboratory testified that his "day to day" responsibilities include "the peer review of the work of" alcohol and drug analyses. He previously served as an "entry-level chemist"

and analyst, has an alcohol analyst permit, and has tested “[w]ell over 20,000” blood samples for the presence of alcohol. The supervisor confirmed he reviews “Blood/Urine Analysis” forms like Exhibit 4, which forms are “routinely filled out in the ordinary course of business by people at the lab.” He testified that Section F “is where we document specimen receipt, date, and time, and note specimen condition.” He testified that the “normal practice” for such a form “is for our evidence technician, Randy Boyce, to actually perform the check-in process. And then for the analyst who is actually going to perform the analysis for ethanol, to do what we call analyst verification and then sign their name and initials.” The supervisor continued: “The check-in process ... is to document with each specimen, their name, the date and time that they opened the styrofoam mailer and examined the contents, and then to note specimen condition and assign the analysis number.”

¶7 The supervisor explained that as part of his process of reviewing “for every specimen” what other employees at the laboratory fill out with regard to Section F, he

review[s] this form, the request form, to make sure that the agency information is enclosed, that it is a proper specimen for us to test, ... that section F has been filled out, and if there are inconsistencies: Damage to the specimen, et cetera, that the verification is performed if, in fact, Randy did the initial check-in, and the analyst verified. All the way down to making sure that we have an analysis number on that form.

Regarding Exhibit 4 specifically—the blood/urine analysis form related to Adame—the supervisor explained that “[u]nder F I made sure that the line, ‘specimen received by’ was filled in; that the date next to it was filled in; that the time was filled in; and that there was a notation about specimen condition.” The supervisor acknowledged he did not know if the information was accurate, he “just

know[s] if it's filled out." He testified he is "typically ... looking to make sure that this form is filled out" and he likely did not "ever handle or see the blood in this particular case" and did not watch the analyst perform the analysis. He confirmed that "Laura Sweeney" analyzed Adame's samples.

¶8 The supervisor agreed that because the "Specimen Condition/Seal/Label/Comments" portion of Section F states "two tubes labeled and sealed" and nothing else, there is no indication of any problem with the "condition of the tubes in regard to Mr. Ricardo Adame." He explained that it would be "an ordinary practice of the lab" to note on the form if there was any problem with "the condition of the specimens."

¶9 Turning to the back side of the form, the supervisor testified that it showed the official laboratory report for the alcohol analysis "for this specimen," with the supervisor adding that "the same specimen ID occurs on each side of this document." He agreed this was the laboratory report "that's issued based on the request on the [front] side of the form."

¶10 The supervisor explained in detail the method used to analyze a specimen for alcohol concentration, to verify the accuracy, and to ensure quality control during the process of analyzing a specimen. He stated: "Since we calibrate the instrument at the beginning of each day, we're able to report or generate a three decimal place value or concentration for ethanol, and ultimately that three decimal place value ... is what we issue on reports like [Exhibit 4]." The supervisor testified, over Adame's overruled objection, that according to Exhibit 4, the results of the analyses "performed on the samples of Ricardo Adame's blood" were "0.156 grams per one hundred milliliters." The supervisor expressed that he believed the .156 result was accurate "[b]ecause this analysis

was conducted along with a series of other specimens following standard protocol based on acceptable criteria for quality control, the duplicate analysis of each specimen, and ultimately it met all of our reporting criteria and I generated the report.”

¶11 The jury found Adame guilty of both offenses.<sup>3</sup> He now appeals.

### *Discussion*

¶12 Adame insists on appeal that the circuit court erred when it admitted Exhibit 4 and related testimony. He claims “the City failed to present sufficient proof to establish the chain of custody for the blood sample.” We disagree.

¶13 Whether a party “presented sufficient proof to establish a chain of custody” is “a matter within the trial court’s discretion.” See *State v. McCoy*, 2007 WI App 15, ¶8, 298 Wis. 2d 523, 728 N.W.2d 54 (2006); *B.A.C. v. T.L.G.*, 135 Wis. 2d 280, 290, 400 N.W.2d 48 (Ct. App. 1986). Accordingly, “we review whether the trial court considered the pertinent facts, applied the correct law, and reached a reasonable determination.” *McCoy*, 298 Wis. 2d 523, ¶8.

¶14 Evidence regarding a chain of custody “must be sufficiently complete so as to render it improbable that the original item has been exchanged, contaminated or tampered with.” *B.A.C.*, 135 Wis. 2d at 290. “A perfect chain of custody is not required,” and any “[a]lleged gaps in a chain of custody ‘go to the

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<sup>3</sup> The arresting officer provided substantial testimony regarding Adame’s driving and his performance on field sobriety tests leading to his arrest. We do not discuss those matters because they are not relevant to the issue before us on appeal.

weight of the evidence rather than its admissibility.” *McCoy*, 298 Wis. 2d 523, ¶9 (citation omitted).

¶15 Considering all of the above-mentioned evidence, we conclude there is adequate support in the record for the circuit court’s implicit determination that there was sufficient proof to establish a chain of custody for Adame’s blood samples. Specifically, the medical technologist testified that at approximately 3:26 a.m. on August 7, 2016, she drew two tubes of Adame’s blood and filled out portions of Exhibit 4 in conjunction with that blood draw. She placed a label over the top of each tube and then wrapped a label around each tube, which labels contained Adame’s name, the date, the time, and her own initials. The materials were packaged up, the officer sealed the box in Adame’s presence, and then gave the box to the administrative assistant at her department “to be mailed to the state hygiene lab.” Exhibit 4 and the chemist supervisor’s testimony indicate the blood samples and the blood/urine analysis form related to Adame (the latter of which became Exhibit 4) were received by Randy Boyes at the hygiene laboratory on August 9, 2016, and verified by laboratory analyst Laura Sweeney on August 10, 2016. The exhibit and the supervisor’s testimony also indicate the blood samples were analyzed by Sweeney the following day and showed an ethanol result of “0.156 grams per one hundred milliliters,” which result was recorded on Exhibit 4.

¶16 With regard to the supervisor’s testimony related to Exhibit 4, it does not matter that he himself did not perform the analysis of the blood samples, a point about which Adame complains, because the evidence establishes that the supervisor was “a highly qualified witness, who [was] familiar with the procedures at hand [and] supervise[d] or review[ed] the work of the testing analyst.” *See State v. Williams*, 2002 WI 58, ¶20, 253 Wis. 2d 99, 644 N.W.2d 919. As a result,

he could properly testify regarding Exhibit 4 “despite the fact that [he] was not the person who performed the mechanics of the original tests.” *See id.*

¶17 The supervisor testified that if there is any “problem” with a blood sample, the standard practice of the laboratory is to indicate that on the blood/urine analysis form. Significantly, Exhibit 4, the blood/urine analysis form related to Adame, contained no such indication but under “Specimen Condition/Seal/Label/Comments” in Section F simply states “two tubes labeled and sealed.” Because there was no such indication, the supervisor’s testimony necessarily was that there was no problem with Adame’s blood samples. Furthermore, there is no evidence suggesting a mix up in the samples or that the test result for Adame’s samples listed on Exhibit 4 was in any way inaccurate due to the samples being “contaminated or tampered with.” *See B.A.C.*, 135 Wis. 2d at 290.

¶18 We conclude the evidence at trial was sufficiently complete for the circuit court to determine the analyses results on Exhibit 4 did indeed relate to the blood samples taken from Adame on August 7. Furthermore, the evidence was “sufficiently complete so as to render it improbable” that Adame’s blood “ha[d] been exchanged, contaminated or tampered with.” *See id.* Moreover, any alleged “gaps” related to the chain of custody “go to the weight of the evidence rather than its admissibility.” *See McCoy*, 298 Wis. 2d 523, ¶9 (citation omitted).

¶19 To prevail on appeal, it is Adame’s burden to convince us the circuit court erroneously exercised its discretion in admitting Exhibit 4 and related testimony into evidence. *See Seltrecht v. Bremer*, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997) (on appeal “it is the burden of the appellant to demonstrate that the [circuit] court erred”). He has not met that burden.



*By the Court.*—Judgment affirmed.

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

