

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

August 29, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-1245**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**RHONDA L. ZIEGLER,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for DANE County: STUART A. SCHWARTZ, Judge. *Affirmed.*

DEININGER, J.<sup>1</sup> Rhonda Ziegler appeals from a judgment convicting her of first-offense operating a motor vehicle while under the influence of an intoxicant (OMVWI), in violation of § 346.63(1)(a), STATS. She claims error in the trial court's admission of an Intoxilyzer test result without expert testimony, arguing that the State's failure to establish the arresting officer's compliance with § 343.305, STATS., deprives it of the benefits of

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

automatic admissibility of the test result. We conclude that we need not reach this issue because Ziegler's conviction for OMVWI is adequately supported by the other evidence of intoxication in the record. Accordingly, we affirm.

State trooper Tracy Fuller testified at trial that he first observed Ziegler's car as it turned onto East Washington Avenue in Madison and the driver attempted to parallel park. Ziegler's initial efforts were less than successful, and the car blocked the flow of vehicles in the right lane of traffic. Her car then collided with both the vehicle ahead of and behind hers, before it "jerked forward" and stopped.

Ziegler got out of her car and walked toward Fuller, who asked to see her driver's license. The trooper noted an odor of alcoholic beverages and asked if Ziegler had been drinking. She admitted to having had "a few beers" some time ago. The trooper also observed Ziegler to be having considerable difficulty keeping her balance and asked her to perform field sobriety tests. During the "one legged stand," Ziegler lost her balance and fell up against a truck. During the "walk and turn," she "missed most of those steps ... as she lost her balance." On the horizontal gaze nystagmus, the trooper observed "choppiness in both eyes."

Ziegler was then arrested for OMVWI and taken to state patrol district headquarters for processing and administration of the Intoxilyzer test. The "Informing the Accused" form that the trooper employed did not reflect an amendment to § 343.305(4), STATS., which changed the counting period from 5 years to 10 years for prior violations which might result in an order for immobilization, seizure or ignition interlock of a vehicle.<sup>2</sup> Fuller testified that he "had scratched this, this five-year period thing out because we were then in the process of getting the new informing the accused."

Ziegler objected to the admission of the Intoxilyzer test result because the State offered no expert testimony to lay a foundation for its admissibility. She argued that under *State v. Zielke*, 137 Wis.2d 39, 403 N.W.2d 427 (1987), a failure to strictly follow § 343.05, STATS., results in the State's loss of

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<sup>2</sup> 1993 Wis. Act 317, § 3, effective April 30, 1994. Ziegler's arrest was on July 10, 1994.

the benefit of automatic admissibility of the Intoxilyzer test result. *See id.* at 49, 403 N.W.2d 431.

The trial court overruled Ziegler's objection to automatic admissibility and admitted the Intoxilyzer test result. In a subsequent court proceeding, the trial court found the State had met its burden of proof and entered a judgment of conviction for first-offense OMVWI.

We need not consider whether the trial court properly admitted the results of Ziegler's blood alcohol concentration test without expert testimony. Even if the blood alcohol concentration test had not been admitted, a conviction for OMVWI is sustainable on this record. Although Ziegler's blood alcohol content, as revealed by the Intoxilyzer test, is relevant to whether she is guilty of OMVWI, it is not a necessary element of proof in an OMVWI prosecution. *State v. Burkman*, 96 Wis.2d 630, 642-643, 292 N.W.2d 641, 647 (1980).

Ziegler asserts in the last sentence of her brief that "[t]he remaining evidence adduced at trial was insufficient to support a finding of guilt," but she fails to identify any specific insufficiencies in the record. Here, the trial court had before it the un rebutted testimony of the arresting officer who described a very erratic parking maneuver involving two minor collisions and the blocking of traffic, the odor of alcohol, admission of consumption, unsteady balance, and observed failures on three sobriety tests. The trial court's finding that the State met its burden of presenting clear, satisfactory and convincing evidence that Ziegler operated a motor vehicle while under the influence of an intoxicant is well supported in the record.

*By the Court.*— Judgment affirmed.

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