COURT OF APPEALS
DECISION
DATED AND RELEASED

April 10, 1997

NOTICE

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.

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

No. 96-2994-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VINCENT SPEAKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed.*

EICH, C.J.[1] Vincent Speaks appeals from a judgment, entered on a jury verdict, finding him guilty of driving while intoxicated (second offense), and from an order denying his motion for postverdict relief. His appeal challenges the sufficiency of the evidence to support the verdict. Specifically, he claims that (1) the jury could not properly consider his breath-test results because the State

[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

failed to prove the specific amount of his breath that was tested; and (2) the other evidence was insufficient to prove that he was under the influence of an intoxicant.

Speaks, pointing to the pattern jury instruction on driving while intoxicated, WIS J I–CRIMINAL 2669—which tells the jury it must be satisfied that "there was .10 grams or more of alcohol in 210 liters of the defendant's breath at the time the test was taken"—maintains that without proof that 210 liters of his breath was actually tested, the jury could not consider the test results. There is no dispute that among the evidence before the jury was a record of the test indicating when and where it was administered and a variety of other information. The record of the test, in the form of a business-envelope-sized card, also contains the following information:

Test	*GMS/210L*	*Time*
Diagnostic OK		21:54CST
Air Blank	.000	21:57CST
Subject Test	.106	21:57CST
Air Blank	.000	21:57CST
Cal. Check	.101	21:58CST
Air Blank	.000	21:58CST
Subject Test	.104	21:59CST
Air Blank	.000	21:59CST
Reported Value	.10	21:59CST

The State does not challenge Speaks's assertion that there must be evidence before the jury from which it can find that 210 liters of his breath was sampled. It argues simply that the above evidence is sufficient.

We defer to the jury's fact-finding ability. When we review the sufficiency of the evidence to support a conviction, we may not substitute our judgment for that of the jury

> unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force

> that no [jury], acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the [jury] could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the [jury] should not have found guilt based on the evidence before it.

State v. Poellinger, 153 Wis.2d 493, 507, 451 N.W.2d 752, 758 (1990) (citations omitted).

We agree with the State that, despite the lack of explanation on the card, a reasonable jury could infer that the emphasized notation on the card referred to a test of 210 liters of Speaks's breath, as mentioned in the trial court's instructions. We are satisfied that the record contained adequate evidence to support the jury's consideration of the test results.

Speaks's argument that the other evidence was insufficient is predicated on our agreement with his contention that the breath-test evidence was inadmissible. Because we held that it was admissible, we need not consider the argument further.[2]

[2] Speaks claims that: there was no evidence that he was driving erratically, he had a rational explanation for his speeding (which the officer observed), he was responsive and polite, fatigue and cold weather could have caused his bloodshot and watery eyes, he failed only two of the three field sobriety tests administered to him, his speech was not slurred and he did not weave when he walked. He also states that three people who dined with him earlier that evening did not notice any signs of impaired driving.

(continued)

By the Court.–Judgment and order affirmed.

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

Our obligation is, of course, to search the record for evidence to support the jury's verdict, not for evidence that might support a verdict the jury did not reach. ***Staehler v. Beuthin***, 206 Wis.2d 609, 616, 557 N.W.2d 487, 489 (Ct. App. 1996). In addition to the evidence of his breath test, the evidence is more than adequate to sustain the jury's verdict. He was, as indicated, speeding in a residential area and did not immediately pull over when the officer put on the red lights; indeed, he passed the officer's car, turned around and onto another street before stopping a block or so away. The officer smelled the odor of intoxicants about Speaks's person and noted his bloodshot and watery eyes and the fact that he had a twelve-pack of beer in the car. Speaks, who admitted to the officer he had been drinking, swayed from side to side during one of the field sobriety tests, exhibited a "jerkiness" in his eye movement and did not successfully complete what the officer described as the "one-legged-stand" test. We have no doubt that, on such evidence, a rational trier of fact could have found Speaks guilty of the offense beyond a reasonable doubt.