

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 27, 2001

Cornelia G. Clark
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. 00-1558-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD MODER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: SUE E. BISCHHEL, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Richard Moder appeals a judgment convicting him of seventh offense operating a vehicle while intoxicated and an order denying his motion for a new trial. The State presented evidence that his blood alcohol concentration was .305%. Moder raises four issues relating to the State's failure

to present testimony from the hospital laboratory technician who took Moder's blood: (1) the State failed to establish that the blood was properly withdrawn as required by WIS. STAT. § 343.305(5)(b);¹ (2) the State failed to establish the necessary chain of custody; (3) failure to call the technician denied Moder his right to confront witnesses; and (4) the laboratory of hygiene report analyzing the blood sample was hearsay. We reject these arguments and affirm the judgment and order.

¶2 The arresting officer took Moder to a hospital and requested that a laboratory technician take a blood sample. A short time later, a woman wearing a lab coat appeared and, in the officer's presence, withdrew the blood. She then turned the vial over to the officer, who packaged it and mailed it to the hygiene lab. The hospital technician, Patricia Knipp, filled out and signed her portion of the blood analysis report in the officer's presence and signed her name followed by initials that indicated she is a medical technologist registered by the American Society of Clinical Pathologists. At trial, the director of human services at the hospital verified that Knipp was a medical technologist at the hospital since 1990, that she was working on the date and at the time Moder's blood was drawn, that Knipp had a medical technology degree and that the director had a copy of Knipp's medical technology license. The director also verified Knipp's signature on the form; she said she had seen Knipp's signature close to one hundred times. The chemist who performed the blood analysis testified that the sample arrived in the mail in the styrofoam mailing box the lab provides and that the samples were properly sealed and labeled.

¹ All statutory references are to the 1999-2000 version unless otherwise noted.

¶3 Knipp's testimony was not necessary to establish her authority to draw blood under WIS. STAT. § 343.305(5)(b). Her credentials were adequately established by other witnesses. From the totality of the evidence, it is clear that Knipp, a qualified medical technician, drew Moder's blood sample. In addition, an attack on the technician's qualifications is a matter of defense that goes to the weight to be accorded the test, not its admissibility. See *City of New Berlin v. Wertz*, 105 Wis. 2d 670, 675 n.6, 314 N.W.2d 911 (Ct. App. 1981).

¶4 Likewise, Knipp's testimony was not necessary to establish the chain of custody. A chain of custody is adequately established if the testimony presented shows that it is improbable that an item has been exchanged or tampered with. See *In re Paternity of J.S.C.*, 135 Wis. 2d 280, 290, 400 N.W.2d 48 (Ct. App. 1986). The arresting officer was present when the blood was withdrawn and the sample was given to him. There is no gap in the chain of custody. Knipp was not required to testify merely because she handled the evidence in the officer's presence.

¶5 The State's failure to call Knipp as a witness did not violate Moder's right to confront witnesses. Because the arresting officer testified to Knipp's activities, her testimony would have added nothing to the State's case. If Moder believed Knipp could have provided exculpatory information, he could have subpoenaed her. The right to confront witnesses is not implicated because Knipp was not a witness against Moder.

¶6 Finally, the hygiene laboratory report was admissible over Moder's hearsay objection. The analyst testified that he kept the original report in his file. His testimony is sufficient to allow admission of the document under WIS. STAT. § 908.03(6) as a record of a regularly conducted activity. Knipp's failure to testify

does not render the document inadmissible hearsay. Other witnesses testified to all of the information contained in Knipp's portion of the document. The parts of the document relating to Knipp taking the blood sample were not introduced to establish the truth of the matters asserted. The only significant part of the report is the conclusion that the blood contained a higher alcohol level than is allowed by law. The hygiene laboratory technician, not Knipp, provided that information.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

