COURT OF APPEALS
DECISION
DATED AND FILED

April 4, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 00-2996-FT

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

COUNTY OF WINNEBAGO,

PLAINTIFF-RESPONDENT,

V.

LARRY A. SCHMITZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: BRUCE K. SCHMIDT, Judge. *Affirmed.*

¶1 SNYDER, J.[1] On September 26, 2000, a jury found Lawrence A. Schmitz guilty of first offense (subject to civil penalties) operating a motor vehicle

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

while intoxicated, contrary to WIS. STAT. § 346.63(1)(a), and operating a motor vehicle with a prohibited alcohol concentration, contrary to § 346.63(1)(b). Schmitz contends that the trial court erred in receiving the results of his blood alcohol test into evidence under the statutory presumption of admissibility provided in the implied consent law under WIS. STAT. §§ 343.305(5)(d) and 885.235.[2] We disagree and affirm.

¶2 Schmitz did not move to suppress the blood alcohol evidence, but raised the issue of the statutory presumption of admissibility of the chemical test evidence by motions prior to the trial. The trial court heard testimony from the arresting officer, Winnebago County Deputy Sheriff David Mack, and from Schmitz concerning the circumstances surrounding the blood sample request and withdrawal. The trial court held that the blood sample was obtained under the implied consent law and denied the motions.

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[2] WISCONSIN STAT. § 343.305(5)(d) states in relevant part that

> the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant … to a degree which renders him or her incapable of safely driving or any issue relating to the person's alcohol concentration. Test results shall be given the effect required under s. 885.235.

WISCONSIN STAT. § 885.235(1g) states in relevant part that

> evidence of the amount of alcohol in the person's blood at the time [of operating or driving a motor vehicle] as shown by chemical analysis of a sample of the person's blood … is admissible on the issue of whether he or she was under the influence of an intoxicant or had a prohibited alcohol concentration or a specified alcohol concentration if the sample was taken within 3 hours after the event to be proved. The chemical analysis shall be given effect … without requiring any expert testimony as to its effect….

¶3 Schmitz relies on ***State v. Zielke***, 137 Wis. 2d 39, 403 N.W.2d 427 (1987), and ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 542 N.W.2d 196 (Ct. App. 1995), in contending that his blood sample was not obtained under the implied consent law, and, therefore, the statutory presumption is not available.

¶4 In ***Quelle***, the defendant moved to suppress the blood test results because she was confused as to the information required to be provided to drivers who are asked to submit to chemical testing under the implied consent law. WIS. STAT. § 343.305(4). ***Quelle*** addressed the sufficiency of the implied consent warnings by applying a three-part test: (1) has the law enforcement officer not met, or exceeded, his or her duty under § 343.305(4) and (4m)[3] to provide information to the accused driver; (2) is the lack or oversupply of information misleading; and (3) has the failure to properly inform the driver affected his or her ability to make the choice about chemical testing. ***Quelle***, 198 Wis. 2d at 280. In ***Quelle***, the defendant presented "undisputed evidence" that the arresting officer went beyond his statutory duty of reading the information on the face of the Informing the Accused form; therefore, the first prong of the ***Quelle*** factors had been met. ***Id.*** at 282. Whether the ***Quelle*** factors were met in this case was the subject of the testimony and evidence received at the motion hearing.

¶5 At the hearing, Mack testified that he had read Schmitz the Informing the Accused form[4] verbatim prior to requesting the blood draw, that he did not explain anything further, that he could not recall Schmitz having any

[3] 1997 Wis. Act 107, §§ 1 and 2, repealed WIS. STAT. § 343.305(4m) when it re-created the current version of § 343.305(4).

[4] The Informing the Accused form was marked as Exhibit 1 and received into evidence at the motion hearing without objection.

questions, that he did not ask Schmitz to submit to a blood test while in the squad car or at the arrest scene, and that Schmitz consented.

¶6 Schmitz agreed that he consented to the blood withdrawal. However, he testified that Mack told him that he was being taken to Mercy Medical Center for a blood alcohol test, that Mack requested his consent "roadside" and that he consented. Schmitz testified that he could not remember Mack reading him the Informing the Accused form. Schmitz testified that Mack handed him the Informing the Accused form, asked him to read it, asked if he understood it, and he said yes. Schmitz further testified that after reading the Informing the Accused form, he again was asked to submit to a blood test and he asked what would happen if he did not consent. Schmitz stated that Mack responded, "[A]re you going to make this hard?" and that he was scared and intimidated by that response.

¶7 This court cannot make findings of fact if the facts are contested. ***Wurtz v. Fleischman***, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980). Here, the trial court resolved the factual dispute by finding that Mack's testimony was more credible than that of Schmitz:

> Based upon the evidence presented this morning, the Court will find that the provisions of the Implied Consent Law have been complied with. The Court finds the testimony of the officer much more credible than the selected memory of the defendant. The Court will find that the officer did comply with the provisions of the Implied Consent Law contained in the Wisconsin Statutes and therefore will deny the motions filed by the defense.

Schmitz argues here that his testimony was more credible than that of Mack and contends that the trial court's credibility conclusion was erroneous because "[t]he lower court's decision is seemingly either lazy or hastily made. In either event,

laziness or haste do not provide sufficient grounds upon which to make a factual determination of credibility." The fact finder, not the reviewing court, determines the credibility of witnesses and the weight of their testimony. *See* ***State v. Wachsmuth***, 166 Wis. 2d 1014, 1023, 480 N.W.2d 842 (Ct. App. 1992). The trial court's findings and conclusions based upon the hearing testimony and exhibit are not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶8 In addition, while Schmitz contends that the trial court erroneously exercised its discretion in not sufficiently addressing the reasons why Mack was more credible than Schmitz, he cites to no authority or precedent to support his argument that the trial court's finding was insufficient and merely conclusory. We will not address issues for which no legal authority is cited. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980). Nor need we address inadequately briefed issues. *See* ***State v. Beno***, 99 Wis. 2d 77, 91, 298 N.W.2d 405 (Ct. App. 1980), *reversed on other grounds*, 116 Wis. 2d 122, 341 N.W.2d 668 (1984).

¶9 Further, we note that Schmitz failed to request further explanation or clarification from the trial court as to its ruling on the motions prior to seeking relief in this appeal. The admissibility of evidence lies within the sound discretion of the trial court. *See* ***State v. Evans***, 187 Wis. 2d 66, 77, 522 N.W.2d 554 (Ct. App. 1994). When this court reviews a trial court's exercise of discretion, the question presented is whether that discretion was exercised "according to accepted legal standards and if it is in accordance with the facts on the record." ***Id***. We are compelled to conclude that Schmitz's ***Quelle*** argument is without merit.

¶10 Schmitz also cites to ***Zielke*** as providing a basis for relief from the trial court's ruling, in contending that the State obtained his blood sample other

than under the implied consent law. ***Zielke*** is inapposite. In ***Zielke***, the officer failed to provide the test subject with the information required under the implied consent law. ***Zielke***, 137 Wis. 2d at 44. Here, it is undisputed that Mack used the approved Informing the Accused form to provide Schmitz the required information and the form was received into evidence. The record does not support that Schmitz was misled or misinformed in regard to his rights under the implied consent law.

By the Court.—Judgment affirmed.

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