

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 29, 1995

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. 94-3155

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

CITY OF GLENDALE,

Plaintiff-Respondent,

v.

JOHNNY E. BOHANNON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed.*

SULLIVAN, J. Johnny E. Bohannon appeals from a forfeiture judgment arising out of a jury trial that found him guilty of operating a motor vehicle while under the influence of an intoxicant—first offense. He presents three issues for our review: (1) whether the evidence was insufficient to support the jury's guilty verdict; (2) whether the trial court erroneously exercised its discretion by failing to admit a blood alcohol chart into evidence; and (3) whether the trial court erroneously exercised its discretion by restricting the scope of Bohannon's closing argument. This court concludes that the evidence supports the jury's guilty verdict and that the trial court properly exercised its

discretion, both in refusing to admit the chart into evidence and in restricting Bohannon's closing argument. Accordingly, this court affirms.¹

In the early morning hours of February 19, 1993, City of Glendale Police Officer John Pinkert stopped Bohannon's automobile for speeding, changing lanes without signaling, and making an illegal U-turn. After smelling alcohol emanating from inside Bohannon's car, and upon hearing Bohannon's admission that he had a few drinks, Officer Pinkert ordered Bohannon to perform several field sobriety tests. Bohannon failed all four tests and was arrested for operating an automobile while under the influence of an intoxicant.

Bohannon received a jury trial in the circuit court for Milwaukee County. During the trial, Bohannon attempted to introduce into evidence a blood alcohol chart. Based upon RULE 904.03, STATS., the trial court refused to admit the chart, concluding that because no other evidence was presented concerning Bohannon's actual blood alcohol level, the chart had "great potential for confusing the jury." Further, during Bohannon's closing argument, the trial court refused to allow Bohannon to mention anything about the State's failure to "provide scientific evidence of blood alcohol level." A jury found him guilty of the charged offense.

Bohannon first argues that there is insufficient evidence to support the jury's guilty verdict. When reviewing a claim that there is insufficient evidence to support a jury verdict, this court searches for credible evidence to support the verdict. *See York v. National Continental Ins. Co.*, 158 Wis.2d 486, 493, 463 N.W.2d 364, 367 (Ct. App. 1990). Credibility determinations and the weight given to witness testimony are left to the jury. *Id.*

Overwhelming evidence in the record supports the jury's guilty verdict. Bohannon argues that the reason he failed the field sobriety tests was because the police did not provide him with proper instructions on how to complete the tests. Further, he argues that no blood alcohol tests were performed, and that he and the bartender testified that while he did consume intoxicants, the amount was allegedly not excessive for a person of his weight.

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

Finally, he argues that although the police testified that Bohannon violated several traffic laws, no citations were issued for these violations.

Notwithstanding the above arguments and assertions, credible evidence clearly supports the jury's verdict. First, Officer Pinkert testified that he did explain the sobriety tests to Bohannon. Credibility determinations are left to the jury, and the jury could accept Officer Pinkert's testimony over Bohannon's version of the events. As such, the jury could also believe the testimony that Bohannon failed the sobriety tests. Such evidence is credible and supports the jury's verdict.

Bohannon next argues that the trial court erroneously exercised its discretion by denying Bohannon's request to allow a blood alcohol chart into evidence. A trial court possesses wide discretion in determining whether to admit or exclude evidence, and this court will reverse such determinations only upon an erroneous exercise of discretion. *State v. Lindh*, 161 Wis.2d 324, 348-49, 468 N.W.2d 168, 176 (1991). The trial court properly excluded the chart in this case.

No evidence was presented of Bohannon's actual blood alcohol reading. There was no reading because Bohannon refused to submit to an intoxilyzer test. Without any issue of Bohannon's actual blood alcohol reading, the trial court could properly conclude that introducing a blood alcohol chart into evidence would have a great potential to confuse the jury. *See* § 904.03, STATS. (evidence may be excluded if probative value of evidence is substantially outweighed by danger of unfair prejudice or confusion of issues). The trial court properly excluded the chart in this case.

Bohannon finally argues that the trial court erroneously exercised its discretion by preventing him from discussing the State's failure to provide scientific evidence of Bohannon's blood alcohol level. This court disagrees. "While counsel has wide latitude in closing arguments, the control of the content, duration of the argument, and the form of the closing argument are within the sound discretion of the trial court." *State v. Lenarchick*, 74 Wis.2d 425, 457, 247 N.W.2d 80, 97 (1976). We will not reverse a trial court's determination on these issues absent an erroneous exercise of discretion. *Id.*

The trial court did not erroneously exercise its discretion; the issue of the State's failure to provide scientific evidence of Bohannon's blood alcohol level was irrelevant. Accordingly, the trial court could restrict Bohannon from making references in his closing argument to irrelevant topics that could greatly confuse the jury.

By the Court. – Judgment affirmed.

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