

Nos. 95-1780-CR
95-1781-CR
95-1782-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

ERRATA SHEET

RYAN E. BROCKMAN,

Defendant-Respondent.

Marilyn L. Graves
Clerk of Court of Appeals
231 East, State Capitol
Madison, WI 53702

Peg Carlson
Chief Staff Attorney
119 Martin Luther King Blvd.
Madison, WI 53703

Court of Appeals District I
633 W. Wisconsin Ave., #1400
Milwaukee, WI 53203-1918

Court of Appeals District II
2727 N. Grandview Blvd.
Waukesha, WI 53188-1672

Court of Appeals District III
740 Third Street
Wausau, WI 54403-5784

Court of Appeals District IV
119 Martin Luther King Blvd.
Madison, WI 53703

Jennifer Krapf
Administrative Assistant
119 Martin Luther King Blvd.
Madison, WI 53703

Hon. Jack F. Aulik
Dane Co. Courthouse
210 M.L. King Jr. Blvd.
Madison, WI 53709

Judith Coleman Nispel
Trial Court Clerk
Nos. 95-CT-285/286,95-CM-499
Dane Co. Courthouse
Madison, WI 53709

Paul W. Humphrey
Asst. District Attorney
523 City-County Bldg.
Madison, WI 53709

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Peter L. Steinberg
King Street Law Collective
111 King St., #24
Madison, WI 53703

PLEASE TAKE NOTICE that the attached page 7 is to be substituted for page 7 in the above-captioned opinion which was released on May 9, 1996.

Dated this 17th day of December, 2006.

commenced." *State v. Maass*, 178 Wis.2d 63, 67, 502 N.W.2d 913, 915 (Ct. App. 1993).

Because it would tend to establish whether one of the elements of § 346.63(1)(a), STATS., exists for operating under the influence, Brockman's HGN test result is significant evidence. The trial court's order barred its admission. The State may appeal the order under § 974.05(1)(d)2, STATS.

III. EXPERT WITNESS

Whether a witness is qualified as an expert is a discretionary determination for the trial court. *State v. Donner*, 192 Wis.2d 305, 317, 531 N.W.2d 369, 374 (Ct. App. 1995). The court properly exercises its discretion when it applies the correct theory of law to the facts of record in a reasoned manner. *Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981). If the witness knows something beyond that generally known, the witness is an expert. *State v. Hollingsworth*, 160 Wis.2d 883, 896, 467 N.W.2d 555, 560 (Ct. App. 1991).

The trial court ruled that Dr. Godich was not qualified because his opinions were based on hearsay, since no evidence existed that the articles he brought to the hearing came under the learned treatise exception, but even if they did the State had not complied with the forty-day notice requirement in that exception, § 908.03(18)(a), STATS.