

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

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

**Appeal No. 2015AP000272
Manitowoc County Circuit Court Case No. 2013TR002929**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACOB A. MARTINEZ,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGMENT OF CONVICTION
BEFORE THE HONORABLE GARY L. BENDIX, JUDGE
MANITOWOC COUNTY CIRCUIT COURT**

**THE BRIEF AND APPENDIX OF THE PLAINTIFF-
RESPONDENT STATE OF WISCONSIN**

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TABLE OF CONTENTS

| | |
|---|----------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE ISSUES | iii |
| STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION | iii |
| STATEMENT OF THE CASE/FACTS | 1 |
| ARGUMENT | 4 |
| THE STATE PRESENTED SUFFICIENT PROOF TO ESTABLISH THE CHAIN OF CUSTODY FOR THE BLOOD SAMPLE AND THEREFORE THE COURT PROPERLY ADMITTED THE TEST RESULT..... | 4 |
| CONCLUSION | 7 |
| FORM AND LENGTH CERTIFICATION | 9 |
| CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12) | 10 |
| APPENDIX CERTIFICATION | 11 |
| APPENDIX | 13 |
| APPENDIX TABLE OF CONTENTS | 14 |

TABLE OF AUTHORITIES

Wisconsin Supreme Court

| | |
|---|------|
| <i>B.A.C. v. TLG</i> , 135 Wis.2d 280, 400 N.W. 2d 48 (1986)..... | 5, 6 |
| <i>State v. McCarty</i> , 47 Wis.2d 781, 177 N.W. 2d 819 (1970)..... | 5 |
| <i>State v. Simmons</i> , 57 Wis.2d 285, 203 N.W. 2d 887(1973)..... | 4 |

Wisconsin Court of Appeals

| | |
|---|---|
| <i>State v. McCoy</i> , 2007 WI App 15, 298 Wis. 2d 523, 728 N.W. 2d 54..... | 5 |
|---|---|

United States Court of Appeals

| | |
|--|---|
| <i>United States v. Olson</i> , 846 F.2d 1103, (7 th Cir. 1988)..... | 6 |
|--|---|

Wisconsin Statute

| | |
|--------------------------|---|
| §909.01, Wis. Stats..... | 5 |
|--------------------------|---|

STATEMENT OF THE ISSUES

Did the State establish a sufficient chain of custody for admission of blood test results?

Answer: The trial court answered yes.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Since this is an appeal within Wis. Stats. Sec. 752.31(2), the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the brief in this matter should adequately address the arguments; therefore, oral argument will not be necessary.

STATEMENT OF THE CASE/FACTS

On December 17, 2014, the trial court heard the testimony of the medical technologist, Gina Taddy, who testified that she drew blood from Jacob Martinez at Holy Family Medical Center. Taddy detailed the information she placed on labels wrapped around Martinez's blood vials, including Martinez's name, Taddy's initials, the date and the time. Taddy testified that she packaged the vials in the kit and handed it to the officer. (R.28: 69,70 /R. App.122, 123). Trooper Mitchell Guderski testified that Taddy packaged the vials and handed the package to him. (R.28: 22/ R. App. 101) Trooper Guderski then placed his own label on the outside of the package and then mailed it to the State Laboratory of Hygiene.

Ryan Pieters testified that he is an advanced chemist in the toxicology section for the Wisconsin State Laboratory of Hygiene. Pieters testified that an ethanol test was conducted by Dan McManaway of the Laboratory of Hygiene and that the sample proceeded to THC testing only under certain

conditions. (R.28: 44 /R. App.105). Analyst Pieters noted nothing in the sample's condition that was out of the ordinary and that the vials had the same number for identification as appeared in McManaway's report and Pieters report. (R.28: 54, 55/R. App.107, 108). Rieters described how samples are processed at the Laboratory of Hygiene. (R.28: 43,44/R. App. 104, 105) Following McManaway's test, Analyst Pieters removed the sample from storage for Analyst Kahlscheur, whose run did not pass because the spike recoveries were not up to the laboratories standards. (R.28: 58, 61/R. App.111, 114) Analyst Pieters testified that the only thing that was out of the ordinary for the sample was that two runs were done for THC and while that was something the analysts did not usually have to do, it was "not outside of our normal scope". (R.28: 61/R. App.114) Analyst Pieters conducted his own test two days later following laboratory protocol. (R.28: 63/R. App. 116) Analyst Pieters testified that he did not personally assign a lab number to the samples upon receipt. (R.28: 57/R. App.110) Analyst Pieters testified that he observed nothing on the sample he tested to indicate that the label was changed

on the sample and nothing to indicate that one sample or vial belonged to Martinez and the other vial belonged to another person. Pieters further testified that he observed nothing on the paperwork or the vials of blood that indicated that any label or paperwork had been switched. (R.28: 60/ R. App.113)

The trial court determined that the testimony regarding Martinez's impairment set the stage for the court's analysis of the testimony that came in through the lab technician. (R.28: 82/R. App. 125) The court noted Martinez's delay in pulling over to the side of the road, the immediate smell of THC, the driver's slightly red eyes and Martinez's admission that he smoked THC within a half hour of the stop and difficulties Martinez had in performing the field sobriety tests showed circumstantial evidence that Martinez still had an amount of THC in his blood at the time of operation. (R.28: 82,83/R. App.125, 126) The trial court concluded that the chain of custody argument is addressed to the court's discretion in reviewing the evidence and concluded that there was nothing

in the record to undermine the court's ability to find the custody of the sample was sufficiently established and the reliability of the test result met the State's burden of proof. (R.28: 83, 84/R. App.126, 127)

ARGUMENT

THE STATE PRESENTED SUFFICIENT PROOF TO ESTABLISH THE CHAIN OF CUSTODY FOR THE BLOOD SAMPLE AND THEREFORE THE COURT PROPERLY ADMITTED THE TEST RESULT

The State presented sufficient proof for the court to authenticate the blood sample in this case. The State asserts that based on the testimony presented to the trial court, that the State was not required to call every staff person at the State Laboratory of Hygiene who handled the blood sample and there was sufficient evidence placed on the record for the court to conclude the blood sample tested was that of Mr. Martinez.

The degree of proof necessary to establish the chain of custody is an issue within the discretion of the trial court. *State v. Simmons*, 57 Wis.2d 285, 295-296, 203 N.W. 2d

887, 894 (1973). Moreover, “a perfect chain of custody is not required” and alleged gaps in the chain of custody go to the weight of the evidence rather than its admissibility.” *State v. McCoy*, 2007 WI App 15, ¶ 9, 298 Wis. 2d 523, 728 N.W. 2d 54. Even though all the links in the chain of custody need not testify, the testimony presented must be “sufficiently complete so as to render it improbable that the original item has been exchanged, contaminated or tampered with.” *B.A.C. v. TLG*, 135 Wis.2d 280, 290, 400 N.W. 2d 48, 53 (1986). It is not required that all possibilities for the opportunity for tampering be excluded before a sufficient chain of custody is established, *State v. McCarty*, 47 Wis.2d 781, 788, 177 N.W. 2d 819, 823 (1970), or that each person who touched the evidence be called as a witness. *Id.*

Authentication, as noted by Mr. Martinez, is a preliminary issue and precedes admissibility. When determining what constitutes a reasonable basis for authenticity, Section 909.01 of the Wisconsin Statutes provides generally that all that is necessary for admission of evidence is foundational testimony that is “sufficient to

support a finding that the matter in question is what its proponent claims”. Each case requires a determination by the court as to whether there are sufficient guarantees that the evidence relates to the case. *B.A.C.*, 135 Wis.2d at 291. Essentially, that the blood tested was that of Jacob Martinez. In this case, there is no affirmative evidence in the record to show that the vials, labels or paperwork were tampered with or altered in any way. The record shows that the specimen number assigned to the sample upon receipt at the State Laboratory of Hygiene is the same specimen number that followed the sample through the lab from Analyst McManaway to Analyst Pieters.

If the trial court finds that there is a reasonable basis to conclude that the evidence is authentic, gaps in the chain of custody go to the weight the trier of fact gives the evidence, not its admissibility. *United States v. Olson*, 846 F.2d 1103, 1116 (7th Cir. 1988) "If the trial judge is satisfied that in reasonable probability the evidence has not been altered in any material respect, he may permit its introduction." *Id.* In this case, the trial court weighed all the evidence, including

the drug testing evidence and determined that the State met its burden of proof by clear, satisfactory and convincing evidence. In fact, the trial court stated that the testimony of Trooper Guderski “sets the stage for analyzing and viewing the testimony that came in through the lab technician.” The trial court was satisfied that record sufficiently established the custody of the sample for the court to find the drug test results reliable.

CONCLUSION

Based on the evidence presented at trial, the trial court had sufficient evidence to conclude that the blood sample tested by Analyst Pieters was the blood sample of Jacob Martinez and properly found that the blood test evidence was admissible. The trial court, as the finder of fact, then considered the weight to be give the evidence regarding the

blood sample. The trial court's findings are reasonable and the judgment of conviction should be upheld.

Dated this 1st day of May, 2015.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certifies that this brief and appendix conform to the rules contained in Sections 809.19(6) and 809.19(8)(b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 1258 words.

Dated this 1st day of May, 2015.

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**CERTIFICATION OF COMPLIANCE WITH RULE
809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s.809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 1st day of May, 2015.

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or a judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials

instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have be so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 1st day of May, 2015.

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APPENDIX

APPENDIX TABLE OF CONTENTS

Page No.

| | |
|--|----------------|
| Transcript of Court Trial on December 17, 2014..... | R-App. 101-127 |
|--|----------------|