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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2015AP001415
(Oconto County Circuit Court Case No. 14 TR 1988)

COUNTY OF OCONTO,

Plaintiff-Respondent,

v.

JONATHAN E. VAN ARK,

Defendant-Appellant:

ON APPEAL FROM A JUDGMENT OF CONVICTION OF THE
CIRCUIT COURT OF OCONTO COUNTY, THE HONORABLE
MICHAEL T. JUDGE PRESIDING FINDING THE DEFENDANT
GUILTY OF OPERATING A MOTOR VEHICLE WITH A
PROHIBITED ALCOHOL CONCENTRATION

Brief of the Plaintiff-Respondent
County of Oconto

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Brief of the Plaintiff-Respondent
County of Oconto

STATEMENT ON ORAL ARGUMENT
AND PUBLICATION

The County of Oconto is not requesting either oral
argument or publication.

ARGUMENT

1. THE TRIAL COURT PROPERLY ADMITTED THE TESTIMONY OF THE MEDICAL TECHNOLOGIST AND BLOOD ANALYST.

The medical technologist testified at trial. The medical technologist adequately identified himself as the person who drew the appellant's blood sample. (R32:124-129). He refreshed his memory from reviewing the appellant's blood test result and was able to testify as to the date, time and manner in which the blood sample was drawn. Although the medical technologist could not identify the appellant, Deputy Adam Zahn identified the appellant as the person who had his blood drawn. (R32:99). The testimony of the medical technologist establishes he had personal knowledge of the matter he testified to as required by Sec. 906.02, Wis. Stats.

The blood analyst also testified at trial. She adequately identified herself as the person who analyzed the appellant's blood sample. (R32:134-136). She refreshed her memory with her notes and blood test results and was able to testify as to the date, time and manner of her analysis. (R32:135-134, 136-137). The testimony of the blood analyst establishes she had personal knowledge of the matter she testified to.

In addition, Sec. 906.02, Wis. Stats., is subject to Sec. 907.03, Wis. Stats., relating to expert witnesses. The blood analyst and medical technologist are both expert witnesses. Both have established themselves at trial as expert witnesses concerning the matters they testified to. The medical technologist is an expert regarding the drawing of blood samples and the blood analyst regarding the analysis of blood samples. It is common practice for expert witnesses to rely on written materials to refresh his or her memory as relates to the matter they testify to.

2. THE TRIAL COURT PROPERLY FOUND THE APPELLANT
GUILTY OF OPERATING A MOTOR VEHICLE ON A PUBLIC
HIGHWAY WITH A PROHIBITED ALCOHOL CONCENTRATION.

The appellant was convicted by the trial court of the civil offense of operating a motor vehicle on a public highway contrary to Sec. 346.63(1)(b), Wis. Stats. Because this is a civil case and not a criminal case, the trial court may, if the evidence is sufficient, take the case from the jury and find the appellant guilty of the violation. In this case, the trial court found that the evidence was sufficient to take the case from the jury and find the appellant guilty of operating a motor vehicle on a public highway with a prohibited alcohol concentration by evidence that is clear satisfactory and convincing. The trial court did not direct a verdict in favor of Oconto

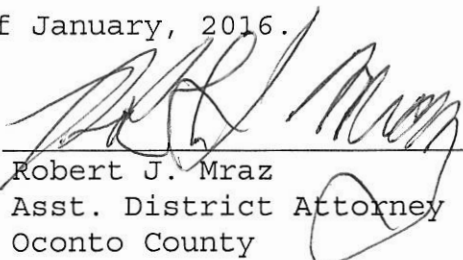
County on a citation issued to the defendant for operating a motor vehicle while intoxicated in violation of Sec. 346.63(1)(a), Wis. Stats.

The trial court looked at the elements of the offense for operating a motor vehicle and found that the appellant certainly was operating a motor vehicle on a public highway and that he did this within 3 hours of his blood test. (R32:150-152). The appellant admitted he was driving and approached by Deputy Zahn within a few minutes after stopping at the Lena Fast Stop. (R32:71-72). The trial court heard evidence of the results of the appellant's blood test and accepted into evidence the written results of his test. (R32:139). The trial court heard no evidence questioning the blood draw or the analysis of the appellant's blood sample. (R32:152). The trial court did not find any evidence that disputed the appellant's blood alcohol concentration because there was none. (R32:152). Even looking at all the evidence most favorably to the defendant there was simply no evidence from which the trial court could find that disputed the results of the appellant's blood test. As a result, the trial court properly directed a verdict finding the appellant guilty of operating a motor vehicle on a public highway with a prohibited alcohol concentration.

CONCLUSION

For all the reasons set forth herein, Oconto County respectfully requests the Court to affirm the trial court's decision finding the appellant guilty of operating a motor vehicle on a public highway with a prohibited alcohol concentration.

Dated this 6th day of January, 2016.

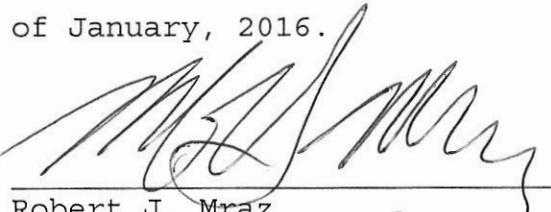


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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Sec. 809.19(8(b) and (c), Wis. Stats., for a brief produced with monospaced font. The length of this brief is 6 pages.

Dated this 6th day of January, 2016.



Robert J. Mraz
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CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)

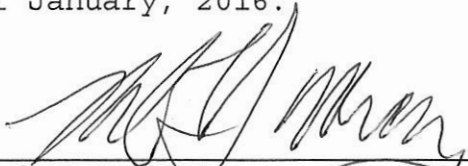
I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Rule 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 6th day of January, 2016.



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