

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP1163

Cir. Ct. No. 2007TR10559

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF SAUK,

PLAINTIFF-RESPONDENT,

V.

GREGORY K. DOLENSEK,

DEFENDANT-APPELLANT.

APPEAL from judgment of the circuit court for Sauk County:
PATRICK TAGGART, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Gregory Dolensek appeals a judgment of conviction, entered following a trial to the court, for operating a motor vehicle

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

while intoxicated and operating a motor vehicle with a prohibited blood alcohol content, first offense. Dolensek asserts that the evidence was insufficient to support the trial court's finding that he was the operator of the vehicle. We affirm.

BACKGROUND

¶2 The following pertinent facts are taken from the record of Dolensek's trial, and viewed in the light most favorable to the verdict. Rosella Stanley was driving on Highway 12 near the entrance of Rocky Arbor State Park at approximately 11:00 p.m. on a November night when she saw an overturned vehicle on the road. The vehicle was producing steam or smoke and she did not see anyone around it. This led Stanley to believe that the accident was recent; she pulled over to provide assistance and called 911. As she approached the vehicle, she observed a man crawling out of the driver's side window. Stanley testified that the man looked similar to Dolensek, who was in the courtroom during the trial. However, she could not confirm his identification. What was clear was that she did not see any other occupants in or near the vehicle.

¶3 Shortly after Stanley called 911, emergency response personnel and police officers arrived at the accident scene. Officer Marty Ederer of the Sauk County Sheriff's Department testified that when he arrived at the scene he spoke with Stanley, and that Stanley pointed out to him the man who had crawled out of the vehicle. At trial, Officer Ederer identified that man as Dolensek.

¶4 Officer Joshua T. Kowalke of the Sauk County Sheriff's Department was also at the accident scene and spoke to Dolensek in the ambulance and at the hospital. Officer Kowalke testified that Dolensek told him that he was driving the vehicle at the time of the crash, and that he crashed the car when he missed a turn in the road and swerved to miss a deer. The officer noted that Dolensek did not

appear confused. However, Dolensek testified that he did not remember anything about the accident.

¶5 Dolensek was arrested, tried and convicted by a trial court for operating a motor vehicle while intoxicated and for operating a motor vehicle with a prohibited blood alcohol content. Dolensek appeals.

DISCUSSION

¶6 Dolensek challenges the trial court's factual finding that he was the operator of the overturned vehicle. He asserts that the County failed to present sufficient proof that he was the driver of the crashed motor vehicle. We disagree.

¶7 When reviewing a challenge to the sufficiency of the evidence to support the trial court's findings, we apply a highly deferential standard of review. *Jacobson v. American Tool Cos., Inc.*, 222 Wis. 2d 384, 389, 588 N.W.2d 67 (Ct. App. 1998). We uphold the trial court's findings of fact unless they are clearly erroneous. *Id.* at 389-90. Moreover, "the fact finder's determination and judgment will not be disturbed if more than one inference can be drawn from the evidence." *Id.* at 389. Thus, if the evidence supports a reasonable inference that Dolensek was the operator of the vehicle, the trial court's factual finding will be upheld. We conclude that the evidence supports such an inference.

¶8 The circuit court relied on the following facts adduced by the testimony of Rosella Stanley, Officer Ederer, and Deputy Kowalke to support its finding that Dolensek was the vehicle's operator. Stanley arrived at the scene soon after the accident and saw one man crawl out the driver's side window. The court reasonably inferred that this person, who was the only person in the vehicle, was also the operator. Although Stanley could not confirm at trial that Dolensek

was the man she saw crawling out of the vehicle that night, Officer Ederer testified that Stanley pointed out to him the man she saw, and that the man was Dolensek. The evidence shows that Dolensek did not leave the accident scene because he was being treated by medical personnel. Deputy Kowalke testified that he spoke to the injured man in the ambulance and at the hospital, and identified him at trial as Dolensek. Significantly, Dolensek admitted to Deputy Kowalke that he was the driver of the crashed motor vehicle.

¶9 The evidence overwhelmingly established that Dolensek operated the motor vehicle involved in the accident. Consequently, we conclude that there was sufficient evidence to support the trial court's finding that Dolensek was the operator of the motor vehicle at issue. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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

