

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 17, 2015

Diane M. Fremgen
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. 2015AP978

STATE OF WISCONSIN

Cir. Ct. Nos. 2014TR864
2014TR1169

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF STEVENS POINT,

PLAINTIFF-RESPONDENT,

V.

TODD P. BECK,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Portage County:
THOMAS B. EAGON, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Todd Beck appeals judgments of the circuit court for operating a motor vehicle while under the influence of an intoxicant (OWI), and driving a motor vehicle with a prohibited alcohol concentration (PAC). Beck

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

contends the circuit court erred in admitting the results of his blood draw, which he argues is inadmissible because the arresting officer failed to provide him the proper notices under Wisconsin's implied consent law. *See* WIS. STAT. § 343.305(4). For the reasons discussed below, I affirm.

BACKGROUND

¶2 Beck was charged with OWI and PAC. At trial, the arresting officer, Officer Brian Brooks, testified that he stopped Beck's vehicle at approximately 1:55 a.m. on March 6, 2014. Officer Brooks testified that when he approached Beck's vehicle, he smelled the strong odor of intoxicants, and he observed that Beck's "face was flushed ... red" and "[h]is eyes were glossy and red." Officer Brooks testified that he asked Beck to perform field sobriety tests, which Beck consented to do. After the tests were performed, Officer Brooks placed Beck under arrest and transported him to St. Michael's Hospital, where Beck consented to a blood test.

¶3 Jackie Schara, a medical laboratory scientist at St. Michael's Hospital, testified that at approximately 2:40 a.m. on March 6, 2014, she took a sample of Beck's blood at the request of Officer Brooks. Thomas Neuser, an advanced chemist employed by the State Laboratory of Hygiene, testified that he analyzed Beck's blood sample and that the result of his analysis showed that Beck had a blood alcohol level over the legal limit.

¶4 After being asked whether he performed an analysis of Beck's blood sample, but before testifying as to the result of that analysis, Beck objected on the basis of "[f]oundation." Beck did not offer further explanation as to his objection, and it was overruled by the circuit court.

¶5 During counsels' discussion with the circuit court on the instructions that were to be provided to the jury, Beck moved the court to dismiss the PAC charge. Beck argued that "the City [had not] laid an adequate foundation of the reproduction of the chemical test and hasn't shown that the provisions of [WIS. STAT. §] 343.305 have been complied with." The court denied Beck's motion, and the jury found Beck guilty of both OWI and PAC. Beck appeals.

DISCUSSION

¶6 Beck contends that the results of his blood test should have been excluded from trial because the State failed to present evidence that he had been given the mandatory warnings and advice, including the informing the accused form, under WIS. STAT. 343.305(4). Section 343.305(3)(a) authorizes a police officer to request an OWI suspect to provide a sample of breath, blood or urine for purposes of chemical test. In subsection (4), the legislature sets out those warnings and advice that the officer *must* provide to the suspect before the officer may request the test. § 343.305(4).

¶7 The City argues that Beck has forfeited his right to challenge the admissibility of the result of his blood draw because Beck did not sufficiently explain the specific grounds for his objection at trial. The City argues that it is not clear from Beck's "foundation" objection what the specific ground for his objection was, nor did his objection "state[] the specific ground of objection." *See* WIS. STAT. 901.03(1)(a) ("Error may not be predicated upon a ruling which admits ... evidence unless ... a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context.")

¶8 An objection must be stated with specificity “so that both parties and courts have notice of the disputed issues as well as a fair opportunity to prepare and address them.” *State v. Agnello*, 226 Wis. 2d 164, 173, 593 N.W.2d 427 (1999). Beck’s objection in no way suggested that the evidence of the blood draw should have been disallowed because there was no evidence that Beck had not been provided with warnings required under the informed consent law. An objection not made on the proper ground is forfeited. *See State v. Wind*, 60 Wis. 2d 267, 272, 208 N.W.2d 357 (1973). Accordingly, I agree with the City that Beck has forfeited his right to challenge admission of the evidence at trial.

¶9 However, even if Beck’s arguments on appeal had not been forfeited, I would nevertheless affirm. Beck argues that “it is well settled law that the City can lose the presumption of automatic admissibility” of the results of chemical testing if the defendant is not provided the warnings under the Implied Consent Law. Beck is correct. In *State v. Zielke*, 137 Wis. 2d 39, 51, 403 N.W.2d 427 (1987), our supreme court stated that the “failure to advise the defendant as provided by the implied consent law affects the State’s position in a civil refusal proceeding and results in the loss of certain evidentiary benefits, e.g., automatic admissibility of results.” However, the supreme court further stated that the failure to comply with the implied consent law and the resulting loss of the automatic admissibility does not mean that the results are inadmissible in the separate and distinct prosecution for offenses involving intoxicated use of a vehicle. *Id.* at 51-52. The court in *Zielke* concluded that “if [the] evidence is otherwise constitutionally obtained, there is nothing in the implied consent law which renders it inadmissible.” *Id.* at 52.

¶10 Chemical test evidence may be legally obtained if it is obtained with the consent of the driver. *Id.* The City argues that Beck’s chemical test was

legally obtained because he consented to the blood draw. The record supports this and Beck does not dispute the City's argument in his reply brief. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). Accordingly, I conclude that the chemical test evidence in this case was legally obtained and admissible regardless of the City's failure to present evidence that Beck was provided the required warnings under the implied consent law.

By the Court.—Judgments affirmed.

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

