

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

August 22, 1996

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

**NOTICE**

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

**No. 96-0534**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**CITY OF EDGERTON,**

**Plaintiff-Respondent,**

**v.**

**ROBERT NAATZ,**

**Defendant-Appellant.**

APPEAL from an order of the circuit court for Rock County: JAMES DALEY, Judge. *Affirmed.*

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(b), STATS. Robert Naatz appeals from an order affirming a municipal court judgment convicting him of both operating a motor vehicle while intoxicated (OMVWI) in violation of City of Edgerton ordinance § 9.01, which adopts § 346.63(1)(a), STATS., and operating a motor vehicle with a prohibited blood alcohol content (BAC) in violation of City of Edgerton ordinance 9.01, which adopts § 346.63(1)(b), STATS. We conclude that although Naatz attacks his conviction of BAC, he has not contested his conviction of OMVWI. We therefore affirm.

Naatz was charged with OMVWI and BAC. The municipal court for the City of Edgerton denied his motion to suppress evidence of his blood alcohol concentration tests and found him guilty of both charges. His convictions were affirmed on appeal to the circuit court. He appeals to this court.

Naatz correctly notes that Wis. ADM. CODE § TRANS 311.06(3)(a) requires a law enforcement officer to observe a breath test subject for twenty minutes prior to collection of a breath specimen to be sure that during that time the subject did not ingest alcohol, regurgitate, vomit or smoke. He contends that the evidence is insufficient to show that the officer who arrested him observed him for twenty minutes before Naatz took a breath test. He concludes that evidence of his blood alcohol concentration is therefore not entitled to automatic admissibility, citing *City of New Berlin v. Wertz*, 105 Wis.2d 670, 314 N.W.2d 911 (Ct. App. 1981).<sup>1</sup> He requests that we reverse the judgment of the circuit court and remand with directions to the Edgerton Municipal Court to grant his motion to suppress the results of his breath test.

We need not address Naatz's assertions. Naatz was convicted of both BAC and OMVWI. Even if the result of his breath test is suppressed, the judgment convicting him of OMVWI remains. Though the result of Naatz's breath test is relevant evidence to determine whether he is guilty of OMVWI, he has not argued that in the absence of the breath test result, the remaining evidence is insufficient to support a conviction for OMVWI. We generally do not decide issues not raised on appeal. *Waushara County v. Graf*, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19, cert. denied, 506 U.S. 894 (1992). We therefore do not address this issue.

*By the Court.* – Order affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4, STATS.

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<sup>1</sup> We do not decide in this opinion whether Naatz's reading of *City of New Berlin v. Wertz*, 105 Wis.2d 670, 314 N.W.2d 911 (Ct. App. 1981), is correct.