

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62(1).

NOTICE

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

No. 96-0905-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL K. BLOCH,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Manitowoc County: DARRYL W. DEETS, Judge. *Affirmed.*

BROWN, J. Michael K. Bloch pled no contest to operating a motor vehicle while under the influence of an intoxicant. See § 346.63(1)(a), STATS. He now challenges the trial court's decision, made before trial, not to allow testimony from four defense witnesses who would have asserted that Bloch's arresting officer fabricated facts surrounding their arrests for driving while intoxicated. Bloch contends that this "other acts" evidence would have

shown the jury that the arresting officer had a motive to fabricate evidence and would have damaged the State's case.

Nonetheless, we do not reach the merits of Bloch's argument because we hold that Bloch waived his right to pursue this "other acts" evidence issue when he entered the no contest plea. Under *State v. Reikkoff*, 112 Wis.2d 119, 128, 332 N.W.2d 744, 749 (1983), once a no contest plea is accepted, the defendant waives his or her right to appeal nonjurisdictional issues *as a matter of law*. While the State does not raise the *Reikkoff* rule in its briefs, this court may independently raise reasons to sustain the trial court. See *State v. Truax*, 151 Wis.2d 354, 359, 444 N.W.2d 432, 435 (Ct. App. 1989). We thus deem Bloch's evidentiary challenge waived and affirm the trial court's judgment of conviction.

Although there is an exception to the *Reikkoff* rule which enables a defendant who enters a no contest plea to still make an appellate claim that the trial court should have suppressed evidence, *see* § 971.31(10), STATS., Bloch's appellate claim does not deal with the suppression of evidence. Our search of the record shows that Bloch filed several pretrial motions. One was a Motion to Suppress Physical Evidence on grounds that his arrest was not constitutionally valid. He also made a motion for a Prehearing Admissibility Ruling asking the

court to allow the introduction of evidence which would “show that prior to the occurrence of the defendant's arrest, [Bloch's arresting officer] had an intent, plan, mode of operation, habit, and established practice of detaining motor vehicle operators without having legally sufficient probable cause” The trial court denied both motions.

Now on appeal, Bloch only contends that the trial court erred in respect to the Prehearing Admissibility Ruling. While this claim shares some resemblance to his suppression motion, as both rest on Bloch's basic assertion that his arresting officer fabricated facts, they are nonetheless distinct claims because he seeks a different remedy with each. Through his suppression motion, Bloch hoped that the trial court would exclude evidence flowing from his arrest, most importantly, his blood test. In contrast, through his admissibility motion, Bloch hoped that the court would enable him to introduce evidence at trial to rebut the arresting officer's testimony. The *Reikkoff* rule, however, holds that Bloch's decision to enter a no contest plea now bars him from challenging this trial-related ruling.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.32(1)(b)4, STATS.