

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 19, 2005

Cornelia G. Clark
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. 2005AP198-CR

Cir. Ct. No. 2003CT586

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW E. HAAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
STEPHEN A. SIMANEK, Judge. *Affirmed.*

¶1 SNYDER, P.J.¹ Matthew E. Haas appeals from a judgment of conviction for his second offense of operating a motor vehicle while under the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

influence of an intoxicant, contrary to WIS. STAT. § 346.63(1)(a). Haas pled guilty after the circuit court granted the State's motion to preclude expert medical testimony regarding Haas's culpability. Haas contends that the circuit court erred when it ruled that the defense of involuntary intoxication under WIS. STAT. § 939.42 was not available to him and consequently excluded the testimony of Haas's medical expert. We disagree and affirm the judgment of the circuit court.

¶2 The facts are brief and essentially undisputed. On March 8, 2003, at approximately 2:10 a.m., City of Racine Police Officer D. Rybarik was on routine patrol when he observed a large white truck stopped on Hamilton Avenue. As Rybarik watched, the truck turned northbound onto Martin Luther King Drive, a one-way southbound street. The truck did not have its lights on. Rybarik followed with his overhead lights and siren activated. He pulled the truck over and identified the driver as Haas.

¶3 Rybarik noted that Haas was unresponsive, slurred some of his words, and had a heavy odor of intoxicants around him. Rybarik asked Haas to exit the truck and perform field sobriety tests. Haas failed the Horizontal Gaze Nystagmus and walk-and-turn tests. When asked to perform the one-leg stand test, Haas just stared and did not move. Rybarik arrested Haas for OWI and read him the Informing the Accused form. Haas agreed to an evidentiary chemical test of his breath which indicated an alcohol concentration of .17%. Haas was charged with one count of OWI and one count of PAC, contrary to WIS. STAT. § 346.63(1)(a) and (b).

¶4 Prior to the trial date, the State filed a motion in limine requesting, among other things, that the circuit court restrict the testimony of Haas's treating physician and also Dr. Lance P. Longo, Haas's medical expert. At the motion

hearing, Haas stated that he planned to pursue the defense of involuntary intoxication under WIS. STAT. § 939.42. He explained that he was taking prescription medication for a sleeping disorder and that his treating physician told him to reduce his alcohol consumption from six beers to no more than three beers when taking the medication. Haas admitted consuming two or three beers along with his medication on the night in question. He claimed to be unable to remember anything else from that point until his arrest.

¶5 The circuit court ruled in favor of the State, holding that “the defense of involuntary intoxication is not available to Mr. Haas. Therefore, the testimony of Dr. Longo and the other doctor ... would be irrelevant.” Haas subsequently pled no contest to the OWI charge, and the PAC charge was dismissed.

¶6 Haas appeals the circuit court’s evidentiary ruling. He argues that the court misinterpreted the legal rule of *State v. Gardner*, 230 Wis. 2d 32, 601 N.W.2d 670 (Ct. App. 1999), and erroneously excluded Dr. Longo’s testimony. The decision whether to admit or exclude proffered expert testimony is a matter of circuit court discretion. *State v. Friedrich*, 135 Wis. 2d 1, 15, 398 N.W.2d 763 (1987). We review the circuit court’s decision to determine whether it erroneously exercised its discretion. *State v. Pittman*, 174 Wis. 2d 255, 268, 496 N.W.2d 74 (1993). We will not disturb the court’s discretionary decision if the court examined the relevant facts, applied the proper legal standard, and used a rational process to reach a reasonable conclusion. *Id.*

¶7 The proper legal standard is expressed in *Gardner*, which states: “The involuntary intoxication defense is limited to (1) the defendant’s unawareness of what the intoxicating substance is; (2) force or duress; or (3) medically prescribed drugs taken according to prescription.” *Gardner*,

230 Wis. 2d at 41-42 (citation and emphasis omitted). However, the involuntary intoxication defense does not apply where a patient “mixes a prescription medication with alcohol or other controlled substances.” *Id.* at 42. In its ruling, the circuit court relied on *Gardner*, stating:

For the reasons alluded to [in *Gardner*], that in circumstances where the medication is not taken in accordance with the directives of the doctor or where the medication is taken in conjunction with alcohol, or ... where it is incompatible to engage in the activity considering the drug’s side effects, the defense is not available.

¶8 Haas acknowledges that he “took the drug, as prescribed and directed by his treating physician, drank three beers and slipped into the episode of anterio grade amnesia.” Nonetheless, he contends that *Gardner*’s medication-plus-alcohol-consumption exclusion should not apply to him. He emphasizes that “[t]he mixing of alcohol with [his sleeping medication] was limited by ... his treating physician and Haas obeyed those instructions.” He argues that his physician’s instruction to limit his alcohol consumption to two or three beers when taking his medication was an “oral instruction” and part of the “prescription” as that term is used in *Gardner*.

¶9 We reject this attempt to manipulate the concept of prescribed medication. A prescription is “a written direction for the preparation, compounding, and administration of a medicine.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1792 (unabr. 1993). Further, a prescription drug is one that “can be bought only as prescribed by a physician.” *Id.*

¶10 The undisputed facts are that Haas took medication to help him sleep and consumed alcohol along with the medication. *Gardner* precludes an involuntary intoxication defense where prescription medication is mixed with

alcohol. *Gardner*, 230 Wis. 2d at 42. We conclude that the circuit court properly excluded expert testimony related to the involuntary intoxication defense. Therefore, we affirm.

By the Court.—Judgment affirmed.

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

