

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 29, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-2600-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MARTY S. MADEIROS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ Marty Madeiros appeals his conviction for operating a motor vehicle while intoxicated (OMVWI) in violation of WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c). Additionally, all further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

§ 346.63(1)(a). He argues that: (1) the circuit court erred in finding that he had consented to have blood drawn for a chemical test and (2) permitting his prosecution for both OMVWI and operating a vehicle with a prohibited alcohol content (PAC) constitutes double jeopardy and a violation of his due process rights. Because Madeiros did not move to suppress the results of the blood test, we conclude that he waived any objection to the test results by pleading guilty to OMVWI. Additionally, we conclude that prosecuting Madeiros for both OMVWI and operating with a PAC does not constitute double jeopardy or violate his due process rights. Therefore, we affirm the judgment of the circuit court.

BACKGROUND

¶2 On September 18, 1999, Wisconsin State Trooper Lee Bloomquist arrested Madeiros based on probable cause to believe he was OMVWI. Bloomquist transported Madeiros to Meriter Hospital and read him the Informing the Accused form. Bloomquist twice asked Madeiros whether he would consent to a blood test, and Madeiros refused to respond. However, Madeiros did allow a hospital technician to withdraw blood. Analysis of the blood revealed a blood alcohol concentration of 0.233 percent.

¶3 Madeiros was charged with OMVWI and operating with a PAC, both as a second offense. Madeiros filed pretrial motions to preclude reliance on presumptions of automatic admissibility of the blood test results and to dismiss based on due process violations. The circuit court denied both motions. Madeiros then pled guilty to OMVWI as a second offense. He appeals the denial of the motions and renews his double jeopardy contention.

DISCUSSION

Standard of Review.

¶4 We review allegations of due process and double jeopardy violations *de novo*. *State v. Evans*, 187 Wis. 2d 66, 82, 522 N.W.2d 554, 560 (Ct. App. 1994) (due process); *State v. Saucedo*, 168 Wis. 2d 486, 492, 485 N.W.2d 1, 3 (1992) (double jeopardy).

Blood Test.

¶5 Madeiros argues that the circuit court erred in finding that he had consented to having blood withdrawn for the purpose of chemical testing. As a result, he argues that the prosecution could not rely on the statutory presumptions concerning the admissibility of chemical test results.² We conclude that Madeiros's guilty plea waived this argument.

¶6 Generally, a guilty or no contest plea waives all non-jurisdictional defects and defenses. *State v. Kazee*, 192 Wis. 2d 213, 219, 531 N.W.2d 332, 334 (Ct. App. 1995). However, a defendant may appeal from an order denying a

² Madeiros's argument appears to be based on the implied consent law, WIS. STAT. § 343.305(5)(d), which provides, in relevant part:

At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant ... or having a prohibited alcohol concentration ... the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant

He appears to be arguing that the results of his blood test are not presumed to be automatically admissible because the test was not administered within the parameters of the implied consent law. We do not address this argument because we conclude that he waived it by pleading guilty to OMVWI.

motion to suppress evidence even though the judgment of conviction rests on a guilty or no contest plea. WIS. STAT. § 971.31(10); *State v. Riekkoff*, 112 Wis. 2d 119, 126, 332 N.W.2d 744, 748 (1983).

¶7 In this case, Madeiros pled guilty to OMVWI (second offense) after the circuit court denied several motions. He had raised the issue of the automatic admissibility of the blood test results in a motion entitled “Motion To Preclude Reliance on Presumptions of Automatic Admissibility.” Madeiros concedes that the motion did not seek to suppress the results of the blood test. During the motion hearing, his attorney did not argue that the results of the blood test should be suppressed. Therefore, we conclude that his guilty plea constituted a waiver of his right to appeal the circuit court’s denial of the motion.

Double Jeopardy.

¶8 Madeiros also argues that prosecuting him for both OMVWI and operating a vehicle with a PAC constitutes double jeopardy and violates his due process rights because the charges are based on the same course of conduct. He asks us to reconsider our decision in *State v. Raddeman*, 2000 WI App 190, 238 Wis. 2d 628, 618 N.W.2d 258, which held that the dual prosecution procedure authorized by WIS. STAT. § 346.63(1)(c)³ does not constitute double jeopardy or

³ WIS. STAT. § 346.63(1)(c) reads, in relevant part:

A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b), the offenses shall be joined. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

violate a defendant's due process rights. However, we may not overrule our own published decisions. *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246, 256 (1997). Therefore, we conclude that prosecuting Madeiros for OMVWI and operating a vehicle with a PAC did not constitute double jeopardy or violate his due process rights.

CONCLUSION

¶9 Because Madeiros did not move to suppress the results of the blood test, we conclude that he waived any objection to the test results by pleading guilty to OMVWI. Additionally, we conclude that prosecuting Madeiros for both OMVWI and operating with a PAC does not constitute double jeopardy or violate his due process rights. Therefore, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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

