

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2002

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. 02-1362-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00-CT-305

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS D. SEVERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
RICHARD REHM, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ Douglas D. Severson appeals a judgment of conviction for operating a motor vehicle while intoxicated (OMVWI), contrary to

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

WIS. STAT. § 346.63(1)(a), second offense. Because we conclude that there is nothing in the arguments presented in this appeal that bears on the circuit court's judgment of conviction for a violation of WIS. STAT. § 346.63(1)(a), we affirm the judgment of the circuit court.

BACKGROUND

¶2 Severson's conviction arose from the following incident. On August 19, 2000, at approximately 11:44 p.m., patrol officer Andrew Rau stopped Severson for speeding. Officer Rau approached Severson and asked to see his driver's license. Rau noticed that Severson's speech was slow and slurred, that he had a difficult time retrieving his license, that the car smelled of intoxicants and that Severson's eyes were glassy and bloodshot. Rau asked Severson if he had been drinking and Severson answered that he had been out with some friends. Rau then asked Severson to exit his car to perform field sobriety tests.

¶3 Rau first conducted the horizontal gaze nystagmus test. Next, Rau instructed Severson to complete the walk and turn test and then to complete the stand and count test. After Severson failed to successfully complete the three tests, Rau asked him to submit a preliminary breath test that yielded an alcohol level of .218.

¶4 Rau arrested Severson for OMVWI and transported him to Divine Savior Hospital for a blood draw. Severson was read the Informing the Accused Form and asked to submit a sample of his blood for testing. Severson agreed and the blood draw produced a blood alcohol level of .219, a prohibited alcohol concentration (PAC) for a driver of a motor vehicle under Wisconsin law.

¶5 Severson moved to suppress the results of the blood test. The court denied his motion, and he pled no contest based on a stipulation of facts.² He was convicted of OMVWI.

DISCUSSION

Standard of Review.

¶6 The facts relevant to Severson's conviction were stipulated. Therefore, whether those facts and the legal arguments presented on appeal require reversal is a question of law that we review *de novo*. See *Monroe County v. Kruse*, 76 Wis. 2d 126, 128, 250 N.W.2d 375, 376 (1977).

Conviction.

¶7 Severson appeals the judgment of conviction for OMVWI, a violation of WIS. STAT. § 346.63(1)(a).³ Severson alleges that the conviction is invalid because the blood draw violated his Fourth Amendment protections against unreasonable searches and seizures. Although Severson consented to the blood draw, he now argues that his consent was coerced by the threatened sanction of a loss of driving privileges. Stated differently, Severson challenges the constitutional validity of WIS. STAT. § 343.305 and thereby, his conviction.

¶8 In order to sustain its burden of proof for the OMVWI, the prosecution was required to establish that (1) Severson was operating a vehicle on

² Those same facts are the facts used in this appeal.

³ While Severson was charged with violations of both WIS. STAT. §§ 346.63(1)(a) and 346.63(1)(b), he was convicted of violating only § 346.63(1)(a).

the highway and (2) Severson was under the influence of intoxicants. *Kruse*, 76 Wis. 2d at 131, 250 N.W.2d at 377. The supreme court has recognized that a driver may have a PAC according to the terms of WIS. STAT. § 346.63(1)(b) but not be under the influence of an intoxicant. *State v. Bohacheff*, 114 Wis. 2d 402, 415-16, 338 N.W.2d 466, 473 (1983). Therefore, a finding of guilt for driving with a PAC is not necessarily intertwined with a finding of guilt for OMVWI. *See id.*

¶9 On appeal for his conviction of OMVWI, Severson does not argue that he would not have been convicted of OMVWI if the suppression motion relating to the blood test had been granted, nor does he argue that the evidence contained within the stipulation of facts used by the circuit court and by this court is insufficient to support his conviction of OMVWI, without the results of the blood test. Therefore, the arguments that Severson presents in this appeal could not result in a reversal of his judgment of conviction for OMVWI, even if we were to accept his views as accurate statements of the law.

¶10 Accordingly, although the State argues that Severson's conviction should be affirmed under our holdings in *State v. Krajewski*, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, *State v. VanLaarhoven*, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411 and *Village of Little Chute v. Walitalo*, 2002 WI App 211, ___ Wis. 2d ___, 650 N.W.2d 891, *review denied*, 2002 WI 121, ___ Wis. 2d ___, ___ N.W.2d ___ (Sept. 26, 2002) (No. 01-3060), because we conclude that there is nothing in the arguments presented in this appeal that bears on the circuit court's judgment of conviction for Severson's violation of WIS. STAT. § 346.63(1)(a), we do not analyze the applicability of *Krajewski*, *VanLaarhoven*, *Walitalo*, or any of the other cases relating to the Fourth

Amendment issues raised by Severson. Instead, we affirm the judgment of the circuit court without further discussion.

By the Court.—Judgment affirmed.

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

