

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 13, 2003

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. 02-2792-CR

Cir. Ct. No. 00-CT-142

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CLIFFORD R. RUCKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Green County: JAMES R. BEER, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ Clifford Rucks appeals the circuit court order denying his motion to suppress evidence obtained from a blood draw and his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). Additionally, all further references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

subsequent judgment of conviction for operating a motor vehicle while intoxicated (OMVWI), contrary to WIS. STAT. § 346.63(1)(a), third 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 § 346.63(1)(a), we affirm the judgment of the circuit court.

BACKGROUND

¶2 On September 4, 2000, at approximately 1:12 a.m., Deputy Robert Werren of the Green County Sheriff's Department observed a black GMC truck swerve in its lane of traffic. Werren followed the truck as it traveled north on the highway and again observed it veer over the center lane before swerving back into its traffic lane. Werren activated his emergency lights, stopped the vehicle and approached Rucks. Rucks appeared very upset about the traffic stop but was able to locate his driver's license. Werren then asked Rucks if he had been drinking and Rucks responded, "Yes, I've had a little." Werren noticed that Rucks's eyes were glassy and blood shot, his speech was slurred and that he smelled heavily of intoxicants. Rucks agreed to perform field sobriety tests and exited his vehicle.

¶3 Werren first conducted the horizontal gaze nystagmus test. Next, Werren instructed Rucks to recite the alphabet; Rucks stopped at the letter "G" and stated, "I guess I've forgotten it." Werren then asked Rucks to complete the walk and turn test. After Rucks failed to successfully complete the three tests, Werren asked him to submit to a preliminary breath test. Rucks refused and Werren arrested him for OMVWI. Werren then transported Rucks to the Monroe Clinic emergency room for a blood draw. Rucks was read the Informing the Accused Form and asked to submit a sample of his blood for testing. Rucks agreed and the blood draw produced a blood alcohol level of .170, a prohibited

alcohol concentration (PAC) for a driver of a motor vehicle under Wisconsin law, pursuant to WIS. STAT. § 346.63(1)(b).

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

DISCUSSION

Standard of Review.

¶5 The facts relevant to Rucks'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.

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

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

³ While Rucks 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).

differently, Rucks challenges the constitutionality of Wisconsin's implied consent law, WIS. STAT. § 343.305(2), and thereby, his conviction.

¶7 In order to sustain its burden of proof for the OMVWI conviction, the prosecution was required to establish that (1) Rucks was operating a vehicle on the highway and (2) Rucks 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 tantamount to a finding of guilt for OMVWI. *See id.*

¶8 On appeal for his conviction of OMVWI, Rucks 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 is insufficient to support his conviction of OMVWI, without the results of the blood test. Therefore, the arguments that Rucks 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, which we do not.

¶9 Accordingly, although the State argues that Rucks's conviction should be affirmed under the holdings in *State v. Krajewski*, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, *cert. denied*, 123 S. Ct. 704 (Dec. 16, 2002) and *State v. Wintlend*, 2002 WI App 314, ___ Wis. 2d ___, 655 N.W.2d 745, 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 Rucks's violation of WIS. STAT. § 346.63(1)(a), we do not analyze the applicability of *Krawjewski*,

Wintlend, or any other case relating to the Fourth Amendment issues raised by Rucks. Instead, we affirm the judgment of the circuit court without further discussion.

By the Court.—Judgment and order affirmed.

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

