

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 22, 2004**

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. 04-0230-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 02CT003417

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MICHAEL A. DECKER,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments of the circuit court for Dane County:  
GERALD C. NICHOL, Judge. *Affirmed.*

¶1 DYKMAN, J.<sup>1</sup> Michael Decker appeals from judgments of conviction for operating a motor vehicle while intoxicated (OWI) second offense and for operating a motor vehicle while having a prohibited alcohol concentration

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

second offense in violation of WIS. STAT. § 346.63(1)(a) and (b). He contends that the trial court erred by denying his motion to exclude from evidence the results of an Intoximeter EC/IR breath test. Decker asserts that the Department of Transportation approved the instrument using “standards.” He contends that these standards should have been established following proper rule-promulgation procedures under WIS. STAT. ch. 227, but were not.

¶2 Both parties agree that this case raises the same legal issue and presents the same evidence as *County of Dane v. Winsand*, 2004 WI App 86, \_\_\_ Wis. 2d \_\_\_, 679 N.W.2d 885, where we said:

Winsand has not established that ... the section chief used standards that meet the definition of WIS. STAT. § 227.01(13) but were not promulgated as a rule. In addition, he does not argue that the section chief did not comply with § 343.305(6)(b) or with the regulations in WIS. ADMIN. CODE § TRANS 311. Accordingly, the test results are admissible under § 343.305(5)(d) with the benefits of WIS. STAT. § 885.235. The trial court therefore correctly denied Winsand’s motion to exclude the test results.

*Id.*, ¶13.

¶3 We therefore affirm.

*By the Court.*—Judgments affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

