

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 31, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1520

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

MONICA L. GRAHAM,

Defendant-Respondent.

APPEAL from an order of the circuit court for Marquette County: DONN H. DAHLKE, Judge. *Affirmed.*

DYKMAN, J. This is a single judge appeal decided pursuant to § 752.31(2)(c), STATS. The State appeals from an order dismissing its criminal complaint against Monica Graham for operating a motor vehicle after suspension pursuant to § 343.44(1), STATS. The State argues that criminal sanctions may be imposed on Graham pursuant to § 343.44(1), STATS., for this violation. We conclude that criminal sanctions could not be imposed, and therefore affirm.

BACKGROUND

The facts are not in dispute. On May 14, 1992, Graham's license was revoked pursuant to § 344.14, STATS. Graham's license was then suspended on January 18, 1994, for failure to pay a fine or forfeiture. Graham's license was again suspended on March 11, 1994, for her driving record. Next, Graham's license was suspended for failure to pay fines or forfeitures on June 1, 1994, August 5, 1994, and August 17, 1994.

Graham has not reinstated her license from any of those suspensions or revocations. Finally, Graham was arrested pursuant to § 343.44(1), STATS.,¹ on October 16, 1994, for operating after suspension for the second time in five years.

The State filed a criminal complaint against Graham, and the trial court dismissed the complaint. The State appeals.

DISCUSSION

The trial court dismissed the State's criminal complaint based on *State v. Muniz*, 181 Wis.2d 928, 512 N.W.2d 252 (Ct. App. 1994). The State argues that *Muniz* should be overruled because it is irreconcilable with *State v. Biljan*, 177 Wis.2d 14, 501 N.W.2d 820 (Ct. App. 1993).² But the cases are not irreconcilable.

¹ Section 343.44(1), STATS., provides that "[n]o person whose operating privilege has been duly revoked or suspended pursuant to the laws of this state shall operate a motor vehicle upon any highway in this state during such suspension or revocation or thereafter before filing proof of financial responsibility or before that person has obtained a new license in this state"

² This is the only issue which the State has adequately briefed. We do not consider, *sua sponte*, other issues which the State might have raised. *Waushara County v. Graf*, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19, *cert. denied*, 506 U.S. 894 (1992).

In both *Muniz* and *Biljan*, the State sought a criminal conviction against a motorist under § 343.44(2)(b), STATS., for operating a motor vehicle after revocation. Section 343.44(2)(b), provides:

1. Except as provided in subd. 2, for a 2nd conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person may be fined not more than \$1,000 and shall be imprisoned for not more than 6 months.
2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person may be required to forfeit not more than \$1,000. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

In *Muniz*, the court held that the only suspension in effect was a five-year suspension for Muniz's failure to pay a forfeiture, and thus under § 343.44(2)(b)2, STATS., a criminal remedy was not available. 181 Wis.2d at 933, 512 N.W.2d at 254. In *Biljan*, the court held that the revocation was not based solely upon Biljan's failure to pay a forfeiture, and therefore § 343.44(2)(b)2 did not apply. 177 Wis.2d at 22, 501 N.W.2d at 824. Thus, the cases are distinguishable.³

According to § 752.41(2), STATS., "Officially published opinions of the court of appeals shall have statewide precedential effect." The published

³ In a footnote to its brief, the State argues: "Assuming the court believes there is a substantive difference between a demerit point suspension and a § 344.14 suspension that justifies the different holding in *State v. Biljan* and *State v. Muniz*, Ms. Graham had a § 344.14 suspension and therefore *State v. Biljan* applies." The State, however, does not explain either the substantive difference between a demerit point suspension and a § 344.14 suspension or why any difference would make *Biljan* and *Muniz* distinguishable. Consequently, we will not consider this issue. See *State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992) (we may decline to review an issue inadequately briefed).

decision of any one panel of the court of appeals has binding effect on all panels of the court. See *In re Court of Appeals*, 82 Wis.2d 369, 371, 263 N.W.2d 149, 149-50 (1978); *Ranft v. Lyons*, 163 Wis.2d 282, 299-300 n.7, 471 N.W.2d 254, 260-61 (Ct. App. 1991). Accordingly, the State's request that we overrule *Muniz* must await another forum.⁴ Because the trial court did not improperly rely on *Muniz*, we affirm.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

⁴ The question of whether we have the authority to overrule our own cases is now pending before the Wisconsin Supreme Court in *Cook v. Cook*, No. 95-1963 (May 7, 1996) (petition for review granted). However, unless and until the supreme court decides that we can overrule our own cases, we are bound by prior precedent.