

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 14, 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. 95-1949-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID A. KOHL,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Washington County: RICHARD T. BECKER, Judge. *Affirmed.*

NETTESHEIM, J. David A. Kohl appeals from a judgment of conviction for the criminal offense of operating a motor vehicle while intoxicated pursuant to § 346.63(1)(a), STATS.

Prior to the conviction in this case, Kohl's operating privileges were administratively suspended pursuant to § 343.305, STATS., based upon a blood alcohol test which indicated that Kohl operated the motor vehicle with a

prohibited blood alcohol concentration. Based on this prior suspension, Kohl contended that the instant OWI prosecution violated his right against double jeopardy. The trial court disagreed. Kohl was eventually convicted and he appeals.

Kohl relies on *DOR v. Kurth Ranch*, 114 S. Ct. 1937 (1994), as support for his double jeopardy argument. There, the United States Supreme Court concluded that the imposition of a marijuana tax imposed after the defendants had been convicted and imprisoned for criminal drug trafficking was barred by the Double Jeopardy Clause. *Id.* at 1948. However, this court recently held that an administrative suspension pursuant to § 343.305, STATS., followed by a prosecution and conviction for OWI growing out of the same incident does not violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. *State v. McMaster*, No. 95-1149-CR, slip op. at 11 (Wis. Ct. App. Nov. 8, 1995, ordered published Jan. 30, 1996). In so holding, we distinguished *Kurth Ranch* by concluding that the implied consent law is remedial, not punitive, in nature. *Id.* at 6-7.

McMaster is the law on the issue which Kohl raises.

By the Court. – Judgment affirmed.

This opinion will not be published.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