COURT OF APPEALS
DECISION
DATED AND RELEASED

November 27, 1996

NOTICE

No. 96-1721

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID K. MARKS,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County: P. CHARLES JONES, Judge. *Affirmed*.

DYKMAN, P.J. This is a single-judge appeal decided pursuant to § 752.31(2)(c), STATS. David K. Marks appeals from an order convicting him of operating a motor vehicle while under the influence of an intoxicant in violation of § 346.63(1)(a), STATS., and operating a motor vehicle with a prohibited alcohol concentration in violation of § 346.63(1)(b), STATS. Marks raises two issues on appeal: (1) whether the police officer's request that he perform field sobriety tests converted his detention into an arrest, which needed to be supported by probable cause; and (2) whether his prosecution and sentence were barred by the Double Jeopardy Clause of the Fifth Amendment because his operating

privileges had previously been administratively suspended for the same violation. Because this court recently decided both issues against Marks, we affirm.

In ***County of Dane v. Campshure***, 204 Wis.2d 27, 29, 552 N.W.2d 876, 876 (Ct. App. 1996), we concluded that a request to perform field sobriety tests does not convert an otherwise lawful investigatory stop into an arrest. Marks concedes that ***Campshure*** decides the first issue against him and explains that he raised this issue to preserve it for subsequent review. We conclude that the officer did not arrest Marks by requesting him to perform field sobriety tests.

In ***State v. McMaster***, 198 Wis.2d 542, 544, 543 N.W.2d 499, 499 (Ct. App. 1995), *petition for review granted*, 546 N.W.2d 468 (1996), we concluded that criminal prosecution for operating a motor vehicle with a prohibited blood alcohol concentration after an administrative suspension of operating privileges does not violate the Double Jeopardy Clause of the Fifth Amendment. Marks concedes that ***McMaster*** decides the second issue against him and again explains that he raises this issue solely to preserve it for subsequent review. We conclude that Marks' prosecution and sentence did not violate the Double Jeopardy Clause.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.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