

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 20, 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. 02-2349-CR

Cir. Ct. No. 01-CT-244

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DENNIS L. OLSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
GUY D. REYNOLDS, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ Dennis L. Olson appeals a judgment of conviction for operating a motor vehicle while intoxicated (OMVWI), contrary to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). Additionally, all further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

WIS. STAT. § 346.63(1)(a), second 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 June 24, 2001, at approximately 1:35 a.m., Officer J. Wepking of the Sauk Prairie Police Department was notified of a possible drunk driver heading south on the highway towards Sauk City. Wepking located the vehicle and while following a short distance behind it, saw the vehicle swerve within its lane of traffic and cross the center line. Wepking stopped the car, approached Olson and asked him to step out of the vehicle. Olson attempted to exit the car but because he failed to put the car in gear, it started to roll backwards. Wepking instructed Olson to put his foot on the brake and to put the car back into gear. Wepking then asked Olson if he had been drinking, and Olson replied that he had had a couple of beers. Wepking asked Olson to perform field sobriety tests; Olson agreed, and using the vehicle to keep his balance, exited the vehicle.

¶3 During the administration of the sobriety tests, Wepking noticed that Olson swayed from side-to-side, that his speech was slurred and that he smelled heavily of intoxicants. Olson failed to successfully complete the sobriety tests and Wepking arrested him for OMVWI. Wepking then transported Olson to Sauk Prairie Memorial Hospital for a blood draw. Olson was read the Informing the Accused Form and asked to submit a sample of his blood for testing. Olson agreed and the blood draw produced a blood alcohol level of .196, a prohibited alcohol concentration (PAC) for a driver of a motor vehicle under Wisconsin law, pursuant to WIS. STAT. § 346.63(1)(b).

¶4 Olson moved to suppress the results of the blood test. The court denied his motion, and he pled no contest to OMVWI based on the facts in the criminal complaint.

DISCUSSION

Standard of Review.

¶5 The facts relevant to Olson's conviction are not disputed. 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 Olson appeals the judgment of conviction for OMVWI, a violation of WIS. STAT. § 346.63(1)(a).² Olson 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 Olson consented to the blood draw, he now argues that his consent was coerced by the threatened sanction of a loss of driving privileges. Stated differently, Olson challenges the constitutionality of WIS. STAT. § 343.305 and thereby, his conviction.

¶7 In order to sustain its burden of proof for the OMVWI, the prosecution was required to establish that (1) Olson was operating a vehicle on the

² While Olson 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).

highway and (2) Olson 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 necessarily intertwined with a finding of guilt for OMVWI. *See id.*

¶8 On appeal for his conviction of OMVWI, Olson 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 in the criminal complaint and used by the circuit court is insufficient to support his conviction of OMVWI, without the results of the blood test. Therefore, the arguments that Olson 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 Olson'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), *State v. VanLaarhoven*, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411 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 Olson's violation of WIS. STAT. § 346.63(1)(a), we do not analyze the applicability of *Krajewski*, *VanLaarhoven*, *Wintlend*, or any other case relating to the Fourth Amendment issues raised by Olson. Instead, we affirm the judgment of the circuit court without further discussion.

By the Court.—Judgment affirmed.

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

