

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 29, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-2997

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF VERNON,

PLAINTIFF-RESPONDENT,

V.

JEFFREY H. MILLIKIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Vernon County:
MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

ROGGENSACK, J.¹ Jeffrey Millikin appeals his conviction for operating a motor vehicle while intoxicated (OMVWI) in violation of § 346.63(1)(a), STATS. Millikin was charged with OMVWI and with operating a motor vehicle with a prohibited blood alcohol concentration (PAC) in violation of

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

§ 346.63(1)(b). The jury found Millikin guilty of both charges, but pursuant to § 346.63(1)(c), the circuit court dismissed the PAC charge and entered a judgment of conviction only for OMVWI. Millikin's sole argument on appeal is that the blood test administered after his arrest for OMVWI, and upon which the PAC charge was based, was not statutorily valid. Because the PAC was dismissed and the OMVWI was the basis for the conviction entered against Millikin, we affirm his conviction for OMVWI.

BACKGROUND

On February 7, 1998, Millikin was stopped and arrested for OMVWI and PAC. On July 27, 1998, a jury trial was held. The jury found Millikin guilty of both OMVWI and PAC. On August 26, 1998, the circuit court entered a judgment of conviction on the OMVWI charge and dismissed the PAC charge, pursuant to § 346.63(1)(c), STATS. This appeal followed.

DISCUSSION

When a person is charged with both OMVWI and PAC for acts arising out of the same incident or occurrence, the offenses must be joined, and if the person is found guilty of both charges, the circuit court must enter a single conviction for the purposes of sentencing and counting convictions. Section 346.63(1)(c), STATS. After the jury found Millikin guilty of OMVWI and PAC, the circuit court properly entered a judgment of conviction for OMVWI and dismissed the PAC charge. Millikin's only argument on appeal is that his blood test was improperly admitted into evidence at trial. Because that argument relates to the dismissed PAC charge, we do not address it. Millikin did not argue that there was insufficient evidence to convict him of OMVWI or that the jury's finding of guilt on that charge was influenced by the allegedly improperly

admitted blood test; therefore, we do not address those issues, *Waushara County v. Graf*, 166 Wis.2d 442, 453, 480 N.W.2d 16, 20 (1992) (the court of appeals has no duty to consider issues not presented to it). Accordingly, we affirm Millikin's conviction for OMVWI.

CONCLUSION

Because the only issue Millikin has raised on appeal is insufficient to overturn his conviction for OMVWI, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)4., STATS.

