COURT OF APPEALS
DECISION
DATED AND FILED

December 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-1304

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

IN THE MATTER OF THE REFUSAL OF BRIAN J. KNUTSON:

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRIAN J. KNUTSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Portage County: THOMAS T. FLUGAUR, Judge. *Affirmed.*

¶1 EICH, J.[1] According to the appellant, Brian Knutson, he is appealing from a "final judgment and sentence" in this driving-while-intoxicated case. The record, however, contains no such judgment. We assume the appeal is

[1] This appeal is decided by a single judge pursuant to § 751.32(2)(f), STATS.

from the circuit court's order revoking Knutson's license for one year for his refusal to submit to blood-alcohol testing under the implied consent law.

¶2 Knutson argues that the implied consent law is unconstitutional because it is based on the concept of "coerced" consent to a bodily search which, *ipso facto*, is involuntary, and thus invalid. His argument proceeds as follows: (1) under the Fourth Amendment, a warrantless search is *per se* unreasonable; (2) an exception exists where the defendant voluntarily consents to the search; (3) the implied consent law coerces arrestees into consenting to a blood alcohol test because, if a test is unreasonably refused, the person's driving privileges will be temporarily revoked; (4) it follows that the law is unconstitutional and we must reverse the revocation order and dismiss the OWI prosecution.

¶3 We see no merit in the argument. Knutson claims the implied consent law is unconstitutional because it "coerces" consent to a search (*via* breath, blood or urine testing). But no consent was forced or coerced from Knutson. He refused to take the test. It may be that, had he consented, and had the test resulted in chemical evidence of intoxication, he could raise such an argument in a motion to suppress that evidence. But we are nowhere near that point in this case. No consent was given, no tests were administered, and there has yet to be a trial. In these circumstances, we do not see that Knutson has standing to challenge the constitutionality of the implied consent law on grounds that it coerces consent to blood-alcohol testing. Not having been forced to consent, he has not suffered any "threatened or actual injury" by the "coercion" he claims exists in the law and renders it invalid. *See* ***State v. Fisher***, 211 Wis.2d 665, 668-69 n.2, 565 N.W.2d 565, 567 (Ct. App. 1997) (party has standing to raise constitutional issues only when his or her own rights are affected – if the statute causes that party "injury in fact …"). Knutson cannot suffer injury in fact from a

coerced consent to blood, breath or urine testing when he never consented, and never underwent any such testing.

By the Court.—Order affirmed.

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