

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1908-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES A. MUNSCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: ROBERT HAWLEY, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ James A. Munsch appeals from his conviction for a second offense of operating a motor vehicle while intoxicated in violation of WIS. STAT. § 346.63(1)(a). He is challenging the trial court's refusal to suppress

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

the results of a blood draw performed to gain evidence of his blood alcohol concentration. On appeal, he contends that the blood draw was an “unreasonable” search and seizure because the arresting officer had a less intrusive means of obtaining evidence of his blood alcohol concentration.

¶2 Prior to Munsch filing his reply brief, we decided *State v. Thorstad*, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, *review denied*, ___ Wis. 2d ___, 619 N.W.2d 93 (Wis. Oct. 17, 2000) (No. 99-1765-CR). In *Thorstad*, we were presented with the same issue that was raised by Munsch. We held that the blood draw “was admissible because it met the constitutional requirements for warrantless blood tests set out in [*State v.*] *Bohling*.” *Thorstad*, 2000 WI App 199 at ¶1 (citing *State v. Bohling*, 173 Wis. 2d 529, 533-34, 494 N.W.2d 399 (1993)).

¶3 In lieu of a reply brief, Munsch filed a letter advising this court that he “cannot ethically submit a reply brief and argue that the trial court erred in denying his suppression motions in light of the current state of the law.” We have independently reviewed the record in this appeal as well as the written legal argument submitted by Munsch and the State before the publication of *Thorstad*, and we conclude that *Thorstad* directly governs this appeal. Therefore, we affirm.

¶4 It is a rare occasion for appellate counsel to concede that new authority is factually indistinguishable from the case on appeal and controls the disposition of the appeal. We take the opportunity to commend Attorney Michele A. Tjader, appellate counsel for Munsch, for her adherence to the high ethical standards of this profession.

By the Court.—Judgment affirmed.

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

