COURT OF APPEALS
DECISION
DATED AND FILED

December 12, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-2412-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL L. MONSOUR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: JOHN A. DES JARDINS, Judge. *Affirmed.*

¶1 CANE, C.J.[1] Michael Monsour appeals from a judgment convicting him of a second offense of operating a motor vehicle while intoxicated, contrary to

[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.

WIS. STAT. § 346.63(1)(a). The sole issue on appeal is whether the taking of his blood sample without a warrant violated the Fourth Amendment to the United States Constitution.

¶2 The facts are undisputed. The police arrested Monsour for operating a motor vehicle while intoxicated and, shortly after his arrest, the arresting officer required Monsour to provide a blood sample for evidentiary analysis. The officer required this sample to be provided by invoking the provisions of WIS. STAT. § 343.305, the Wisconsin Implied Consent Law. The officer also informed Monsour that he was legally required to submit to the taking of the blood sample or suffer certain penalties by reading the standard Informing the Accused form issued by the Wisconsin Department of Transportation, which sets forth the provisions of § 343.305(4). In response, Monsour stated that he would submit to the blood test, which was taken St. Elizabeth's Hospital in Appleton. The blood test revealed his blood alcohol content at .193%.

¶3 Monsour filed with the trial court a motion to suppress the blood test results, arguing that the seizure of the blood was taken unreasonably without a required search warrant. The trial court denied the motion. Again on appeal, Monsour argues that the seizure of his blood did not fit within a recognized exception to the warrant clause. He reasons that after balancing the interest of the driver in his bodily security and integrity against the interest of the State, the search was unreasonable.

¶4 To appellant counsel's credit, he concedes that the recent opinion of ***State v. Thorstad***, 2000 WI App 199, 618 N.W.2d 240, controls. ***Thorstad*** was released and published after Monsour's appeal. He also concedes that there are no factual reasons for arguing that this case is distinguishable from ***Thorstad***. In

Thorstad, this court rejected an argument the same as Monsour's. This court held that, under facts identical to Monsour's, Thorstad's blood test was a reasonable search under the Fourth Amendment. *See* ***id.*** at ¶17.

By the Court.—Judgment affirmed.

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