COURT OF APPEALS
DECISION
DATED AND FILED

November 30, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 99-2753

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

CITY OF MONROE,

PLAINTIFF-RESPONDENT,

V.

JUSTIN P. FOULKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Green County: JAMES R. BEER, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] Justin P. Foulker appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OMWVI) in violation of WIS. STAT. § 346.63(1). He claims the trial court erred

[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.

in denying his motion to suppress the result of a blood test performed without a search warrant. As Foulker concedes in his reply brief, the recent decision in ***State v. Thorstad***, 2000 WI App 199, No. 99-1765-CR, *review denied*, 2000 WI 121 (Wis. Oct. 17, 2000), rejected the very argument he makes on this appeal. We therefore affirm the judgment of conviction.

¶2 Foulker was arrested for operating a motor vehicle while under the influence of an intoxicant after the truck he was driving was involved in an accident. The officer who arrested him arrived at the scene of the accident, detected a slight odor of intoxicants, and noticed that Foulker's balance was unsteady as he exited the truck. Foulker admitted to having consumed intoxicants and fell twice while walking up steps leading from the steps to the sidewalk. The officer administered field sobriety tests to Foulker and determined that Foulker did not successfully complete the tests, whereupon he arrested Foulker and transported him to Monroe Hospital. After the officer read him the Informing the Accused form, Foulker agreed to submit to a chemical test of his blood. The officer opted to require him to submit to a blood test as opposed to another type of chemical testing because that was the policy of the Monroe Police Department, although the officer had available to him the means to administer a breath test. The result of the blood test was .156.

¶3 Foulker moved to suppress the results of the blood test on the ground that it violated the Fourth Amendment because it was conducted without a search warrant and the officer could have performed a less intrusive test. The trial court denied the motion, concluding that the officer was not required to obtain a search warrant in order to comply with the Fourth Amendment because exigent circumstances were created by the dissipation of alcohol from Foulker's bloodstream.

¶4 On appeal, Foulker renews the argument he presented to the trial court and, because the question presented is one of law, we decide it de novo. ***State v. Edgeberg***, 188 Wis. 2d 339, 344-45, 524 N.W.2d 911 (Ct. App. 1994).

¶5 Foulker contends that a warrantless seizure of his blood was not justified by exigent circumstances because there was a readily available breath test that had equal evidentiary value and was less intrusive. However, as Foulker concedes in his reply brief, we have recently considered and rejected the same argument in ***Thorstad***. We concluded in ***Thorstad*** that so long as the four requirements outlined by the supreme court in ***State v. Bohling***, 173 Wis. 2d 529, 494 N.W.2d 399 (1993), *cert denied*, are met, there is no Fourth Amendment violation when the police obtain a blood sample from an OMVWI arrestee. The ***Bohling*** requirements are as follows: "(1) the blood draw is taken to obtain evidence of intoxication from a person lawfully arrested for a drunk-driving related violation or crime, (2) there is a clear indication that the blood draw will produce evidence of intoxication, (3) the method used to take the blood sample is a reasonable one and performed in a reasonable manner, and (4) the arrestee presents no reasonable objection to the blood draw." ***Id.*** at 533-34 (footnote omitted). Because the ***Bohling*** requirements are met in this case, ***Thorstad*** controls. The trial court correctly denied Foulker's motion to suppress the blood test results, and we therefore affirm that order and the judgment of conviction.

By the Court.—Judgment affirmed.

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