

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 11, 2001

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. 00-2639-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICK D. SCHEEL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Winnebago County: WILLIAM H. CARVER, Judge. *Affirmed.*

¶1 NETTESHEIM, J.<sup>1</sup> Rick D. Scheel appeals from a judgment of conviction for operating a motor vehicle while intoxicated pursuant to WIS. STAT. § 346.63(1)(a). At the opening of the trial, the trial court reversed its earlier ruling

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

suppressing Scheel's blood test results. Scheel then pled no contest to the charge.<sup>2</sup> Scheel contends that the court was obligated to sua sponte adjourn the trial date after it reversed its earlier ruling. We reject Scheel's argument and affirm the judgment of conviction.

¶2 The facts are brief and undisputed. The State charged Scheel with OWI. Scheel moved to suppress the results of a blood test obtained incident to his arrest. The trial court granted Scheel's motion, relying on *Nelson v. City of Irvine*, 143 F.3d 1196 (9<sup>th</sup> Cir. 1998). However, when granting the motion, the trial court cautioned that it might reverse its ruling in light of a pending appeal on the same issue in *State v. Thorstad*, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240. During the ensuing months, the court granted repeated adjournments awaiting the *Thorstad* decision. When the decision was not forthcoming, the court scheduled the matter for trial.

¶3 At the opening of the trial, the trial court stated that it had just learned that the *Thorstad* decision had been released and that the decision ran counter to the court's earlier ruling suppressing the blood test results. So the court reversed its prior ruling. Scheel then changed his plea to no contest, and the court entered a judgment of conviction.

¶4 Scheel appeals, contending that the trial court was duty bound to sua sponte continue the trial after it reversed its earlier ruling. We disagree.

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<sup>2</sup> After Scheel entered his no contest plea to OWI, the trial court dismissed an accompanying charge of operating with a prohibited alcohol concentration pursuant to WIS. STAT. § 346.63(1)(b).

¶5 First, and primarily, we reject Scheel’s argument because a guilty or no contest plea waives any nonjurisdictional errors. *State v. Bangert*, 131 Wis. 2d 246, 293, 389 N.W.2d 12 (1986).

¶6 Second, Scheel fails to offer any authority for his argument that the trial court was duty bound to act sua sponte. We generally do not consider arguments unsupported by reference to legal authority. See *Borsellino v. DNR*, 2000 WI App 27, ¶11, 232 Wis. 2d 430, 660 N.W.2d 255.

¶7 Third, we reject Scheel’s argument that the trial court’s failure to sua sponte continue the trial resulted in “trial by ambush.” The trial court cautioned the parties when it made its initial ruling suppressing the evidence that the court might well reverse its ruling in light of the pending appeal in *Thorstad*. Therefore, Scheel was not ambushed by the trial court’s reliance on *Thorstad* when it reversed its ruling.

*By the Court.*—Judgment affirmed.

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

