

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 27, 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. 01-0459-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL J. ARPKE,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Sheboygan County:  
GARY LANGHOFF, Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Michael J. Arpke appeals from an order denying his motions challenging the forcible withdrawal of his blood, the constitutionality of

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

dual OWI/PAC prosecution and the adequacy of the information provided to him pursuant to the Implied Consent Law. Because the issues Arpke raises in this appeal were decided in the State's favor in *State v. Thorstad*, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, *review denied*, 239 Wis. 2d 310, 619 N.W.2d 93 (Wis. Oct. 17, 2000) (No. 99-1765-CR), as Arpke concedes, we affirm the order.

### FACTS

¶2 On June 19, 1999, Sheboygan County Deputy Sheriff Lance Dassler noticed a slow moving vehicle, driving approximately thirty miles per hour. Dassler followed the vehicle for a while, and then passed the vehicle; after passing the vehicle, Dassler saw the car swerve and cross the center line. After stopping the vehicle and making contact with Arpke, Dassler noted an odor of intoxicants. Arpke failed several field sobriety tests and was arrested for operating a motor vehicle while intoxicated.

¶3 Arpke was transported to a hospital, where he refused to submit to a chemical test of his blood after being so requested. Despite the refusal, a blood draw was obtained, and an analysis of the blood indicated a prohibited blood alcohol level. Arpke was charged with operating a motor vehicle with a prohibited alcohol concentration.

¶4 Arpke filed several pretrial motions challenging: (1) the forcible withdrawal of his blood; (2) the constitutionality of both an OWI/PAC prosecution; and (3) the adequacy of the information provided to him pursuant to the Implied Consent Law. All of these motions were denied, and Arpke was convicted of both charges after a jury trial. Arpke appeals the denial of his pretrial motions.

## DISCUSSION

¶5 This case presents a question of law based upon an undisputed set of facts, which we review de novo. *State v. Edgeberg*, 188 Wis. 2d 339, 344-45, 524 N.W.2d 911 (Ct. App. 1994).

¶6 As Arpke concedes in his brief, we have recently considered and rejected the exact arguments he makes in this appeal. In *Thorstad*, we concluded that so long as the four requirements outlined by the Wisconsin Supreme Court in *State v. Bohling*, 173 Wis. 2d 529, 533-34, 494 N.W.2d 399 (1993), are met, there is no Fourth Amendment violation when the police obtain a blood sample from an OMVWI arrestee. *Thorstad*, 2000 WI App 199 at ¶17. Not only has the Wisconsin Supreme Court denied review, the United States Supreme Court recently denied certiorari review. *See Thorstad v. Wis.*, 121 S. Ct. 1099 (Feb. 20, 2001) (No. 00-1145). *Thorstad* is dispositive. Therefore, we affirm the order denying Arpke's pretrial motions.

*By the Court.*—Order affirmed.

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

