COURT OF APPEALS
DECISION
DATED AND FILED

November 15, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0707-CR **Cir. Ct. No. 99-CT-141**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

COREY W. SCHULTE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County: PATRICK TAGGART, Judge. *Affirmed.*

¶1 DEININGER, J.[1] Corey Schulte appeals a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant (OMVWI).

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[1] 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.

He claims that the trial court erred in denying his motion to suppress the results of a blood test administered following his arrest. Schulte concedes, however, that under the holding in ***State v. Thorstad***, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, the trial court did not err in rejecting his claim that the arresting officer was constitutionally required to administer a breath test instead of the "more intrusive" blood test. Accordingly, we affirm the appealed judgment.

BACKGROUND

¶2 The underlying facts are undisputed. A City of Reedsburg police officer arrested Schulte for OMVWI and transported him for the purpose of having a blood sample drawn. The officer read Schulte the "Informing the Accused" form required by WIS. STAT. § 343.305(4), a blood sample was drawn, and the sample was subsequently analyzed and the results reported.

¶3 Schulte moved the trial court to suppress the results of the blood test, alleging that "[t]he seizure of blood samples from the defendant was unreasonable because law enforcement had available to it the capability to obtain from the defendant samples of his breath for analysis of alcohol content, instead of the blood samples." The trial court denied the motion. Schulte subsequently pled no contest to OMVWI, second offense, which is a traffic crime. The court entered a judgment of conviction and Schulte appeals.[2]

[2] *See* WIS. STAT. § 971.31(10) ("An order denying a motion to suppress evidence … may be reviewed upon appeal from a judgment of conviction notwithstanding the fact that such judgment was entered upon a plea of guilty.").

ANALYSIS

¶4 Schulte concedes in his brief that the grounds alleged in his suppression motion, and therefore the issues in this appeal, were addressed by this court in ***State v. Thorstad***, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240. Specifically, Schulte states that "[f]or purposes of the present appeal … defendant-appellant acknowledges that the ***Thorstad*** decision is binding precedent upon these motions, and that the opinion of the Court of Appeals mandates, at present, that this Court affirm the trial court's denial of those three motions." Schulte goes on to explain, however, that because the Wisconsin Supreme Court has granted review in ***State v. Krajewski***, No. 99-3165-CR, unpublished order (Wis. Ct. App. Dec. 5, 2000), *review granted* (Wis. May 8, 2001), he is seeking to preserve the issues raised by his motions in the event that the supreme court, in deciding ***Krajewski***, overrules or modifies our holding in ***Thorstad***.

¶5 Because, as Schulte acknowledges, this court "is constrained to follow … ***Thorstad***," we affirm the appealed judgment.

By the Court.—Judgment affirmed.

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