**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 9, 2001**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**No. 01-0955**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DEBORAH P. DODSKI,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Vilas County: JAMES B. MOHR, Judge. *Affirmed.*

¶1 PETERSON, J.[1] Deborah Dodski appeals her judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), first offense, contrary to WIS. STAT. § 346.63(1)(a).[2] Dodski argues that

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f).

[2] Wisconsin classifies first offense OWI as a noncriminal, civil forfeiture with no possibility of imprisonment. *See* WIS. STAT. § 346.65(2)(a)

the warrantless draw of her blood for noncriminal OWI violates the Fourth Amendment. We reject Dodski's argument and affirm.

## BACKGROUND

¶2 At approximately 9:36 p.m., on May 22, 2000, Lac Du Flambeau tribal police officer Daryl Poupart was notified of a one-vehicle accident on Highway 47. While in route to the accident, Poupart was notified of a separate hit and run accident. Vilas County dispatch gave Poupart a description of a green vehicle that was last seen traveling north on Highway 47.

¶3 Upon arriving at the scene of the one-vehicle accident, Poupart saw a green vehicle just off Highway 47 with the driver, later identified as Dodski, still at the wheel. The vehicle appeared to be similar to the vehicle reported in the hit and run.

¶4 Poupart asked Dodski whether she needed medical attention. She stated that she just wanted to leave. She also stated that she did not know what had happened, she did not know where she was coming from or going to, and she did not know where she lived. Poupart noticed that Dodski had blood-shot eyes, that her answers were short, and that she appeared to be evasive. Dodski was then transported to a local hospital by ambulance.

¶5 Before going to the hospital, Poupart investigated the hit and run. Witnesses stated that the green car had rear-ended another car, then turned around and left the scene.

¶6 At the hospital, Poupart asked Dodski whether she had had anything to drink that evening. Dodski stated that she had a couple glasses of wine. Poupart then placed Dodski under arrest. Poupart read the Informing the Accused

form, pursuant to WIS. STAT. § 343.305(4). Dodski agreed to a blood draw. The blood test revealed an alcohol concentration of .228%.

¶7 Dodski moved to suppress the results of the blood test. She argued that the seizure of her blood violated the Fourth Amendment because the seizure occurred without a warrant. The trial court denied the motion. Dodski was found guilty after a trial to the court. This appeal followed.

## STANDARD OF REVIEW

¶8 In reviewing the denial of a suppression motion, this court upholds the trial court's findings of fact unless they are clearly erroneous. ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, the application of constitutional principles to the facts is a question of law this court decides independently. ***State v. Patricia A.P.***, 195 Wis. 2d 855, 862, 537 N.W.2d 47 (Ct. App. 1995).

## DISCUSSION

¶9 Dodski argues that the police violated her Fourth Amendment right against unreasonable searches and seizures by drawing her blood without a warrant. She contends that: (1) the exigent circumstances exception to a warrantless seizure of blood found in ***State v. Bohling***, 173 Wis. 2d 529, 533-34, 494 N.W.2d 399 (1993), does not apply to noncriminal OWI; and (2) her consent was not voluntarily given.

### I. EXIGENT CIRCUMSTANCES EXCEPTION

¶10 Dodski argues that the exigent circumstances exception found in ***Bohling*** and ***State v. Thorstad***, 2000 WI App 199, ¶11, 238 Wis. 2d 666, 618

N.W.2d 240, does not apply to noncriminal OWI because ***Bohling*** and ***Thorstad*** were criminal cases. She contends that any language applying the exigent circumstances exception to noncriminal cases is dicta. We disagree.

¶11 In ***Bohling***, our supreme court held that as long as certain requirements are met, the State is entitled to withdraw a sample of an intoxicated driver's blood regardless of whether the driver voluntarily submits to the testing. ***Id.*** at 534-35. The court held the dissipation of alcohol from a person's bloodstream constitutes a sufficient exigency to justify a warrantless blood draw at the direction of a law enforcement officer. ***Id.*** at 533-34. The court explained that a warrantless blood draw is permissible when:

> (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.*** (emphasis added; footnote omitted).

¶12 ***Bohling*** uses the phrase "violation or crime." ***Id.*** at 534. While some pronouncements from the supreme court are technically dicta, they are nevertheless administrative or supervisory directions that are intended for the guidance of the court system and are to be followed. ***State v. Koput***, 142 Wis. 2d 370, 386 n.12, 418 N.W.2d 804 (1988). We should only label a supreme court statement "dicta" if it is clearly that. "[V]iolation or crime" is not clearly dicta.

¶13 We conclude that the ***Bohling*** court's holding covers both OWI forfeitures and OWI crimes. In this context, violation is synonymous with forfeiture or noncriminal. Because not all drunk driving offenses are crimes, the ***Bohling*** court used the phrase "violation or crime" to apply the exigent circumstances exception to both noncriminal and criminal offenses.

¶14 Nevertheless, Dodski argues that the severity of first offense OWI does not justify a warrantless blood draw because a person's body is entitled to greater constitutional protection than a home. She relies on ***Schmerber v. California***, 384 U.S. 757 (1966), and ***Welsh v. Wisconsin***, 466 U.S. 740 (1984), to argue that police must consider the severity of the offense when determining whether exigent circumstances exist.

¶15 In ***Schmerber***, the United States Supreme Court recognized that "intrusions into the human body" implicated "interests in human dignity and privacy which the Fourth Amendment protects …." ***Id.*** at 769-70.

¶16 In ***Welsh***, the Court concluded that the dissipation of evidence is not a sufficient exigent circumstance to enter a home without a warrant when the offense is relatively minor. ***Id.*** at 750. ***Welsh*** involved a drunk driver whose driving was witnessed by a citizen. After the citizen informed the police about Welsh's erratic driving, police went to Welsh's home, entered without a warrant and arrested him for OWI. The Court held that a warrantless home arrest under these circumstances was invalid. ***Id.*** at 754.

¶17 We are unpersuaded by Dodski's argument that the present facts are analogous to the ones in ***Welsh***. ***Welsh*** involved a warrantless seizure of the defendant in his home, whereas this case involves a seizure of Dodski's blood after she was taken to the hospital and arrested for driving while intoxicated on a

public highway. As our supreme court has recognized, "in the context of driving on public highways, public safety concerns reduce a driver's expectation of privacy." ***Bohling***, 173 Wis.2d at 541.

¶18 Under the implied consent law, consent is implied as a condition of the privilege of operating a motor vehicle on state highways. By implying consent, the statute removes the right of a driver to lawfully refuse a chemical test. ***State v. Zielke***, 137 Wis. 2d 39, 48, 403 N.W.2d 427 (1987). The ***Bohling*** court also noted that its conclusion "strikes a favorable balance between an individual's right to be free from unreasonable searches and Wisconsin's interest in enforcing its drunk driving laws. Wisconsin's interest is vital whereas the resulting intrusion on individual privacy is minimal." ***Id.*** at 545.

¶19 Dodski has pointed to no facts to show why the balancing of interests should be different in her case. Accordingly, we are bound to follow the supreme court's conclusions in ***Bohling***.

¶20 We conclude that the ***Bohling*** exigent circumstances exception applies to noncriminal OWI. Because Dodski does not argue that the other three ***Bohling*** requirements were not met, Dodski's blood draw was reasonable under the Fourth Amendment.

## II. CONSENT

¶21 Dodski also argues that her consent to the warrantless blood draw was coerced and involuntary because the Informing the Accused form threatened revocation of her driver's license. She contends that the State was required to show by clear and convincing evidence that she voluntarily consented.

¶22 We need not address Dodski's argument. When blood is drawn without a warrant under the exigent circumstances exception, consent is not an issue. ***Id.*** at 534-35. If the ***Bohling*** factors are met, blood may be drawn when consent is involuntary or even absent.

*By the Court.*—Judgment affirmed.

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