COURT OF APPEALS
DECISION
DATED AND FILED

February 22, 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. 00-2178-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS A. LOGEMANN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County: J.R. ERWIN, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Douglas A. Logemann appeals his conviction of operating a motor vehicle while intoxicated as a third offense. He raises two

[1] 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 unless otherwise noted.

challenges to his conviction. First, he contends that WIS. STAT. § 343.305 is unconstitutional as applied to him. Second, he argues that the blood samples drawn pursuant to that statute should not have been admitted into evidence at trial. We affirm as to both issues.

FACTS

¶2 On August 29, 1999, at approximately 3:00 a.m., Logemann's vehicle was stopped by a Watertown police officer after the officer observed the vehicle make a rolling stop at a flashing red light. After noticing that Logemann's speech was moderately slurred, the officer asked Logemann if he had been drinking and Logemann did not deny it. The officer conducted field sobriety tests and then placed Logemann under arrest for allegedly operating a motor vehicle while under the influence of intoxicants.

¶3 Pursuant to WIS. STAT. § 343.305, the officer transported Logemann to Watertown Memorial Hospital where blood samples were drawn. The samples were delivered to the State of Wisconsin Laboratory of Hygiene in Madison, where analysis revealed a blood alcohol content of .186. Logemann had two prior convictions for operating a motor vehicle while intoxicated.

¶4 At his jury trial, Logemann objected to the admission of the State Laboratory of Hygiene's analysis of the blood samples drawn from him on the night of his arrest based on an alleged break in the chain of custody of the samples. The trial court overruled the objection based on the consistency of the packaging of the vials of blood, and found that Logemann's argument went to the weight of the evidence rather than to its admissibility. At the conclusion of the trial, Logemann was convicted.

DISCUSSION

¶5 Logemann's first argument on appeal is that WIS. STAT. § 343.305 is unconstitutional as applied to him. That statute provides that "[a]ny person who ... drives or operates a motor vehicle upon the public highways of this state ... is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity ... of alcohol …." WIS. STAT. § 343.305(2).

¶6 Whether a search or seizure is reasonable is a question of constitutional law that we review *de novo*. ***State v. Guzman***, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992). In ***State v. Thorstad***, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, *review denied*, 2000 WI 121, 239 Wis. 2d 310, 619 N.W.2d 93, we engaged in an analysis of the same issue raised in this case. We held that the constitutionality of a warrantless blood test used to detect evidence of intoxication in motorists must be determined in light of the holding in ***State v. Bohling***, 173 Wis. 2d 529, 494 N.W.2d 399 (1993). ***Bohling*** established that a warrantless blood draw is constitutional when the following four requirements are met:

> (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).

¶7 In ***Bohling***, these requirements were met in a situation in which a defendant was subjected to a blood test after he refused to take a breath test. ***Id.*** at

534-35. The ***Bohling*** requirements were also met in ***Thorstad***, where, as here, the defendant was subjected to a blood test and at no time either refused to take the blood test or requested an alternative test. ***Thorstad***, 2000 WI App 199, ¶¶ 2, 17.

¶8 Logemann effectively concedes that the ***Thorstad*** holding controls this case and that there are no factual differences which would make this case distinguishable. He argues that the ***Bohling*** factors must be applied to each case individually, but then does not present a reason why the individual application of the ***Bohling*** test to the facts in this case should produce a different result than in ***Thorstad***.

¶9 The blood draw was taken to obtain evidence of intoxication during the course of a lawful arrest under circumstances in which Logemann was suspected of a drunk-driving related offense. The draw was conducted at Watertown Memorial Hospital under no objection from Logemann, and he has not argued that the method used was unreasonable.

¶10 The second issue Logemann raises relates to the chain of custody of the blood samples drawn during the course of his arrest. Testing of those samples revealed a blood alcohol content of .186, evidence the State used in securing his conviction. The box containing the samples was at one point opened by the arresting officer so that mailing labels could be filled out, and was then resealed with heavy packing tape. The officer then deposited the sealed box in a secure evidence drop box to be picked up the next morning by evidence technicians, who would then send the box via certified mail to the state hygiene lab. Logemann contends that the State has not sufficiently established the chain of custody of the blood samples with these facts.

¶11 In reviewing evidentiary issues, the question on appeal is not whether this court, ruling initially on the admissibility of the evidence, would have permitted it to come in, but whether the trial court appropriately exercised its discretion. ***State v. Alsteen***, 108 Wis. 2d 723, 727, 324 N.W.2d 426 (1982). We will not disturb an evidentiary ruling where the court, in making its ruling, has exercised discretion in accordance with accepted legal standards and the facts of record. ***State v. Clark***, 179 Wis. 2d 484, 490, 507 N.W.2d 172 (Ct. App. 1993).

¶12 The supreme court has held that "the degree of proof necessary to establish a chain of custody should be a matter within the trial court's discretion." ***State v. Simmons***, 57 Wis. 2d 285, 295-96, 203 N.W.2d 887 (1973). Further, it is within a judge's discretion to admit evidence, even over objection, "if there [is] no doubt that the properly labeled and identified samples [are] the ones relevant to [the] prosecution." ***Id.*** at 296.

¶13 Based on the highly deferential standard applicable here, we will not disturb the trial court's admission of the blood samples. Testimony at trial revealed that the samples were taken by an employee at Watertown Memorial Hospital. She then sealed and labeled the tubes containing the samples and put the tubes in a labeled Ziploc bag which was then put into a styrofoam box. The box was given to the arresting officer, who secured it in a locked locker while he completed the paperwork necessary for Logemann's arrest. That officer then filled out stickers which went on the outside of the box. The box was then securely sealed with heavy packing tape and placed in a secured evidence drop box.

¶14 The arresting officer testified as to the departmental procedure for handling evidence deposited in the secured evidence drop box. He stated that

evidence technicians retrieve packages placed in the evidence box and send those packages via certified mail to the state hygiene lab.

¶15 When the box containing the samples of Logemann's blood was received at the state hygiene lab, the samples were still sealed and labeled in the prescribed manner.

¶16 The trial court admitted the evidence. It held that, because of the consistency of the packaging of the tubes containing Logemann's blood samples and of the kit the tubes were contained in, the issue of the missing link in the chain of custody went to the weight of the evidence, not to its admissibility.

¶17 It is not necessary to negate the possibility that there was an opportunity for tampering with an exhibit nor to trace the exhibit's custody by calling each custodian as a witness. ***State v. McCarty***, 47 Wis. 2d 781, 788, 177 N.W.2d 819 (1970). The trial court's holding is entirely consistent with these principles. We therefore affirm Logemann's conviction.

By the Court.—Judgment affirmed.

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