

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 4, 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. 00-2927-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DAVID K. OSMAN,

DEFENDANT-APPELLANT.

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

¶1 BROWN, P.J.¹ David K. Osman appeals a conviction for operating a vehicle while intoxicated, third offense. He argues that the trial court erred in denying his motion to suppress a blood test result. Because the issue

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000).

Osman raised at his motion to suppress and again on appeal is governed by *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), this court affirms the judgment of conviction.

¶2 The pertinent facts are that Osman was arrested for driving while intoxicated and was driven to the hospital following his arrest. He gave permission for a blood draw and the results showed that he had a prohibited concentration of alcohol in his system. At the motion to suppress, Osman posited that since other alternative tests were available besides a blood draw and because these other two tests are far less intrusive than a blood draw, exigent circumstances justifying a warrantless drawing of his blood did not exist. Osman theorized that the blood test therefore amounted to an unreasonable search under the Fourth Amendment. The trial court rejected his theory. On appeal, Osman acknowledges that his theory of relief was rejected in *Thorstad* and that we are bound by *Thorstad*. However, he nonetheless wishes to raise this issue so as to preserve it pending a Petition for Writ of Certiorari in the United States Supreme Court.

¶3 As acknowledged by Osman, the *Thorstad* court squarely confronted the same issue raised by Osman and rejected it. The opinion is published and this court is bound by it. Therefore, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published.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

