COURT OF APPEALS
DECISION
DATED AND FILED

February 20, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1060 **Cir. Ct. No. 99-TR-1098**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

APRIL J. INGALLS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. April Ingalls appeals an order revoking her driving privileges for one year. She argues that the trial court erroneously determined that her refusal to submit to a blood test was unreasonable. She further contends that her refusal was justified because she requested an alternative test. Because the record supports the court's findings, we affirm the order.

¶2 Scott Johnson, a City of Prescott police officer, testified that he observed a pickup truck fail to stop for a stop sign. He stopped the truck and while conversing with Ingalls, the driver, he noticed the smell of intoxicants. He requested she take a portable breath test. Johnson testified that when he administered the test, "She blew out her nose at one point. Spit through the tube another time. Basically was unwilling to take the portable breath test."

¶3 Johnson further testified that when he asked Ingalls to perform field sobriety tests, he noticed that Ingalls' speech was slightly slurred, she did not comply with directions carefully and she had poor balance. After Ingalls admitted to drinking a couple of beers, Johnson placed her under arrest and took her to the Pierce County Jail.

¶4 At the jail, Johnson issued a citation for operating a motor vehicle while under the influence and read Ingalls the "Informing the Accused" form. Johnson asked Ingalls if she would submit to an evidentiary chemical test of her blood because the Intoxilyzer was not working. She refused. Johnson testified that he had summoned Dr. E.R. Jonas to perform the blood test at the sheriff's office. Johnson stated that Ingalls did not ask for an alternative test.

¶5 Ingalls testified that she objected to providing a blood sample because

> I am standing in an absolute[ly] dirty, filthy booking room, and that there is a man there ready to draw my blood, who I have no idea who he is because I am not from here. And seems to be very elderly man. … He looked very disheveled. Looked like he had just rolled out of bed with just ordinary plain street clothes, flannel type shirt on. … he was not wearing gloves. … He was opening up a package that held the syringe and the needle in it.

¶6 The trial court concluded that the officer had probable cause to stop Ingalls for rolling through a stop sign. It also determined that because she admitted drinking and failed the field sobriety tests, he had probable cause to arrest her. The court found that the officer complied with the implied consent law and that Ingalls refused the test requested by law enforcement. The court noted that Ingalls had not asserted any physical disability that would interfere with her ability to submit to the test.

¶7 The trial court concluded that Ingalls "did not refuse to take the blood test because of the manner in which the blood draw was proposed to be taken by law enforcement." The court observed that Ingalls never indicated to any of the officers at the time of her refusal that she would submit to a blood draw at a hospital. The court also found that it was a fair inference that Ingalls refused the blood test before the doctor even appeared at the sheriff's office, stating:

> Although, her first refusal to submit to a blood draw is before the informing the accused was read to her, the fair inference from the evidence is that it was before Dr. Jonas appeared at the Sheriff's Department. After the Informing the Accused form was read to her, she again refused to permit the blood test. She never indicated to any of the law enforcement personnel or to Dr. Jonas any concerns about the method by which the blood was proposed to be drawn. In addition, the court takes judicial notice that Dr. Jonas was the Pierce County Coroner at the time the blood draw was attempted to be taken and that Dr. Jonas was a member of the medical profession of long standing and has testified in Pierce County courts on more than several occasions prior to this date.

¶8 The trial court concluded that Ingalls' testimony regarding Jonas's appearance was not credible and that her testimony was self-serving and "motivated by an attempt to prevent evidence from being used against her …." The court found that her refusal to submit to the blood test was "Not motivated by

a concern for hygiene but an attempt to thwart law enforcement in their attempt to acquire evidence to prove her guilt of operating while under the influence." As a result, the court concluded that she refused a lawful request to submit to a blood test and ordered her license revoked.

¶9 Under WIS. STAT. § 343.305(9)5(a)-(c), the issues at a refusal hearing are limited to (1) whether the officer had probable cause to believe the person was operating under the influence; (2) whether the person was lawfully arrested; (3) whether the officer complied with the requirements to inform the accused; and (4) whether the person refused the test. The person refusing the test must show by a preponderance of the evidence that the refusal was due to a physical inability to submit to the test due to physical disease or disability unrelated to the use of the alcohol or the banned substance. WIS. STAT. § 343.305(9)5(c). Ingalls does not challenge the trial court's findings as to any of these issues. Consequently, we conclude that the trial court's decision must be sustained.

¶10 Nonetheless, Ingalls contends that the attempted medical procedure was unsafe, unacceptable and unreasonable, and that she offered to submit to a breath test, and had submitted to one several times. Therefore, she concludes that her refusal was justified. We are unpersuaded. Ingalls' arguments rest on facts contrary to those found by the trial court. Because the trial court's findings are not clearly erroneous, Ingalls' argument fails.

¶11 When reviewing a trial court's findings of fact, we do not reverse unless the findings are clearly erroneous. WIS. STAT. § 805.17(2). When more than one reasonable inference may be drawn from the evidence, we are bound by

the one drawn by the trier of fact. *See* ***St. Paul Fire & Marine Ins. Co. v. Burchard***, 25 Wis. 2d 288, 293, 130 N.W.2d 866 (1964).

¶12 The trial court, not the appellate court, judges the credibility of witnesses and the weight of their testimony. ***State v. Wyss***, 124 Wis. 2d 681, 694, 370 N.W.2d 745 (1985). Appellate courts search the record for evidence to support findings reached by the trial court, not for evidence to support findings the trial court did not but could have reached. ***In re Estate of Dejmal***, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980). Appellate court deference considers that the trial court has the opportunity to observe the demeanor of witnesses and gauge the persuasiveness of their testimony. ***Id.*** at 151-52. Its credibility assessments will not be overturned on appeal unless they are inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See* ***Chapman v. State***, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975).

¶13 Ingalls' arguments are structured to avoid these basic standards of review. However, on appeal, our analytical framework does not exist in a vacuum. It must be based upon a set of facts. Applying our standard of review, we conclude that the trial court was entitled to reject Ingalls' testimony that her refusal was due to the unsanitary medical procedures.

¶14 Based on the officer's testimony, the court was entitled to find that Ingalls avoided the preliminary breath test. The record supports the court's finding that Ingalls never indicated that she would be willing to submit to a blood test at a medical center or hospital. The court's finding that she refused before Jonas even appeared on the scene is unchallenged. We are satisfied that the record permits the inference that Ingalls' refusal was motivated by an attempt to thwart officers and prevent evidence from being used against her. Thus, the

reasonableness of the medical procedure was not an issue necessary for the trial court to determine and, consequently, is not ground for reversal.[1]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[1] In her reply brief, Ingalls argues that the trial court erred when it took judicial notice that Jonas was a long-standing member of the medical profession. She does not indicate that this objection was made to the trial court. As a general rule, this court will not decide issues that have not first been raised in the trial court. ***Terpstra v. Soiltest, Inc.***, 63 Wis. 2d 585, 593, 218 N.W.2d 129 (1974).