COURT OF APPEALS
DECISION
DATED AND FILED

July 18, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0048

Cir. Ct. Nos. 00-TR-12110
00-TR-12111

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

COUNTY OF DANE,

PLAINTIFF-RESPONDENT,

V.

TODD M. OIMOEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: ROBERT DE CHAMBEAU, Judge. *Affirmed.*

¶1 DYKMAN, J.[1] Todd Oimoen appeals from a judgment of conviction for operating a motor vehicle while under the influence of an

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

intoxicant, in violation of WIS. STAT. § 346.63(1)(a). Oimoen raises two issues regarding a blood draw that was conducted after his arrest: (1) that the warrantless blood draw was unconstitutional because the police could have obtained evidence through a less-invasive breath test; and (2) even if the blood draw was lawful, police required a warrant to analyze the blood because no exigent circumstances existed after the blood was seized.

¶2 Oimoen concedes that the first issue was resolved by ***State v. Thorstad***, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, but he suggests that ***Thorstad*** could be undermined by a case pending before the supreme court at the time of briefing, ***State v. Krajewski***, No. 99-3165-CR. ***Krajewski*** has now been decided. *See* 2002 WI 97. Rather than overrule ***Thorstad***, however, ***Krajewski*** extended its holding, concluding that warrantless blood draws were constitutionally permissible even when the suspect offers to take an alternative test. ***Id.*** at ¶3. Because Oimoen does not contend that he was "unable to reasonably submit to a blood test," ***Krajewski*** forecloses Oimoen's first argument. ***Id.*** at ¶52.

¶3 With regard to the second issue, Oimoen also concedes that ***State v. VanLaarhoven***, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411, has decided that issue against him. We are bound by published decisions of the court of appeals. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). We therefore affirm the judgment of conviction.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.