COURT OF APPEALS
DECISION
DATED AND FILED

November 14, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0535 **Cir. Ct. No. 00-TR-1649**

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

COUNTY OF COLUMBIA,

PLAINTIFF-RESPONDENT,

V.

CHERYL LINDE-RAY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County: JAMES O. MILLER, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Cheryl Linde-Ray appeals a judgment of the circuit court convicting her of operating while intoxicated as a first offense.

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

Linde-Ray argues that the trial court improperly denied her motions to suppress. We disagree and affirm.

Background

¶2 Linde-Ray filed a number of motions to suppress before the trial court, two of which are at issue here. One motion alleged that the evidence obtained from a blood draw was unreasonably obtained because a less intrusive means, i.e., a breath test, was available to the officers. The second motion alleged that the evidence from the blood draw should be suppressed on the grounds that exigent circumstances did not exist to justify seizure without a warrant.

Discussion

¶3 Linde-Ray raises two issues in her appellate brief. One, whether police may draw blood, without a warrant, from a driver arrested for drunk driving when a statutory breath test could have been administered instead, and two, whether the police may, without a warrant, subsequently analyze the blood drawn from a person who has been arrested for drunk driving.

¶4 Linde-Ray concedes that the first issue is controlled by ***State v. Thorstad***, 2000 WI App 199, ¶17, 238 Wis. 2d 666, 618 N.W.2d 240. The ruling in ***Thorstad*** was recently upheld by the supreme court in ***State v. Krajewski***, 2002 WI 97, ¶63, __ Wis. 2d __, 648 N.W.2d 385. "The court of appeals is bound by the prior decisions of the Wisconsin Supreme Court." ***Livesey v. Copps Corp.***, 90 Wis. 2d 577, 581, 280 N.W.2d 339 (Ct. App. 1979).

¶5 Linde-Ray concedes that the second issue is controlled by ***State v. VanLaarhoven***, 2001 WI App 275, ¶17, 248 Wis. 2d 881, 637 N.W.2d 411. "[T]he court of appeals may not overrule, modify or withdraw language from a

previously published decision of the court of appeals." ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997). Therefore, we affirm on both issues.

By the Court.—Judgment affirmed.

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