COURT OF APPEALS DECISION DATED AND FILED

January 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 02-1363-CR

Cir. Ct. No. 00-CT-191

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH M. MEICHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County: RICHARD L. REHM and JAMES O. MILLER, Judges. *Affirmed*.

¶1 LUNDSTEN, J.[1] Joseph M. Meicher appeals a judgment of the circuit court finding him guilty of operating a motor vehicle while intoxicated as a

[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.

second offense. Meicher argues that evidence obtained from a blood draw taken after his arrest should have been suppressed for two reasons: (1) his consent was involuntary because the implied consent law unconstitutionally coerces consent, and (2) without consent, a search warrant was needed to analyze his blood sample. We disagree and affirm.[2]

Background

¶2 Meicher was arrested for driving while under the influence of an intoxicant. The arresting officer read an "Informing the Accused" form to Meicher, pursuant to WIS. STAT. § 343.305(4), Wisconsin's implied consent law, and Meicher consented to the drawing of a blood sample. The blood sample was analyzed two days later.

¶3 Meicher moved to suppress the blood sample and the results of the blood test. The trial court denied the motion, and Meicher pled no contest to operating a motor vehicle while under the influence of an intoxicant.

Discussion

¶4 Meicher contends the implied consent law produces coerced "consent" because it effectively threatens citizens with a penalty if they do not

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[2] Meicher also moved to suppress evidence on the theory that the blood sample was not obtained pursuant to the exigency exception to the warrant clause of the Fourth Amendment. Meicher argued that the availability of statutorily equivalent breath test evidence extinguished the exigency circumstances necessary to obtain the blood sample without a warrant. However, he concedes that this argument was rejected in ***State v. Krajewski***, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, and raises this issue on appeal in order to preserve an appeal on the possibility that the United States Supreme Court overturns ***Krajewski***. The United States Supreme Court denied certiorari in ***Krajewski*** on December 16, 2002, ***Krajewski v. Wisconsin***, *cert. denied*, 71 U.S.L.W. 3415 (U.S. Dec. 16, 2002) (No. 02-719), and thus we need not address this argument further.

consent. In ***State v. Wintlend***, 2002 WI App 314, No. 02-0965-CR, *review denied* (Wis. Jan. 14, 2003), we rejected that argument, concluding that any coercion imposed by the implied consent statute is not unreasonable and is thus constitutional. ***Id***. at ¶¶8-18. Therefore, Meicher's consent was voluntary.

¶5 Because Meicher's consent was voluntary, his assertion that a search warrant was needed to analyze his blood necessarily fails. In ***State v. VanLaarhoven***, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411, we considered whether police officers could obtain a blood sample *and analyze* that sample without obtaining a search warrant under a motorist's consent pursuant to Wisconsin's implied consent law. We concluded that "by operation of law and by submitting to the tests, VanLaarhoven consented to a taking of a sample of his blood and the chemical analysis of that sample." ***Id***. at ¶8; *see also* ***Village of Little Chute v. Walitalo***, 2002 WI App 211, ¶1 n.2, 256 Wis. 2d 1032, 650 N.W.2d 891 (construing the ***VanLaarhoven*** decision to state that "the examination of a blood sample seized pursuant to the warrant requirement or an exception to the warrant requirement is an essential part of the seizure and does not require a separate judicially authorized warrant"). For the foregoing reasons, we affirm.

By the Court.—Judgment affirmed.

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