

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 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. 02-2353-CR

Cir. Ct. No. 01-CT-258

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALLEN R. WEST,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
GUY D. REYNOLDS, Judge. *Affirmed.*

¶1 DEININGER, J.¹ Allen West appeals a judgment convicting him of operating a motor vehicle with a prohibited alcohol concentration as a second offense. He claims the trial court erred in denying his motions to suppress

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

evidence of the result of a blood alcohol test performed following his arrest. West concedes, however, that his claims of error lack merit under presently binding precedent. Accordingly, we affirm.

BACKGROUND

¶2 An officer of the Wisconsin Department of Natural Resources arrested West for operating a motor vehicle while under the influence of intoxicants (OMVWI). The officer obtained a blood sample from West which was subsequently analyzed to have a .152% blood ethanol level by weight. Because West had previously been convicted of OMVWI in 1995, the State charged him with a traffic crime. *See* WIS. STAT. § 346.65(2).

¶3 West moved to suppress evidence of the test result on the grounds that the blood sample was obtained and analyzed in violation of his rights under the Fourth Amendment. Specifically, he asserted that (1) the officer should not have subjected him to a blood test when a breath testing device was readily available; (2) the blood sample should not have been analyzed without a warrant; and (3) the implied consent statute is unconstitutionally coercive. The circuit court denied his motions. He subsequently pled no contest to second-offense operating with a prohibited alcohol concentration.²

² Notwithstanding a plea of guilty or no contest, a defendant may appeal a judgment of conviction in order to challenge the denial of a motion to suppress evidence. *See* WIS. STAT. § 971.31(10).

ANALYSIS

¶4 West states the issues in this appeal to be those he raised in his motions to suppress. He candidly acknowledges, however, that the supreme court's holding in *State v. Krajewski*, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, and ours in *State v. Wintlend*, 2002 WI App 314, 258 Wis. 2d 875, 655 N.W.2d 745, effectively dispose of these issues adversely to him. Although West does not mention *State v. Riedel*, 2003 WI App 18, __ Wis. 2d __, 656 N.W.2d 789, we note that we there held that police do not need a warrant to perform a test for alcohol concentration on a blood sample properly seized from an OMVWI arrestee. We are bound by these precedents and therefore affirm both the denial of West's suppression motions and his conviction.³

CONCLUSION

¶5 For the reason cited above, we affirm the appealed judgment.

By the Court.—Judgment affirmed.

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

³ West asserts in his brief that he brings this appeal in order to preserve the issues for further review in the event either *Krajewski* or *Wintlend* is reversed or modified on further appellate review. In this regard, we note that the U.S. Supreme Court has denied certiorari in *Krajewski v. Wisconsin*, 123 S. Ct. 704 (2002), and the Wisconsin Supreme Court has declined to review *State v. Wintlend*, 2003 WI 16, __ Wis. 2d __, 657 N.W.2d 708 (Wis. Jan. 14, 2003) (No. 02-0965-CR), and *State v. Riedel*, No. 02-1772-CR (Mar. 13, 2003).

