

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 17, 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. 02-2569-CR**

**Cir. Ct. No. 99-CT-159**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**PHILIP S. TACKETT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Green County:  
JAMES R. BEER, Judge. *Affirmed.*

¶1 LUNDSTEN, J.<sup>1</sup> Philip S. Tackett appeals a judgment of the circuit court convicting him of operating a motor vehicle while under the influence of an intoxicant as a third offense. Tackett contends the implied consent law

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<sup>1</sup> 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.

unconstitutionally coerced his consent to a blood draw and that the blood draw was an unreasonable search and seizure because alternative chemical breath test equipment of equal evidentiary value was available.

¶2 Tackett acknowledges that we must reject his first challenge under *State v. Wintlend*, 2002 WI App 314, ¶¶8-19, 258 Wis. 2d 875, 655 N.W.2d 745, review denied (Wis. Jan. 14, 2003) (No. 02-0965-CR), and that we must reject his second challenge under *State v. Krajewski*, 2002 WI 97, ¶¶46-47, 255 Wis. 2d 98, 648 N.W.2d 385. Still, Tackett raised these issues due to the possibility that *Krajewski* or *Wintlend* might be overturned. However, since Tackett filed his brief-in-chief, the United States Supreme Court denied certiorari in *Krajewski* on December 16, 2002, *Krajewski v. Wisconsin*, cert. denied, 154 L. Ed. 2d 634 (2002), and the Wisconsin Supreme Court denied the petition for review in *Wintlend* on January 14, 2003.

*By the Court.*—Judgment affirmed.

This opinion will not be published.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

