COURT OF APPEALS
DECISION
DATED AND FILED

March 20, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2668-CR **Cir. Ct. No. 00-CT-152**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON L. WENDLER,

DEFENDANT-APPELLANT.

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

¶1 VERGERONT, P.J.[1] Jason Wendler appeals the judgment of conviction for driving while intoxicated in violation of WIS. STAT. § 346.63(1)(a), third offense. We reject his challenges to the admissibility of the results of the

[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.

chemical test performed on his blood and his constitutional challenge to WIS. STAT. § 343.305, the implied consent statute. We affirm the judgment and order.

¶2 Wendler was arrested for driving while intoxicated and was read the "Informing the Accused" form in compliance with WIS. STAT. § 343.305(4). He submitted to an evidentiary chemical test of his blood. Wendler moved to suppress the test result as violations of his Fourth Amendment right against unreasonable searches and seizures. He contended a warrant was needed for the blood draw and that the implied consent statute was unconstitutional because it compels a person to choose between abandoning the Fourth Amendment protection against unreasonable searches and seizures on the one hand, and suffering the sanctions of lost driving privileges on the other.[2] The trial court denied the motion.

¶3 Because the facts are undisputed, the application of constitutional principles to those facts presents questions of law, which we review de novo. ***State v. VanLaarhoven***, 2001 WI App. 275, ¶5, 248 Wis. 2d 881, 637 N.W.2d 411. Challenges to the constitutionality of a statute also present a question of law. ***State v. Smith***, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct. App. 1997).

¶4 Wendler concedes that under ***State v. Krajewski***, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, the warrantless seizure of his blood did not violate the Fourth Amendment because it comes within the exception to the warrant

[2] Under WIS. STAT. § 343.305(2), any person operating a motor vehicle is deemed to have given consent to tests to determine the presence or quantity of alcohol in the person's breath or blood when the person is arrested for a violation of WIS. STAT. § 346.63(1); license revocation is the penalty if a person refuses to submit to the tests after certain statutory conditions and procedures are complied with. Section 343.305(3)-(10).

requirement for exigent circumstances.[3] However, he contends, the analysis of his blood is a separate search that must be justified by an exception separate from that for the seizure of his blood, and exigent circumstances do not justify the analysis of his blood once it has been drawn. We have recently rejected this very argument in ***State v. Riedel***, 2003 WI App 18, ___ Wis. 2d ____, ____N.W. 2d ____ (2002), ordered published January 29, 2003.

¶5 As Wendler also recognizes, we have recently rejected the argument that the implied consent law is unconstitutional because it compels drivers to consent to submitting to a chemical test by threatening loss of driving privileges. ***State v. Wintlend***, 2002 WI App. 314, ___ Wis. 2d ___, 655 N.W.2d 745.[4]

¶6 Accordingly, we hold the trial court properly denied Wendler's motion to suppress the results of the chemical test of his blood.

By the Court.—Judgment and order affirmed.

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

[3] Wendler explains that he raised this issue in spite of the binding precedent resolving it in order to preserve it for possible review by the United States Supreme Court.

[4] Wendler explains that at the time he filed the first brief, a petition for review of our decision in ***State v. Wintlend***, 2002 WI App. 314, ___ Wis. 2d ___, 655 N.W.2d 745, was pending in the supreme court. The petition has since been denied.