COURT OF APPEALS
DECISION
DATED AND FILED

October 3, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Nos. 01-0701-CR
01-1875-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SCOTT ZASTROW,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Washington County: ANDREW T. GONRING, Judge. *Affirmed.*

¶1 NETTESHEIM, P.J.[1] Scott Zastrow appeals from a judgment of conviction for a third offense of operating a motor vehicle while intoxicated

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

(OWI) contrary to WIS. STAT. § 346.63(1)(a). Zastrow additionally appeals the trial court's denial of his postconviction motions.[2] Zastrow contends that the trial court erroneously denied his motion to dismiss for lack of reasonable suspicion to conduct an investigative stop of his vehicle and lack of probable cause to arrest. He additionally contends that the trial court erroneously denied his motion to suppress evidence resulting from a blood draw and from a search of his vehicle. Finally, Zastrow argues that the State should have been estopped from prosecuting a charge for operating a motor vehicle with a prohibited blood alcohol concentration (PAC) following the administrative revocation of his operating privileges and from using the results of the blood test in support of its prosecution of the OWI charge. For reasons discussed below, we reject Zastrow's arguments as to each issue and affirm.

FACTS AND TRIAL COURT PROCEEDINGS

¶2 On August 30, 2000, Zastrow was arrested for OWI and PAC. Deputy Timothy Ewing of the Washington County Sheriff's Department testified as to the events surrounding Zastrow's arrest. At approximately 1:30 p.m. on August 30, 2000, Ewing was dispatched to Sandy Knoll County Park. The dispatcher advised Ewing that a person from Bob's Auto had contacted the sheriff's department to report that a person named Scott William Zastrow had requested assistance from Bob's Auto because his automobile had run out of

[2] On March 16, 2001, Zastrow filed a notice of appeal from the judgment of conviction and the trial court's order denying his motion for postconviction relief (No. 01-0701-CR). On April 26, 2001, we ordered that this court did not have jurisdiction to review the postconviction ruling, as it had not been reduced to a written postconviction order. Zastrow then filed a second appeal (No. 01-1875-CR), after the postconviction order had been entered by the trial court. On July 26, 2001, we granted Zastrow's motion to consolidate these appeals.

gasoline at the park. The person from Bob's Auto was concerned that Zastrow was impaired and asked that his condition be assessed before one of its employees provided him with gasoline. The person from Bob's Auto described Zastrow's vehicle as a "two-tone, blue suburban."

¶3 When Ewing arrived at the park, he observed a vehicle matching that description. Ewing ran the vehicle's registration and confirmed that it was registered to Zastrow. Ewing noted that the vehicle had been headed out of the park and was stopped approximately twenty feet north of the entrance to the park. Ewing activated his emergency lights and approached the vehicle to inquire as to whether the occupant was having mechanical problems. The occupant informed him that he had been attempting to exit the park when he ran out of gasoline and that he was waiting for Bob's Auto to assist him. Ewing asked for the occupant's driver's license and confirmed that the occupant was Zastrow.

¶4 Ewing testified that when Zastrow rolled down his window, Ewing detected "an extremely strong odor of alcoholic beverage emanating from the vehicle" and that after speaking further with Zastrow, he "noted that his speech was slow and slurred and that his eyes were bloodshot and glassy." Ewing asked Zastrow to exit his vehicle. Zastrow refused to do so and Ewing then physically escorted him out of the vehicle. Ewing requested Zastrow to submit to field sobriety tests. Zastrow "became visibly angry, adamantly refused, and stated that he would not submit to any type of field test." During this exchange, Ewing noted that Zastrow was swaying back and forth while attempting to stand in one location.

¶5 At that point, Ewing determined that Zastrow was impaired and placed him under arrest for OWI. Ewing based the arrest on his observations and

Zastrow's admissions that he had operated the vehicle "five minutes earlier" and that he had not consumed any alcoholic beverages after running out of gasoline.

¶6 After placing Zastrow under arrest, Ewing searched Zastrow's vehicle. He found a 1.75 liter bottle of whiskey in a duffel bag on the passenger seat of the vehicle. The seal of the bottle had been opened and the bottle was approximately three-quarters full. Ewing then transported Zastrow to the Washington County Sheriff's Department and issued him a citation for OWI. Ewing also requested that Zastrow submit to an evidentiary test of his blood or breath. Zastrow refused. Ewing then transported Zastrow to the hospital for the purpose of a blood withdrawal. Once at the hospital, Ewing informed Zastrow under the implied consent law and asked him to submit to a blood test. Again Zastrow refused. Ewing advised Zastrow that if necessary he would "request back up and [they] would sit on him if [they] had to draw blood." At that point, Zastrow permitted a medical technician to draw a blood sample.

¶7 The results of Zastrow's blood analysis revealed a blood alcohol concentration (BAC) of 0.412%. Ewing then issued Zastrow an additional citation for PAC pursuant to WIS. STAT. § 346.63(1)(b).

¶8 On October 4, 2000, the State filed a criminal complaint against Zastrow alleging OWI and PAC, each as a second offense. On October 10, Zastrow filed a motion to suppress the blood test results and a motion to dismiss. In support, Zastrow argued that the blood withdrawal was in violation of his constitutional rights and that the State had failed to properly inform him of the consequences of refusing to submit to a BAC test. Zastrow additionally argued that Ewing had no probable cause to stop or arrest him or to request that he perform field sobriety tests.

¶9 The trial court held a hearing on Zastrow's motions on January 9, 2001. At the close of testimony, the trial court denied Zastrow's motions. The trial court found that Ewing had reasonable suspicion to initially detain Zastrow and that he had probable cause to later arrest him. The court also determined that Ewing complied with WIS. STAT. § 343.305 and that the threat to forcibly withdraw Zastrow's blood was permitted pursuant to the holdings of ***State v. Bohling***, 173 Wis. 2d 529, 494 N.W.2d 399 (1993), and ***State v. Thorstad***, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, *review denied*, 239 Wis. 2d 310, 619 N.W.2d 93, 2000 WI 121 (Wis. Oct. 17, 2000) (No. 99-1765-CR), *cert. denied*, ***Thorstad v. Wisconsin***, 121 S. Ct. 1099 (U.S. Wis. Feb. 20, 2001) (No. 00-1145).

¶10 On January 17, 2001, the State filed a criminal complaint amending the charges of OWI and PAC, second offense, to OWI and PAC, third offense. Prior to trial, Zastrow filed additional motions seeking suppression of the bottle of whiskey found in his duffel bag, arguing that the warrantless seizure was unreasonable. The trial court denied the motion, ruling that the search and seizure were incident to arrest and therefore permissible pursuant to ***State v. Fry***, 131 Wis. 2d 153, 388 N.W.2d 565 (1986). Zastrow additionally argued for the dismissal of the PAC charges on the grounds of double jeopardy. The court denied this constitutional challenge, noting that it had previously ruled on the issue.

¶11 Zastrow's case proceeded to a jury trial on January 25 and 26, 2001. The jury found Zastrow guilty of OWI and PAC. The court entered a judgment of conviction on the OWI verdict.

¶12 Zastrow filed postconviction motions raising several issues that were heard by the trial court on February 23, 2001. As relevant to this appeal, Zastrow renewed his earlier motions for suppression of evidence and dismissal. In addition, Zastrow argued that the State was judicially estopped from prosecuting the PAC charge because it had previously obtained an administrative revocation of his license based on his initial refusal to submit to a blood test. Following oral arguments from counsel, the trial court denied Zastrow's motions. Zastrow appeals.

DISCUSSION

The Investigative Stop and Arrest

¶13 Zastrow first argues that the trial court erroneously denied his motions to dismiss because Ewing did not have probable cause to arrest him. In so arguing, Zastrow also challenges Ewing's initial temporary detention of him. We reject Zastrow's arguments. We conclude that Ewing's initial stop of Zastrow was based on a reasonable suspicion and that Ewing had probable cause to later arrest Zastrow.

The Investigative Stop

¶14 WISCONSIN STAT. § 968.24 provides in relevant part that "a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime." The statute extends to civil forfeitures as well as crimes. ***State v. Krier***, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991). Reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant

the intrusion." ***State v. Richardson***, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). While an inchoate or unparticularized suspicion or hunch will not suffice, an officer is not required to rule out the possibility of innocent behavior prior to executing a stop. ***State v. Fields***, 2000 WI App 218, ¶10, 239 Wis. 2d 38, 619 N.W.2d 279.

¶15 Zastrow first objects to Ewing's initial detention of his vehicle because Ewing had no report of improper driving or illegal activity at the time he approached Zastrow. We disagree. The informant from Bob's Auto had reported that Zastrow had run out of gasoline and had contacted Bob's Auto to obtain gasoline. The individual believed Zastrow to be intoxicated and informed the police that Zastrow was waiting in his vehicle for someone from Bob's Auto to arrive. While Zastrow is correct that the informant did not report improper driving, the informant did report that he believed Zastrow was impaired and that Zastrow was presently sitting in his vehicle waiting for gasoline to be delivered. A rational inference from these facts would be that Zastrow had been operating his vehicle while intoxicated when he ran out of gas and, upon receiving gasoline, would continue to do so.

¶16 Zastrow also challenges Ewing's reliance on the information from the informant at Bob's Auto. In order for an officer to rely on a tip, the tip should exhibit reasonable indicia of reliability. ***State v. Rutzinski***, 2000 WI 22, ¶18, 241 Wis. 2d 729, 623 N.W.2d 516. "In assessing the reliability of a tip, due weight must be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge. These considerations should be viewed in light of the 'totality of circumstances' and not as discrete elements of a more rigid test." ***Id***. (citation omitted).

¶17 Recently, in ***Rutzinski***, our supreme court considered whether an anonymous cell phone call provided sufficient justification for an investigative traffic stop. ***Id***. at ¶1. It concluded that there was a reasonable suspicion to conduct an investigative stop of Rutzinski because the informant's tip contained sufficient indicia of reliability and alleged a potential imminent threat to public safety. ***Id***. at ¶37. The informant in ***Rutzinski*** exposed himself or herself to being identified by providing information that he or she was in the car in front of Rutzinski. ***Id***. at ¶32. The informant provided verifiable information indicating his or her basis of knowledge. ***Id***. at ¶33. And, the tip suggested that Rutzinski was an imminent threat to public safety. ***Id***. at ¶34.

¶18 Here, we similarly conclude that the informant's tip contained sufficient indicia of reliability to justify an investigative stop. At the time of dispatch, Ewing knew that the information had come from an individual employed at Bob's Auto but did not know the individual's name.[3] If an informant reveals sufficient information about himself or herself such that an officer can reasonably conclude that the informant knew that he or she potentially could be arrested if the tip proved to be fabricated, this threat of arrest could lead a reasonable officer to conclude that the informant is being truthful. ***Id***. at ¶32. We conclude that by

[3] The informant was later identified and testified at Zastrow's trial. However, at the time Ewing relied on the information, he did not know the informant's name.

providing the police with information as to his or her employment, the individual provided sufficient information likely to lead to his or her identification.[4]

¶19 We also conclude that the informant provided verifiable information concerning the basis for his or her knowledge. The informant revealed that he or she was from Bob's Auto and that Zastrow had called Bob's Auto seeking assistance because he had run out of gasoline. The informant believed Zastrow to be intoxicated. The informant described Zastrow's vehicle as a "two-tone, blue suburban" and provided the location of Zastrow's vehicle. When Ewing arrived at the location provided by the informant, he observed an immobile vehicle matching the description provided by the informant.

¶20 Finally, the informant provided information that Zastrow represented a threat to public safety. The informant requested that an officer assess Zastrow's condition prior to one of its employees providing Zastrow with gasoline. From this, it can reasonably be inferred that the informant believed Zastrow would continue to operate his vehicle while impaired if provided with gasoline.

¶21 Based on Ewing's reasonable suspicions and the reliability of the informant's tip, we uphold the trial court's determination that Ewing's investigative stop of Zastrow's vehicle was justified.

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[4] When Zastrow called Bob's Auto for assistance, he spoke to someone other than the informant who later contacted the police. Based on this, Zastrow argues that the police could not rely on the informant's information because it was hearsay. But we know of no law that bars the police from relying on an informant's information acquired by hearsay. The factors that test the reliability of the informant's information protect against any potential for abuse when the informant is relying on hearsay information. Thus, when an informant is providing hearsay information, the veracity of that information can be tested not only by whether the informant has provided information indicating his or her identity (*see* ***State v. Rutzinski***, 2000 WI 22, ¶32, 241 Wis. 2d 729, 623 N.W.2d 516), but also by measuring the actual facts observed by the police against the information provided by the informant. ***Id***. at ¶¶22-25.

The Arrest

¶22 Next, Zastrow contends that Ewing did not have probable cause to arrest him. We disagree. We conclude that the facts as found by the trial court support a finding of probable cause to arrest.

¶23 Whether facts as found by the trial court constitute probable cause is a question of law which this court reviews independently. ***State v. Babbitt***, 188 Wis. 2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994). In determining whether probable cause exists, we must look to the totality of the circumstances to determine whether the arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant. ***State v. Nordness***, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). Probable cause to arrest does not require proof beyond a reasonable doubt or even that guilt is more likely than not. ***State v. Welsh***, 108 Wis. 2d 319, 329, 321 N.W.2d 245 (1982). It is only necessary that the information lead a reasonable officer to believe that guilt is more than a possibility. ***State v. Paszek***, 50 Wis. 2d 619, 625, 184 N.W.2d 836 (1971). In determining whether probable cause exists, a police officer's conclusions based upon his or her investigative experience may be considered. ***State v. Wille***, 185 Wis. 2d 673, 683, 518 N.W.2d 325 (Ct. App. 1994).

¶24 Here, the trial court found that Ewing had probable cause to arrest Zastrow for OWI. Ewing observed that Zastrow smelled of alcohol, had slow and slurred speech, glassy and bloodshot eyes, and swayed back and forth after exiting the vehicle. In addition, Zastrow told Ewing that he had operated the vehicle and that he had not consumed any alcoholic beverages after running out of gasoline. Based on the totality of circumstances, we conclude that Ewing's observations

would lead a reasonable police officer to believe that Zastrow had operated a motor vehicle while under the influence of an intoxicant. ***Nordness***, 128 Wis.2d at 35. We uphold the trial court's denial of Zastrow's motion to dismiss for lack of probable cause to arrest.

Search of the Vehicle

¶25 Following Zastrow's arrest, Ewing searched a duffel bag that was sitting on the passenger seat of the vehicle. The duffel bag contained a bottle of whiskey. Zastrow challenges Ewing's search of the duffel bag. We reject Zastrow's argument. Ewing's search of the duffel bag was incident to Zastrow's arrest and, therefore, permissible under ***Fry***.

¶26 When reviewing the denial of a suppression motion, we uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); ***State v. Whitrock***, 161 Wis. 2d 960, 973, 468 N.W.2d 696 (1991). However, whether the facts satisfy the constitutional requirement of reasonableness of a search presents a question of law which we review independently of the circuit court and court of appeals. ***Fry***, 131 Wis. 2d at 171.

¶27 Zastrow relies on ***State v. Betow***, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999), and ***State v. Richter***, 2000 WI 58, 235 Wis. 2d 524, 612 N.W.2d 29, in support of his argument that Ewing's search of his vehicle did not meet the constitutional requirement of reasonableness. Zastrow's reliance is misplaced. The defendants in ***Betow*** and ***Richter*** had not been arrested prior to the challenged searches. Here, Zastrow was arrested prior to Ewing's search of his vehicle. Therefore, the search challenged by Zastrow was incident to his arrest.

¶28 Whether a search of an automobile incident to arrest violates the Fourth Amendment of the United States Constitution or article I, section 11 of the Wisconsin Constitution has been previously considered. In ***Fry***, 131 Wis. 2d at 175-76, our supreme court adopted the bright-line rule of ***New York v. Belton***, 453 U.S. 454, 460 (1981), which held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he [or she] may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." (Footnotes omitted.) Therefore, Ewing's search of Zastrow's vehicle following his arrest did not violate Zastrow's constitutional rights.

¶29 While Zastrow additionally argues that the search was not justified by exigent circumstances, he fails to recognize that "[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification." ***Fry***, 131 Wis. 2d at 169 (quoting ***United States v. Robinson***, 414 U.S. 218, 235 (1973)). We uphold the trial court's determination that Ewing's search of Zastrow's duffel bag was reasonable and permissible.

Reasonableness of the Blood Draw

¶30 Zastrow next raises several arguments concerning the blood draw that was conducted following his refusal. We construe the essence of Zastrow's argument to be that the blood draw constituted an unreasonable search and seizure in violation of his constitutional rights.[5] Zastrow's argument has been considered

[5] To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected on the merits. ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

and rejected by the courts of this state. *See* ***Thorstad***, 2000 WI App 199; ***Bohling***, 173 Wis. 2d 529; and ***State v. Wodenjak***, 2001 WI App 216, No. 00-3419-CR.

¶31 Again, the question of whether the reasonableness standard of the Fourth Amendment is satisfied presents a question of law that we review de novo. ***Wodenjak***, 2001 WI App 216 at ¶5.

¶32 In ***Wodenjak***, we held that "a forcible warrantless blood draw does not violate the Fourth Amendment if the conditions specified in ***Bohlin***g are satisfied." The ***Bohling*** court held:

> The dissipation of alcohol from a person's blood stream constitutes a sufficient exigency to justify a warrantless blood draw. Consequently, a warrantless blood sample taken at the direction of a law enforcement officer is permissible under the following circumstances: (1) the blood draw is taken to obtain evidence of intoxication from a person lawfully arrested for a drunk-driving related violation or crime, (2) there is a clear indication that the blood draw will produce evidence of intoxication, (3) the method used to take the blood sample is a reasonable one and performed in a reasonable manner, and (4) the arrestee presents no reasonable objection to the blood draw.

Bohling, 173 Wis. 2d at 533-34 (footnote omitted).

¶33 We conclude that the facts of this case satisfy the conditions set forth in ***Bohling***. Clearly, the blood draw was taken to obtain evidence of intoxication from Zastrow after he had been lawfully arrested for a drunk driving related violation. As to the second condition, Zastrow contends that there was not a clear indication that the blood draw would produce evidence of intoxication given his ability to walk without swaying, falling, stumbling or tripping. Nevertheless, Ewing's observations provided sufficient evidence to support a finding that the blood draw would produce evidence of intoxication. The actual method used to take the blood sample was reasonable and was performed in a reasonable manner

by a technician at a hospital. Finally, Zastrow presented no reasonable objection to the blood draw. We uphold the trial court's finding that the blood draw was reasonable under the circumstances.

Estoppel and the Implied Consent Law

¶34 Finally, Zastrow contends that the State was estopped from prosecuting him for PAC and introducing his blood sample into evidence in support of the OWI charge because his driving privileges had been previously revoked pursuant to the implied consent law for refusing to provide a blood sample. Zastrow argues that the State's dual prosecution of him under the implied consent law and in this case based on a forced blood draw is a "monstrosity." Zastrow contends that the State's approach "is a manipulative perversion of the criminal process that the judicial system is set up to administer and the tool of judicial estoppel is available to stop the state from proceeding in that manner."

¶35 The doctrine of judicial estoppel is intended to protect the judiciary as an institution from the perversion of its machinery. ***State v. Petty***, 201 Wis. 2d 337, 346, 548 N.W.2d 817 (1996). It is an equitable doctrine intended to "preclude[] a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position." ***Id***. at 347. An appellate court may independently consider and invoke judicial estoppel. *See* ***id***. The doctrine requires a showing that: (1) a party against whom estoppel is sought presents a later position that is "clearly inconsistent" with the earlier position, (2) the facts at issue are the same in both cases, and (3) the party to be estopped convinced the first court to adopt its position. ***Id***. at 348.

¶36 We conclude, as did the trial court, that the doctrine of judicial estoppel does not apply in this case. A refusal proceeding under the implied

consent law and an OWI/PAC prosecution are entirely separate actions. *See* ***State v. Zielke***, 137 Wis. 2d 39, 41, 403 N.W.2d 427 (1987). The issues in these separate actions are different. In a refusal proceeding, the relevant issues are: (1) whether the officer had probable cause to believe the person was operating a motor vehicle while intoxicated, (2) whether the officer properly advised the suspect under the implied consent law, and (3) whether the suspect properly refused the test. *See* WIS. STAT. § 343.305(9)(a)5.a, b, c.[6] In contrast, the issues in the OWI/PAC prosecution are whether the person was operating a motor vehicle and whether the person was under the influence of an intoxicant or had a prohibited alcohol concentration. WIS JI—CRIMINAL 2663, 2660.

¶37 Moreover, Zastrow's challenges to the fairness of the implied consent law have been addressed and rejected in ***State v. Gibson***, 2001 WI App 71, 242 Wis. 2d 267, 626 N.W.2d 73. Like Zastrow, Gibson argued that the blood test results were erroneously admitted into evidence because he had initially refused to take a blood test, and the only penalty for refusing to take a blood test under the implied consent law is the revocation of operating privileges. ***Id***. at ¶4. We rejected Gibson's argument noting that the legislature enacted the implied consent law to combat drunk driving. ***Id***. at ¶7. The law was designed to facilitate the collection of evidence against drunk drivers in order to remove them from the state's highways by securing convictions, not to enhance the rights of alleged drunk drivers. ***Id***. And again we note the holding in ***Zielke*** that a refusal to submit to a chemical test under WIS. STAT. § 343.305 is a civil matter and is a

[6] According to the Order of Revocation/Suspension filed on September 19, 2000, Zastrow failed to request a hearing on the issue of his refusal. Therefore, his operating privileges were administratively revoked.

separate substantive offense from OWI under WIS. STAT. § 346.63(1)(a). ***Zielke***, 137 Wis. 2d at 41, 49.

¶38 As discussed above, although Zastrow refused the blood test, his refusal did not prevent the State from proceeding to obtain the blood sample using other legal means. ***Gibson***, 2001 WI App 71 at ¶7. Cases consistently hold that, under appropriate circumstances, a suspect's blood may be withdrawn regardless of consent at the time of the blood draw. ***Id***. at ¶8. This is because a driver in this state has no right to lawfully refuse to take a chemical test as "consent is implied as a condition of the privilege of operating a motor vehicle upon state highways." ***Id***. at ¶9. Therefore, even if a suspect refuses to submit to a voluntary blood test, an officer may acknowledge the refusal, complete the Notice of Intent to Revoke Operating Privilege form, and then proceed with an involuntary blood test and use that blood test as the basis for a PAC charge and in support of an OWI charge.

¶39 We also reject Zastrow's contention that the trial court erred in admitting his blood sample results into evidence because of the prior administrative revocation of his operating privilege for refusing to submit to a chemical test under the implied consent law. While the implied consent law seeks to produce evidence, it is not, in and of itself, an evidentiary statute. The implied consent law does not presume to make any statements regarding the admissibility of evidence obtained under that law. In fact, we can envision a situation where a test result produced by the implied consent law is nonetheless inadmissible under the rules of evidence. In any event, the blood draw in this case was not taken under the auspices of the implied consent law. Instead, it was taken pursuant to the authority set out in ***Thorstad***, ***Bohling*** and ***Wodenjak***. In short, the implied consent law does not bear on the admissibility of the blood test results in this case.

CONCLUSION

¶40 We conclude that Ewing's investigative stop of Zastrow's vehicle was justified and that Ewing subsequently had probable cause to arrest him. We further conclude that Zastrow's constitutional rights were not violated by the search of his vehicle incident to his arrest or by the withdrawal of his blood. Finally, we reject Zastrow's contention that the State should be judicially estopped from prosecuting him for PAC and from introducing the results of the blood test at trial despite the administrative revocation of Zastrow's operating privileges based on his refusal to voluntarily submit to the blood test.

By the Court.—Judgment and order affirmed.

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