

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 12, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2826

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES C. STIGNEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: JAMES T. BAYORGEON, Judge. *Affirmed.*

¶1 CANE, C.J.¹ James Stigney appeals from a judgment convicting him of operating a motor vehicle with a prohibited alcohol concentration, contrary

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

to WIS. STAT. § 346.63(1)(b). The sole issue on appeal is whether the taking of his blood sample without a warrant violated the Fourth Amendment to the United States Constitution.

¶2 The facts are stipulated. The police arrested Stigney for operating a motor vehicle while intoxicated and, shortly after his arrest, the arresting officer required Stigney to provide a blood sample for evidentiary analysis. The officer required this sample to be provided by invoking the provisions of WIS. STAT. § 343.305, the Wisconsin Implied Consent Law. The officer also informed Stigney that he was legally required to submit to the taking of the blood sample or suffer certain penalties by reading the standard Informing the Accused form issued by the Wisconsin Department of Transportation, which sets forth the provisions of WIS. STAT. § 343.305(4). In response, Stigney stated that he would submit to the blood test, which revealed his blood alcohol content at .207%.

¶3 Stigney filed with the trial court a motion to suppress the blood test results, arguing that the seizure of the blood was taken unreasonably without a required search warrant. The trial court denied the motion. Again on appeal, Stigney argues that the seizure of his blood did not fit within a recognized exception to the warrant clause. He reasons that after balancing the interest of the driver in his bodily security and integrity against the interest of the State, the search was unreasonable.

¶4 To appellant counsel's credit, he concedes that the recent opinion of *State v. Thorstad*, 2000 WI App 199, 618 N.W.2d 240, controls. *Thorstad* was released and published after Stigney's appeal. He also concedes that there are no factual reasons for arguing that this case is distinguishable from *Thorstad*. In *Thorstad*, this court rejected an argument the same as Stigney's. This court held

that, under facts identical to Stigney's, Thorstad's blood test was a reasonable search under the Fourth Amendment. *See id.* at ¶17.

By the Court.—Judgment affirmed.

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

