COURT OF APPEALS
DECISION
DATED AND FILED

November 22, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3087-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANIEL J. FRANK,

DEFENDANT-APPELLANT

APPEAL from a judgment of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Daniel J. Frank appeals from a judgment of conviction. He complained in his appellate brief that the circuit court erroneously denied his pretrial motions to suppress the results of a blood test taken during the

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

course of his arrest for operating a motor vehicle while intoxicated. He still maintains that the trial court erred, but now concedes that his argument must be rejected by this court because of ***State v. Thorstad***, 2000 WI App 199, No. 99-1765-CR. The judgment of conviction is affirmed.

¶2 Frank was arrested and taken to a hospital where he submitted to the taking of a blood sample. The arresting officer informed Frank that he was required to provide a blood sample pursuant to WIS. STAT. § 343.305(2). In requesting the test, the officer read to Frank the standard Informing the Accused form provided by the Wisconsin Department of Transportation. Frank submitted to the test without objection. Frank contends that the blood draw constituted an illegal seizure.

¶3 In ***State v. Thorstad***, 2000 WI App 199, No. 99-1765-CR, we engaged in an analysis of the same issue raised in this case. We held that the analysis set forth in ***State v. Bohling***, 173 Wis. 2d 529, 494 N.W.2d 399 (1993), determines whether warrantless blood tests used to detect evidence of intoxication in motorists are constitutionally permissible. *See* ***Thorstad***, 2000 WI App 199 at ¶11. ***Bohling*** holds that a warrantless blood draw is permissible when the following four requirements are met:

> (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.

Thorstad, 2000 WI App 199 at ¶7, quoting ***Bohling***, 173 Wis. 2d at 533-34 (footnote omitted).

¶4 Frank concedes that ***Thorstad*** controls this case because there are no factual differences that would make this case distinguishable from ***Thorstad***. The record shows that Frank's concession is appropriate.

¶5 In this case, as in ***Thorstad***, the blood draw was taken to obtain evidence of intoxication during the course of a lawful arrest under circumstances in which the defendant was suspected of a drunk-driving related offense; the blood draw was conducted at a hospital with no objection from the appellant; and there is no argument that the method used to take blood is unreasonable. In keeping with ***Thorstad***, Frank does not contend that the arresting officer failed to provide the consent information mandated by WIS. STAT. § 345.305.

¶6 Therefore, the trial court's decision to deny Frank's request to suppress the blood test results was proper. The appealed judgment of conviction is affirmed.

By the Court.—Judgment affirmed.

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