*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-200

NOVEMBER TERM, 2003

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| State of Vermont<br><br>v.<br><br>Kelly Hurlbut | } | APPEALED FROM:<br><br>District Court of Vermont, Unit No. 3, Franklin Circuit<br><br>DOCKET NO. 153-11-02 Frcs<br><br>Trial Judge: Michael S. Kupersmith |

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a district court judgment suspending her driver= s license in accordance with 23 V.S.A. ' 1205 after being cited for driving while intoxicated. We affirm.

On November 9, 2002, a Vermont State Police trooper arrested defendant for driving under the influence of intoxicating liquor and brought her to the police barracks for processing. The officer read defendant her rights under the implied consent statute, 23 V.S.A. ' 1202. Among the statements the trooper read was the following:

> If you refuse to provide an evidentiary test and you have been involved in an accident/collision resulting in serious bodily injury or death of another, the court may issue a search warrant and order you to submit to a blood test. **PC 22**

Eventually, defendant agreed to provide a breath sample. The record shows the test resulted in a blood-alcohol content of .178, well over the legal limit of .08.

In the companion criminal proceeding, defendant filed a motion to suppress the breath test results. She argued that the trooper= s statement set forth above amounted to a threat to obtain a search warrant if she did not submit to a breath test, and, thus, her consent to the test was involuntary and coerced. The court took evidence on the suppression motion at the same time it took evidence on the civil suspension matter. Notably, defendant did not move for suppression of the test results in the civil case as she did in the criminal proceeding. In a written order on April 22, 2003, the court denied the suppression motion and entered judgment for the State on the civil suspension issue. Defendant appealed to this Court.

On appeal, defendant claims the court erred by denying her motion to suppress. We reject her claim for two reasons. First, defendant never sought suppression of the test results in the civil matter. The court cannot erroneously deny a motion to suppress if one was never made in the proceeding at issue. Second, the premise of defendant= s challenge B that the officer= s reading of defendant= s implied consent rights amounted to a threat to obtain a search warrant B has no basis in the court= s findings. The district court found that the officer did not provide defendant with any misinformation and never threatened to obtain a search warrant if she did not provide a breath sample. Defendant does not challenge those findings on appeal, and therefore we are bound by them. See Bevins v. King, 147 Vt. 203, 206 (1986) (unchallenged findings are binding in the Supreme Court).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Denise R. Johnson, Associate Justice

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Paul L. Reiber, Associate Justice