

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 24, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1368

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DONALD H. MAIER,

Defendant-Appellant.

APPEAL from an order of the circuit court for Dane County: P. CHARLES JONES, Judge. *Affirmed.*

EICH, C.J.¹ Donald Maier, appealing from an order revoking his motor vehicle operating privileges under the implied-consent law for his refusal to submit to a chemical test of his blood-alcohol content, argues that our decision in *State v. Babbitt*, 188 Wis.2d 349, 525 N.W.2d 102 (Ct. App. 1994), requires police officers to have probable cause to arrest before requesting such a test.

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

We held in *Babbitt* that a driver's refusal to perform a requested field sobriety test is not protected by the Fifth Amendment privilege against self-incrimination and, therefore, may be used to establish probable cause to arrest for driving while intoxicated. *Id.* at 362, 525 N.W.2d at 106. Maier suggests that some of the language in *Babbitt* suggests that a motorist is compelled to cooperate—either by performing the test or "providing the incriminating refusal to submit"—which has the effect of turning a stop (which does not require probable cause) into an arrest (which does).

The question is answered by our recent decision in *Dane County v. Campshure*, ___ Wis.2d ___, 552 N.W.2d 876 (Ct. App. 1996), where we specifically rejected the argument Maier makes here: that a lawful request by an officer constitutes "compulsion" for Fifth Amendment purposes, thus transforming a lawful investigatory stop into an arrest. *Id.* at ___, 552 N.W.2d at 878.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.