

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

MARCH 25, 1997

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.

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

Nos. 96-2533-FT
96-2534-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

Washburn County,

Plaintiff-Respondent,

v.

Mark Casper,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Washburn County:
WARREN WINTON, Judge. *Affirmed.*

CANE, P.J. Mark Casper appeals a judgment convicting him of operating a motor vehicle while intoxicated.¹ He argues that the trial court erred by denying his motion to suppress the results of his blood alcohol test because the arresting officer did not have probable cause to arrest and the officer failed to comply with the implied consent law by not allowing an alternative test. Additionally, he argues that the

¹ This is an expedited appeal under RULE 809.17, STATS.

trial court erred at trial by admitting the test because the withdrawn blood had not been properly authenticated. This court rejects Casper's contentions and affirms the judgment.

BACKGROUND

After playing eighteen holes of golf around 4 p.m., Casper says that he drank one vodka and water and two peppermint schnapps with his hosts at a golf outing. The alcohol was 80 proof and consumed between 4 p.m. and 6 p.m. He then left for home and when making a right turn onto Highway 53, another vehicle struck his car. Casper was knocked unconscious as a result of the accident, but regained consciousness within a few minutes. Officer David Dennis approached Casper at the accident scene and after detecting an odor of intoxicants on Casper, placed him under arrest for OWI. Dennis took Casper to a hospital where his blood was withdrawn and the blood sample was then taken to the Washburn County Sheriff's Department where it was placed in a community refrigerator located in the squad room. This sample remained in the refrigerator over the weekend until it was mailed on Monday to the state crime lab for testing.

The State charged Casper with failing to yield, operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol content. The trial court denied Casper's motion to suppress the blood test and a jury found him guilty on all charges. On appeal, Casper does not challenge the failure to yield conviction.

PROBABLE CAUSE TO ARREST

The first issue is whether the officer had probable cause to arrest Casper. Probable cause exists when the totality of the circumstances within the officer's knowledge would lead a reasonable officer to believe the individual 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, 308 (1986). Probable cause is judged by the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. *State v. Truax*, 151 Wis.2d 354, 360, 444 N.W.2d 432, 435 (Ct. App. 1989).

Here, Dennis had received statements from other people at the accident scene who observed Casper and concluded Casper was under the influence of an intoxicant. These observers were Mary Thiede, Joseph Klos and Mark Rau, who told Dennis that they thought Casper was intoxicated. Additionally, the ambulance attendant, Rick Coquillette, also observed Casper and told Dennis that he thought Casper was intoxicated. When Dennis approached Casper, an odor of intoxicants could be detected on Casper's breath and he admitted that he had consumed a couple of drinks. With the statements of the observers and Dennis's own observations, coupled with the accident scene where Casper had pulled out in front of another vehicle, this court is satisfied that the trial court correctly concluded that Dennis had sufficient probable cause to arrest Casper for OWI.

IMPLIED CONSENT

Casper contends that the police failed to comply with the implied consent law by failing to read the Informing the Accused form completely. Also, it is claimed that Dennis refused to honor Casper's request for an alternative test where the blood would be withdrawn by his own doctor. This court is not persuaded. The testimony shows that Dennis read the form to Casper and omitted only that portion dealing with a commercial driver's license. There is no evidence that Casper has a commercial driver's license. Consequently, there is sufficient evidence to show that Dennis substantially complied with § 343.305(4), STATS., and informed Casper of his rights and the penalties

for refusing to submit to the test. *See State v. Piskula*, 168 Wis. 2d 135, 140-41, 483 N.W.2d 250, 252 (Ct. App. 1992).

Although Casper testified that he requested an alternative test, his testimony was refuted by Dennis, who stated that Casper never requested an alternative test and initially refused to comply with the requested blood test at the hospital after insisting that his own doctor withdraw the blood. The trial court is the trier of fact and believed Dennis's testimony. Additionally, as the State points out in its brief, the police were required only to provide a reasonable opportunity for Casper to obtain an alternate test at his own expense within three hours of the stop. *See State v. Vincent*, 171 Wis.2d 124, 128, 490 N.W.2d 761, 763 (Ct. App. 1992). As stated in *Vincent*:

A careful reading of sec. 343.305(5)(a), Stats., shows that it requires the agency to provide a "reasonable opportunity" for the test; it does not require the agency to comply with a reasonable request. "Reasonable," as used in the statute, modifies the word "opportunity," not "request." The agency's responsibility to provide a "reasonable opportunity" is limited to *not frustrating* the accused's request for his or her own test. To require the agency to take an active part in obtaining a test of the accused's choosing could open the door for other responsibilities to be imposed upon the agency, such as insuring that the person or facility performing the test is qualified within the meaning of sec. 343.305(5)(b) or (6)(a). We do not believe the statute extends the responsibility of the agency this far.

Id. (emphasis in original).

AUTHENTICATION

Finally, Casper contends the blood test results should have been suppressed as a matter of law because they were not properly authenticated. Essentially, he contends that the blood sample left in the squad room refrigerator and later mailed to the state crime lab was unreliable because of the chain of evidence in securing, mailing, receiving and testing the sample. Witnesses from the sheriff's department and the state

crime lab testified that they followed the standard procedure with this sample. Any contention that the test result is unreliable or inaccurate goes only to the weight of the evidence which was for the jury to determine, not to its admissibility. *See State v. Disch*, 119 Wis.2d 461, 476, 351 N.W.2d 492, 500 (1984). Casper had sufficient opportunity to question the witnesses involved with the sample, and the jury rejected Casper's argument. Therefore, the conviction for OWI is affirmed.

By the Court.—Judgment affirmed.

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

