COURT OF APPEALS
DECISION
DATED AND FILED

March 30, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-2016-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRUCE H. MANKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: MICHAEL J. BYRON, Judge. *Reversed.*

¶1 EICH, J.[1] Bruce Manke appeals from a judgment convicting him, after a jury trial, of driving with a prohibited alcohol concentration in his blood. The dispositive issue is whether the arresting officer's failure to read Manke the

[1] This appeal is decided by a single judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98).

commercial driver's license provisions of Wisconsin's implied consent law—even though he was not engaged in commercial driving when arrested—renders the breath test results inadmissible. Because, as we have held in ***State v. Geraldson***, 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993), the commercial-license warnings are mandatory under the law, we answer the question in the affirmative and reverse the judgment.

¶2 Manke was apprehended by Milton Police Officer Michael Reimer under circumstances leading Reimer to believe he might be driving while intoxicated. Reimer took Manke to police headquarters and asked him to submit to a chemical test of his blood. Although, as he later testified at trial, Reimer was aware that Manke held both a regular and a commercial driver's license, he read Manke only those portions of the Informing the Accused Form relating to persons holding regular driver's licenses. Manke took the test and failed it, and the results were admitted into evidence at his trial. At the trial's conclusion, the jury found Manke not guilty of operating under the influence, but guilty of the companion charge of operating a vehicle with a prohibited blood-alcohol concentration. He appeals the judgment entered on that verdict.

¶3 Under the implied consent law, police are required to provide certain information to drivers asked to submit to a chemical test of their blood. The information deals generally with (a) the effects on licensure of taking and failing the test, (b) the effects of refusing the test, (c) the availability of alternative tests, and (d) the fact that positive test results, or a refusal, may have consequences affecting a commercial license, if the driver has one. Specifically, WIS. STAT.

§ 343.305(4) (1997-98) states that, at the time the test is requested, the officer "shall read the following" to the driver:

> You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.
>
> This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.
>
> If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.
>
> *If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified* (emphasis added).

¶4 Manke claims that because it is undisputed that Reimer knew he held a commercial license—even though he wasn't operating under that license at the time—he (Reimer) was required to include the commercial-license paragraph in his recitation. And, citing ***Geraldson***, *supra*, he says that Reimer's failure to do so warrants reversal.

¶5 Although the statute in effect at the time the ***Geraldson*** case arose was more detailed in its language, it required the officer to provide advice to the driver on the same four elements as the present statute:

> (b) If testing is refused, … the person's operating privilege will be revoked under this section and, if the person was driving or operating or on duty time with respect to a commercial … vehicle, the person will be issued an out-of-service order for the 24 hours following the refusal;
>
> (c) If … tests are taken and the results of any test indicate that the person:
>
> > 1. Has a prohibited alcohol concentration and was driving or operating a motor vehicle, the person will be subject to penalties and the person's operating privilege will be suspended under this section ….
> >
> > 2. Has an alcohol concentration of 0.04 or more and was driving or operating a commercial … vehicle, the person will, upon condition of such offense, be subject to penalties and disqualified from operating a commercial motor vehicle; and
> >
> > 3. Has any measured alcohol concentration above 0.0 and was driving or operating or on duty time with respect to a commercial ... vehicle, the person will be subject to penalties and issuance of an out-of-service order for the 24 hours following the refusal; and
>
> (d) After submitting to testing, the person … has the right to have an additional test made….

WIS. STAT. § 343.305(4) (1991-92).

¶6 As in this case, the driver's license in ***Geraldson*** contained both commercial and "regular" operating privileges, and the arresting officer was aware of that fact. The driver, also like Manke, was not engaged in commercial operation at the time of his arrest. The officer, while reading the warnings relating to the effect on the driver's regular license if he either refused the test or took and

failed it, and also the warning relating to the effect of a refusal on his commercial license, never warned him of the effect taking and failing the test would have on his commercial license as required by WIS. STAT. § 343.305(4)(c)2 and 3 (1991-92). Concluding that the driver was "entitled to the omitted commercial motor vehicle warnings," we reversed the order revoking his operating privileges. ***Geraldson***, 176 Wis. 2d at 495. In so ruling, we said:

> [W]e think the safest and surest method [of complying with the implied consent law] is for law enforcement officers to advise OWI suspects of *all* warnings, whether or not they apply to the particular suspect, and to do so in the very words of the implied consent law. This suggestion is nothing more than what the statute requires on its face…. [U]nder the statutory scheme, the … officer's role is simply to recite the warnings. The officer is not required to interpret the warning to the suspect or to decide which portions should or should not be delivered. If this suggestion were followed, the implied consent law could then work to its fullest and the flood of litigation in this area could be lessened.

Id. at 496-97.

¶7 The State has elected not to respond to Manke's ***Geraldson*** argument, or even to cite or discuss the case in its brief.[2] Instead, the State offers a single-sentence assertion that affirmance is required as a result of our statement in ***City of Waupaca v. Javorski***, 198 Wis. 2d 563, 543 N.W.2d 507 (Ct. App. 1995), to the effect that the defendant had not persuaded us in that case that "a procedural failure in the application of the provisions of the implied consent law dealing with license suspension following an incriminating chemical test is an error of constitutional proportions—or even one that can (or should) render the test results

[2] We have recognized in several cases that a proposition advanced by an appellant is taken as confessed when the respondents to not undertake to refute it. *See* ***State ex rel. Sahagian v. Young***, 141 Wis. 2d 495, 500, 415 N.W.2d 568 (Ct. App. 1987).

inadmissible at the trial on the underlying charge." ***Id.*** at 573. The State doesn't discuss the case further. It doesn't set forth the facts, nor does it explain what element or elements of WIS. STAT. § 343.305(4) (1997-98) were not complied with in ***Javorski***. We have often said that we will decline to review undeveloped arguments that are supported only by "general statements" in a party's brief. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). And even if we could infer that the State was arguing that ***Javorski*** should somehow be taken as overruling or creating an exception to our clear holding in ***Geraldson***, the argument is unavailing. First, the supreme court has said that we lack the authority to overrule our prior published opinions. ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). Second, we don't see how a later case can be said to have created an exception to a rule adopted in an earlier case when the earlier case is not even mentioned, much less discussed, in the later case.

¶8 Finally, we note that, had Manke been informed of the consequences regarding his commercial driver's license, he may have decided to refuse the test. Thus, there was a causal nexus between the officer's failing to read the commercial-license provisions of the implied consent law and Manke's decision to take the breath test.

¶9 Because the lone charge on which Manke was convicted was operating with a blood-alcohol level, and because the test results constitute the only evidence supporting the conviction, we reverse the judgment. (*See generally* ***State v. Zielke***, 137 Wis. 2d 39, 45, 403 N.W.2d 427 (1987); ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 283, 542 N.W.2d 196 (Ct. App. 1995); and ***State v. Sutton***, 177 Wis. 2d 709, 503 N.W.2d 325 (Ct. App. 1993) (officer's noncompliance with the implied consent law results in suppression of test results or in the case of refusal, reversal of the revocation order.))

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4 (1997-98).