

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 23, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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

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

**Appeal No. 2005AP1501-FT**

**Cir. Ct. No. 2005TR480**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**IN THE MATTER OF THE REFUSAL OF RICHARD D. HAHN:**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD D. HAHN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Fond du Lac County:

RICHARD J. NUSS, Judge. *Affirmed.*

¶1 ANDERSON, J.<sup>1</sup> Richard D. Hahn appeals from a circuit court order finding improper his refusal to submit to a chemical test, pursuant to Wisconsin's implied consent law, WIS. STAT. § 343.305. Hahn's refusal to submit to the chemical test followed his arrest for operating a motor vehicle while under the influence of an intoxicant (OWI). Hahn argues on appeal that his refusal was proper because the arresting officer failed to advise him of the consequences of driving with a detectable amount of a restricted controlled substance in his blood. We hold that the officer properly complied with § 343.305(4) and affirm the circuit court.

## FACTS

¶2 The relevant facts are brief and undisputed. On December 9, 2004, Hahn was arrested for OWI. The arresting officer certified that he had read Hahn the Informing the Accused Form. The form read to Hahn states:

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.

Hahn refused to submit to a chemical test requested pursuant to WIS. STAT. § 343.305.

¶3 On March 7, 2005, a refusal hearing was conducted, and Hahn argued that the refusal charge should be dropped because the arresting officer

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

failed to fully comply with WIS. STAT. § 343.305; that is, the officer failed to advise Hahn of the consequences of driving with a detectable amount of a restricted controlled substance in his blood. Hahn submitted a copy of a revised version of the Informing the Accused Form which includes the following statement that was not read to Hahn: “In addition, under 2003 Wisconsin Act 97, your operating privileges will also be suspended if a detectable amount of a restricted controlled substance is in your blood.” The circuit court concluded that because Hahn was arrested for OWI and not operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood, the information in the revised version was irrelevant and Hahn’s refusal was improper. Hahn’s license was revoked for one year.

#### STANDARD OF REVIEW

¶4 The interpretation of WIS. STAT. § 343.305 and its application to undisputed facts present questions of law that this court reviews independently from the circuit court. *See State v. Schirmang*, 210 Wis. 2d 324, 329, 565 N.W.2d 225 (Ct. App. 1997).

#### DISCUSSION

¶5 The issue before us on appeal is whether the circuit court properly concluded that Hahn was in violation of WIS. STAT. § 343.305 for refusing to submit to a chemical test. We are only able to gather Hahn’s precise arguments on appeal from the State’s brief because Hahn’s brief fails to state a specific

complaint.<sup>2</sup> We assume from the State’s brief that Hahn’s sole argument on appeal is that the arresting officer violated § 343.305 when he failed to inform Hahn of the consequences of operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood. In his brief, Hahn writes, “It is a well-settled principle of implied consent jurisprudence that the Informing the Accused Form must adequately advise a suspected drunk driver of all of the relevant consequences associated with having a chemical test result which is positive for the regulated substance at issue.”

¶6 Every driver in Wisconsin has impliedly consented to take a chemical test for blood alcohol content. *County of Ozaukee v. Quelle*, 198 Wis. 2d 269, 277, 542 N.W.2d 196 (Ct. App. 1995); WIS. STAT. § 343.305(2). Police officers have a statutory duty under § 343.305(4) to inform accused drunk drivers of certain required information when requesting a chemical test. *Quelle*, 198 Wis. 2d at 281. Section 343.305(4) provides:

(4) INFORMATION. At the time that a chemical test specimen is requested under sub. (3)(a) or (am), the law enforcement officer shall read the following to the person from whom the test specimen is requested:

“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

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<sup>2</sup> This court notes that the appellant’s brief should state an argument on each issue, citing parts of the record relied on. WIS. STAT. RULE 809.19(1)(d), (e). It is not this court’s responsibility to sift and glean the record in extenso to find facts supporting the appellant’s argument or, more importantly, what the appellant is arguing. *Tam v. Luk*, 154 Wis. 2d 282, 291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Additionally, because the appellant did not file a reply brief, we assume that he concedes that the State has identified the correct issue. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994); see also *Blackwell v. Cole Taylor Bank*, 152 F.3d 666, 673 (7th Cir. 1998).

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.”

Whether the officer has met his or her obligations to inform the accused as required by § 343.305(4) is determined by the application of a three-part inquiry:

- (1) Has the law enforcement officer not met, or exceeded his or her duty under §§ 343.305(4) and 343.305(4m) to provide information to the accused driver;
- (2) Is the lack or oversupply of information misleading;  
*and*
- (3) Has the failure to properly inform the driver affected his or her ability to make the choice about chemical testing?

*Quelle*, 198 Wis. 2d at 280.

¶7 Hahn seemingly argues that the Informing the Accused Form read to him was incomplete without the statement from the revised version of the Informing the Accused Form concerning the penalties for operating a motor

vehicle with a detectable amount of a restricted controlled substance. Therefore, according to Hahn, the arresting officer in this case failed to meet his duty under WIS. STAT. § 343.305(4). We cannot agree.

¶8 We find no language in WIS. STAT. § 343.305(4) that requires a law enforcement officer to specifically advise the accused of any consequences for operating a motor vehicle with a detectable amount of a restricted controlled substance where the accused driver has been arrested for OWI. Section 343.305(4) provides:

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.

The arresting officer read Hahn this required language.

¶9 The language concerning the consequences of driving when the suspect has a detectable amount of a restricted controlled substance in his or her blood apparently appears on a newer form that is not codified by the statute. The revised form introduced by Hahn at the refusal hearing was allegedly created by the Department of Transportation and used in Dane county. We are not aware of an effective date that mandates the use of this form in any other jurisdiction. The arresting officer never saw the newer form, and there is no indication that other jurisdictions plan on adopting the newer form. We therefore conclude that the arresting officer fully complied with WIS. STAT. § 343.305(4) when he read Hahn the standard Informing the Accused Form.

¶10 Hahn cites *State v. Wilke*, 152 Wis. 2d 243, 448 N.W.2d 13 (Ct. App. 1989), among others, for the principle that the Informing the Accused Form must adequately advise a suspected drunk driver of all of the *relevant* consequences associated with having a positive chemical test result for the regulated substance *at issue*. Hahn also points out that if the principle is violated, no nexus need be established between the underinforming of the accused and any actual harm to that suspect. *Id.* at 251-52; *see also Schirmang*, 210 Wis. 2d at 330-31.<sup>3</sup>

¶11 However, this principle that Hahn claims *Wilke* stands for was not violated in this case; Hahn was not underinformed of the penalties he faced. While Hahn was not informed of the consequences relating to driving with a detectable amount of a restricted controlled substance in his blood, he was not charged with operating with a detectable amount of a restricted controlled substance in his blood and does not claim that he was doing so. *See State v. Piskula*, 168 Wis. 2d 135, 137-41, 483 N.W.2d 250 (Ct. App. 1992) (holding that the arresting officer did not have to inform the accused about the consequences of operating a commercial motor vehicle while under the influence of drugs or alcohol and refusing to submit to a chemical test when operating a commercial motor vehicle because the accused was not operating a commercial vehicle). Information concerning the consequences of failing to submit to the test when the accused has a detectable amount of a restricted controlled substance in his or her blood was simply not relevant to Hahn. *Quelle* stands for the general premise that

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<sup>3</sup> Hahn's brief cites several cases in a section entitled "The Historical Development of the Procedural Violation Test Under Wisconsin's Implied Consent Law." The cases do not meaningfully buttress Hahn's argument and are generally not pertinent to our discussion. We will not address them further.

“implied consent warnings are designed to inform drivers of the rights and penalties applicable to them.” *Quelle*, 198 Wis. 2d at 279; *see also Piskula*, 168 Wis. 2d at 140-41 (“the reasonable objective of sec. 343.305(4) is to inform [noncommercial drivers] of their rights and penalties regarding refusal and a blood alcohol concentration [exceeding the legal limit]”). As explained, Hahn was informed, in accordance with the statute, of the consequences of operating while under the influence of alcohol and of refusing to submit to a chemical test.

### CONCLUSION

¶12 We conclude that the arresting officer fully complied with WIS. STAT. § 343.305(4) when he read Hahn the standard Informing the Accused Form. We affirm the decision of the circuit court revoking Hahn’s driving privilege as a result of his refusal to submit to a chemical test.

*By the Court.*—Order affirmed.

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



