

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2002

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. 02-0497

Cir. Ct. No. 01-TR-3571

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE REFUSAL OF KAREN M.
BOEDECKER:**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KAREN M. BOEDECKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
DAVID T. FLANAGAN, Judge. *Affirmed.*

¶1 VERGERONT, P.J.¹ Karen Boedecker appeals the circuit court's order revoking her operator's license for one year under WIS. STAT. § 343.305(10) (1999-2000) on the ground that she refused to submit to a chemical test of her breath following her arrest for driving under the influence of an intoxicant in violation of WIS. STAT. § 346.63(1). Under § 343.305(2), any person operating a motor vehicle is deemed to have given consent to tests to determine the presence or quantity of alcohol in the person's breath or blood when the person is arrested for a violation of § 346.63(1); license revocation is the penalty if a person refuses to submit to the tests after certain statutory conditions and procedures are complied with. Section 343.305(3)-(10). The only issue Boedecker raises on appeal is whether the implied consent statute, § 343.305, is unconstitutional. Boedecker contends it is because it forces an individual to choose between abandoning his or her Fourth Amendment protection against unreasonable searches and seizures and suffering the sanction of lost driving privileges. The trial court concluded it was not unconstitutional, and we affirm.

¶2 Whether a statute is constitutional presents a question of law, which we review de novo. *State v. Holmes*, 106 Wis. 2d 31, 41 n.7, 315 N.W.2d 703, 708 n.7 (1982).

¶3 In *Village of Little Chute v. Walitalo*, 2002 WI App. 211, ¶¶ 10-11, _____ Wis. 2d ____, 650 N.W.2d 891, we held that an individual's consent to a chemical test under WIS. STAT. § 343.305 was not involuntary for Fourth Amendment purposes solely because the individual had to choose between

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

submission to the test and loss of driving privileges. We decided this case after Boedecker filed her first brief. The State relies on *Walitalo* in its responsive brief to argue that § 343.305 is not unconstitutional. Boedecker has not filed a reply brief to dispute this contention. We take this as a concession that the statute is constitutional, *see Fischer v. Wisconsin Patients Compensation Fund*, 2002 WI App 192 ¶1 n.1, ___ Wis. 2d ___, 650 N.W.2d 75, and we affirm on that basis.

By the Court.—Judgment affirmed.

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

