**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**November 27, 2002**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 02-0737** **Cir. Ct. No. 01-TR-1179, 01-TR-1233**

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

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**COUNTY OF IOWA,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LEON T. KLINGER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed*.

¶1 VERGERONT, P.J.[1] Leon Klinger appeals the judgment of conviction for operating a motor vehicle while intoxicated in violation of WIS.

[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.

STAT. § 346.163(1)(a) (1999-2000).[2] He contends the trial court erred in denying his motion to suppress the result of the analysis of his blood. Klinger argued in the trial court, as he does on appeal, that he did not validly and voluntarily consent to the taking of a sample of his blood. Under WIS. STAT. § 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 § 346.163(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). Klinger's argument is that the implied consent statute, § 343.305, is unconstitutional 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 submission to the test and loss of driving privileges. We decided ***Walitalo*** after

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Klinger filed his first brief in this case. In his reply brief, he asserts that we did not address the constitutionality of § 343.305 in ***Walitalo***. We will assume that is true and will address his argument on the statute's constitutionality.

¶4 Klinger argues that the State may not condition driving on giving consent to the chemical tests, which are seizures under the Fourth Amendment. However, while there is a constitutional right to travel, there is no constitutional right to travel by motor vehicle; operating a motor vehicle on the roads of this state is a privilege properly regulated by the State. ***County of Fond du Lac v. Derksen***, 2002 WI App 160, ¶7, ___ Wis. 2d ___, 647 N.W.2d 922. There is also no absolute prohibition against requiring individuals to give up their rights under the Fourth Amendment as a prerequisite to receiving government benefits or privileges. *See* ***Zap v. United States*** 328 U.S. 624, 628 (1946) (individuals may validly waive their Fourth and Fifth Amendment rights as a condition of receiving government business contracts).

¶5 The issue properly framed is whether the Fourth Amendment intrusion authorized by the statute is reasonable. We conclude that it is. No one is forced to operate a motor vehicle on the roads of this state; thus, conditioning that privilege on giving consent to the chemical tests as prescribed in the statute is not coercive. The tests authorized by statute are safe, relatively painless, and commonplace, *see* ***South Dakota v. Neville*** 459 U.S. 553, 563 (1983) and ***State v. Krajewski***, 2002 WI 97, ¶57, 255 Wis. 2d 98, 648 N.W.2d 385; and they may be given only when there is probable cause to believe the person is violating WIS. STAT. § 346.63(1) or similar statutes. Finally, the State has a compelling interest in keeping intoxicated drivers off the roads.

*By the Court.*—Judgment affirmed.

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