

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2003

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. 02-0746-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CF-1424

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TIMOTHY L. GOLD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Timothy Gold appeals from his conviction for a fifth or subsequent offense of operating a motor vehicle while intoxicated. He claims that his statutory right to have an additional chemical blood alcohol test was violated. We disagree and affirm.

¶2 Dane County Sheriff's Deputy Vincent Murphy arrested Gold for operating under the influence of an intoxicant and transported him to a hospital to have a blood alcohol test administered. After inquiring about alternative tests, Gold submitted to the requested test. Gold also inquired about having an additional test provided by a person of his own choice, noting that he usually went to a clinic which was not a twenty-four hour facility. The deputy told Gold that he could have an additional test performed at the same hospital, or could be transported to another hospital in the vicinity.

¶3 Gold asked instead to be given access to a telephone book so that he could try to make his own arrangements for a test. The deputy then transported Gold to the booking station, where he informed another officer that Gold had requested an alternative test, and asked that officer to facilitate Gold's effort to call a hospital or physician. Gold was placed first in a holding cell, and then in a segregation cell which had a phone book, and had an opportunity to make a collect phone call.

¶4 The parties agree that an officer administering a chemical blood alcohol test must make a diligent effort to provide a suspect with a "reasonable opportunity to have any qualified person of his or her own choosing administer [an additional] chemical test" at the suspect's own expense. WIS. STAT. § 343.305(5) (2001-02).¹ An officer who fails to ascertain whether a suspect who has requested an additional test will be able to leave the hospital before the expiration of the statutory three-hour time limit for presumptive admissibility violates the duty of

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

due diligence. *State v. Renard*, 123 Wis. 2d 458, 367 N.W.2d 237 (Ct. App. 1985).

¶5 Gold contends that he was denied a “reasonable opportunity” to arrange for the administration of an additional blood test by his lack of access to a phone from which he could make non-collect calls. We disagree. First of all, Gold was provided the option of being taken to another hospital of his choice, and he refused. Next, he was provided with access to a phone book and a phone from which he could make collect calls. He did not testify that he attempted unsuccessfully to do so, or that he ever informed staff that the phone provided was inadequate for his needs. We are satisfied the officers provided Gold a reasonable opportunity to make his own arrangements.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

