

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 21, 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. 02-0758**  
**STATE OF WISCONSIN**

**Cir. Ct. No. 99-CT-464**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE REFUSAL OF  
ROBERT P. EGGIMANN:**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROBERT P. EGGIMANN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
PATRICK J. FIEDLER, Judge. *Affirmed.*

¶1 ROGGENSACK, J.<sup>1</sup> Robert Eggimann appeals the circuit court's order revoking his driver's license. Eggimann argues that Wisconsin's implied

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). In addition, all further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

consent law, WIS. STAT. § 343.305, violates his Fourth Amendment right to refuse consent to searches and seizures by imposing punishment for his refusal to submit to a chemical test for intoxication. Because we conclude that any pressure employed by the statute to obtain consent is reasonable and does not violate Fourth Amendment protections, we affirm the circuit court's order.

### **BACKGROUND**

¶2 The facts are undisputed. In February 1999, deputy officer James Hodges arrested Eggimann for operating a motor vehicle while intoxicated. Hodges transported Eggimann to Meriter Hospital for a blood draw to determine his blood alcohol concentration. At the hospital, Hodges read Eggimann the Informing the Accused form, as required by WIS. STAT. § 343.305(4). Eggimann refused to submit to a blood draw. The Department of Transportation issued him the "Notice of Intent to Revoke Operating Privileges" and Eggimann did not request a hearing. In March 1999, the circuit court revoked his driver's license for three years.

¶3 Eggimann then made an untimely demand for a refusal hearing and moved to vacate the order based on a defect in the notice of intent to revoke. The circuit court denied his motion and Eggimann appealed. We reversed the circuit court's decision because of a defect in the notice Eggimann received. The circuit court scheduled a refusal hearing and Eggimann moved to dismiss the proceeding alleging that WIS. STAT. § 343.305 was unconstitutional. In January 2002, following a hearing on the issues, the circuit court denied Eggimann's motion and entered a final order of revocation. Eggimann appeals.

## DISCUSSION

### Standard of Review.

¶4 Whether a statute is constitutional present a question of law that we review *de novo*. *State v. Pittman*, 174 Wis. 2d 255, 276, 496 N.W.2d 74, 83 (1993).

### WISCONSIN STAT. § 343.305.

¶5 WISCONSIN STAT. § 343.305(2) provides in relevant part:

IMPLIED CONSENT. Any person who ... operates a motor vehicle upon the public highways of this state ... is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol ....

If a person improperly refuses to submit to testing, his or her operating privileges are revoked. Section 343.305(10).

¶6 Eggimann argues that WIS. STAT. § 343.305 is unconstitutional because it coerces consent to a search and seizure. He maintains that the threatened sanction of a loss of driving privileges for refusing to submit to a chemical test for intoxication invalidates his consent for Fourth Amendment purposes. We disagree.

¶7 We addressed this precise issue in *State v. Wintlend*, No. 02-0965, slip op. (Wis. Ct. App. Nov. 6, 2002, publication recommended). In that case, we considered whether WIS. STAT. § 343.305 unreasonably coerced a motorist's consent to a blood alcohol test. *Wintlend*, slip op. at ¶1. We held that the pressure employed by the statute to obtain a motorist's consent was not unreasonable and

affirmed the constitutionality of § 343.305. *Id.* at ¶19. The law set forth in *Wintlend* is clear and we are obligated to follow it. *Cook v. Cook*, 208 Wis. 2d 166, 190, 560 N.W.2d 246, 256 (1997) (stating that we “may not overrule, modify, or withdraw language from a previously published decision of the court of appeals.”).

¶8 As we noted in *Wintlend*, driving is a privilege, not a constitutional right. *Wintlend*, slip op. at ¶9; *see also Kopf v. State*, 158 Wis. 2d 208, 214, 461 N.W.2d 813, 815 (Ct. App. 1990). As a condition of obtaining a driver’s license, a would-be motorist consents to submit to a prescribed chemical test if arrested for driving while intoxicated. WIS. STAT. § 343.305(2). The pertinent time of consent is when a license is obtained. *State v. Neitzel*, 95 Wis. 2d 191, 193, 289 N.W.2d 828, 830 (1980). And the choice is there: either obtain a license conditioned on submitting to an intoxication test or exercise the right to travel by alternative means. There is no coercion or psychological pressure. The motorist’s consent is therefore free and voluntary.

¶9 Additionally, a chemical test for intoxication is not overly intrusive or unreasonable. *Wintlend*, slip op. at ¶17. Both the United States Supreme Court and the Wisconsin Supreme Court have recognized that a blood test is safe, relatively painless and commonplace. *South Dakota v. Neville*, 459 U.S. 553, 563 (1983); *State v. Krajewski*, 2002 WI 97, ¶57, 255 Wis. 2d 98, 648 N.W.2d 385. Because the “bodily intrusion the motorist is being asked to allow ... is a minimal one,” the choice between retaining driving privileges and refusing to submit to an intoxication test is not unreasonable. *Wintlend*, slip op. at ¶17. Accordingly, we reject Eggimann’s argument that WIS. STAT. § 343.305 is unconstitutional and affirm the circuit court’s revocation order.

## CONCLUSION

¶10 We conclude that any pressure employed by WIS. STAT. § 343.305 to obtain consent is reasonable and does not violate Fourth Amendment protections. Accordingly, we affirm the circuit court's revocation order.

*By the Court.*—Order affirmed.

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

