COURT OF APPEALS
DECISION
DATED AND FILED

January 14, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2021 **Cir. Ct. No. 01-TR-4329**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK A. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: SUE E. BISCHEL, Judge. *Affirmed*.

¶1 CANE, C.J.[1] Mark Johnson appeals an order revoking his operating privileges because of his refusal to submit to chemical testing after his arrest for operating while under the influence. The circuit court concluded Johnson had no

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

basis to refuse to consent to the blood test. The court also rejected his argument the implied consent statute is unconstitutional because it imposes punishment for refusing to consent to testing. Johnson makes this same argument on appeal. We determine this issue is governed by our decision in ***State v. Wintlend***, 2002 WI App 314, and affirm the circuit court's order.

¶2 Johnson was arrested for operating while under the influence of an intoxicant in June 2001. The arresting officer took Johnson to a local hospital for a blood test. At the hospital, the officer read Johnson the Informing the Accused form as required by WIS. STAT. § 343.305(4). Johnson said he wanted to speak to a lawyer first and the officer noted on the form that Johnson would not submit to a chemical test. The officer issued Johnson a Notice of Intent to Revoke Operating Privileges under § 343.305(9). A hospital technician then took a blood sample from Johnson.

¶3 Johnson requested a refusal hearing and moved to dismiss the revocation. He argued WIS. STAT. § 343.305 punished him for exercising his right not to consent to searches and seizures under the Fourth Amendment. The court rejected this argument and revoked his driver's license.

¶4 Wisconsin's implied consent law is found in WIS. STAT. § 343.305(2), which reads in 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 … when requested to do so by a law enforcement officer ….

¶5 Under WIS. STAT. § 343.305(10), a person who refuses to submit to this testing has his or her driving privileges revoked. The requesting officer must inform the person of the consequences of refusing the test. WIS. STAT. § 343.305(4). If the person refuses, the officer must then take possession of the person's license and prepare a Notice of Intent to Revoke the person's driving privileges. WIS. STAT. § 343.305(9).

¶6 Johnson argues the implied consent law, to the extent it punishes him for refusing to submit to a chemical test, is unconstitutional because it violates his right to refuse to consent to searches and seizures. Specifically, he contends the State's conditioning of the receipt of a driver's license on the relinquishment of the right to be free from searches and seizures violates his Fourth Amendment rights.

¶7 We rejected the same argument in ***Wintlend***, 2002 WI App 314, ¶¶9, 10. There, we concluded the implied consent law was not unconstitutionally coercive because there is no constitutional right to operate a motor vehicle and the State's conditioning of the receipt of a driver's license on consenting to chemical testing is a reasonable measure to combat the problem of drunk driving.[2] ***Id.*** at ¶¶9, 17. Consequently, we reject Johnson's argument here.

[2] We noted in ***Wintlend*** that Wintlend's counsel had raised this issue in a number of appeals across the state, and our discussion was, in part an indulgence "to finally put an end to the constant barrage of appeals all raising this same issue." ***State v. Wintlend***, 2002 WI App 314, ¶7. This is one of those appeals.

By the Court.—Order affirmed.

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