

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 20, 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. 02-2787-CR

Cir. Ct. No. 00-CT-75

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC J. BALL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Green County:
JAMES R. BEER, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Eric Ball appeals from a judgment of conviction for operating while intoxicated, as a second offense within ten years, in violation of WIS. STAT. §§ 346.63(1)(a) and 346.65(2)(b). He contends that the trial court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f)(2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

erred when it denied his motions to suppress the results the blood draw taken incident to his arrest. We affirm.

¶2 The facts are not in dispute. On May 27, 2000, Officer Troy Janda of the City of Brodhead Police Department stopped Ball's vehicle for speeding. While Janda was talking to Ball, he noticed that Ball's eyes were bloodshot, his speech was slurred, and there was a strong odor of intoxicants on his breath. Ball failed field sobriety tests and a preliminary breath test reading was .16 percent. Officer Janda then took Ball to the Monroe Clinic emergency room for a blood draw. When they arrived, Officer Janda read Ball the "Informing the Accused" form in compliance with WIS. STAT. § 343.305(4)² and Ball submitted to the blood draw. Analysis of the blood sample showed a blood alcohol concentration of 0.171 percent.

¶3 Ball was charged with violating WIS. STAT. § 346.63 (1)(a) and (b), as a second offense within ten years. After the trial court denied his motions to suppress the evidence of his intoxication, Ball entered a no contest plea to operating while intoxicated. The prohibited blood alcohol content charge was dismissed. Ball appeals.

¶4 Ball does not challenge the probable cause for his arrest. Thus we are presented solely with questions of law regarding the constitutionality of WIS. STAT. § 343.305(2) and the analysis of Ball's blood sample. Accordingly, our review is de novo. *State v. Krajewski*, 2002 WI 97, ¶17, 255 Wis. 2d 98, 648

² 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 amount of alcohol in the person's breath or blood when the person is arrested for a violation of WIS. STAT. § 346.63(1). Refusal to submit to the tests results in license revocation. Section 343.305(3)-(10).

N.W.2d 385, *cert denied*, ***Krajewski v. Wisconsin***, 123 S. Ct. 704 (U.S. Wis. Dec. 16, 2002).

¶5 Ball concedes that under ***Krajewski***, it is now a settled point of law in Wisconsin that the exigent circumstances exception to the Fourth Amendment allows the police, following an arrest for OWI supported by probable cause, to perform a blood test for alcohol consumption, regardless of the existence of a breathalyzer or other less intrusive test. ***Krajewski***, 2002 WI 97 at ¶¶63-64. He also acknowledges that we rejected the argument that the implied consent law, WIS. STAT. § 343.305(2), is unconstitutionally coercive in ***State v. Wintlend***, 2002 WI App 314, ___ Wis. 2d ___, 655 N.W.2d 745, *review denied* (Wis. Jan. 14, 2003) (No. 02-0965). Section 343.305(2) is not unconstitutional because, even if a coercive event occurs when the officer reads the “Informing the Accused” form, as opposed to when the individual applies for a driver’s license, the limited intrusion posed by a blood draw is reasonable when weighed against the State’s interest in protecting the public from intoxicated drivers. ***Id.*** at ¶¶17-18. Nor is a separate search warrant required before a blood sample drawn without consent is analyzed. ***State v. Riedel***, 2003 WI App 18, ___ Wis. 2d ___, 656 N.W.2d 789.

¶6 The trial court properly denied Ball’s motions to suppress the results of his blood test and correctly concluded that the implied consent statute is constitutional. We affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

