

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 2011

A. John Voelker
Acting 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. 2010AP2349

STATE OF WISCONSIN

Cir. Ct. Nos. 2008TR1786
2008TR2022

**IN COURT OF APPEALS
DISTRICT IV**

COLUMBIA COUNTY,

PLAINTIFF-RESPONDENT,

V.

MARK CORNEAL DEVOS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
DANIEL GEORGE, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Mark Devos appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), contrary to WIS. STAT. § 346.63(1)(a), first offense. He contends the circuit court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

erred in denying his motion to suppress the results of a chemical test of his blood because the Department of Transportation violated the separation of powers doctrine by including language in the Informing the Accused form not authorized by WIS. STAT. § 343.305(4). We disagree and affirm.

BACKGROUND

¶2 In March 2008, Devos was arrested for OWI and transported to a local hospital for a chemical test of his blood. The results of the blood draw indicated that Devos's blood-alcohol levels were above the legal limit and he was charged, among other things, with OWI.

¶3 Prior to the blood draw, Devos had been read the Informing the Accused form, pursuant to WIS. STAT. § 343.305(4). Devos moved the circuit court to suppress the results of his chemical test on the basis that the form read to him violated the separation of powers. The court denied his motion and the case was tried to the court on stipulated facts. Devos was ultimately found guilty of OWI, and now appeals.

DISCUSSION

¶4 Devos contends that the results of his chemical blood test should have been suppressed by the circuit court because the Informing the Accused form read to him included language not specified in WIS. STAT. § 343.305(4), and thereby violated the separation of powers doctrine.

¶5 “The separation of powers doctrine is violated when one branch interferes with a constitutionally guaranteed ‘exclusive zone’ of authority vested in another branch.” *Martinez v. DILHR*, 165 Wis. 2d 687, 697, 478 N.W.2d 582

(1992) (citation omitted). “[A]dministrative agencies ... can exercise only those powers granted by the legislature.” *Id.*

¶6 Under WIS. STAT. § 343.305(4), law enforcement officers have a statutory duty to inform accused drunk drivers of certain required information when requesting a chemical test. Section 343.305(4) provides:

At the time that a chemical test specimen is requested under sub. (3)(a), (am), or (ar), the law enforcement officer shall read the following to the person from whom the test specimen is requested:

“You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified.”

¶7 In addition to the language specified in WIS. STAT. § 343.305(4), the Informing the Accused form read to Devos included an additional paragraph, which stated: “In addition, under 2003 Wisconsin Act 97, your operating privileges will also be suspended if a detectable amount of a restricted controlled substance is in your blood.” The information provided in the additional paragraph is required to be provided to an accused pursuant to § 343.305(8).

¶8 According to Devos, by including the additional language in the Informing the Accused form, the DOT amended WIS. STAT. § 343.305(4) without the legislative authority to do so. I disagree.

¶9 In WIS. STAT. § 343.305(4), the legislature set forth the language that a law enforcement officer must read to an individual accused of driving under the influence of an intoxicant. However, the statute does not restrict the information that must be read to an accused to that which is specified in subsection (4). Nor does the statute mandate the written form in which the information specified in subsection (4) must be disseminated, nor that it be provided in a written form at all.

¶10 Accordingly, I conclude that the DOT has not amended WIS. STAT. § 343.305(4) in violation of the separation of powers doctrine by generating a form which includes the information required to be read to an accused by that section, as well as the information required to be provided to an accused by § 343.305(8).

By the Court.—Judgment affirmed.

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

