

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 7, 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. 2010AP2967**

Cir. Ct. Nos. 2010TR2559  
2010TR2560

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**COUNTY OF BROWN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ERIC J. SCHROEDER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Brown County:  
DONALD R. ZUIDMULDER, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Eric Schroeder appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, first

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

offense. He argues the circuit court erred by denying his motion to prevent the County from relying on the presumption of admissibility for the blood test result. We affirm.

## **BACKGROUND**

¶2 On April 5, 2010, officer Leonard Webster stopped Schroeder for speeding and subsequently arrested him for operating while intoxicated. Webster took Schroeder to the hospital for a blood draw. Webster read Schroeder the Informing the Accused form pursuant to WIS. STAT. § 343.305(4). There is no dispute that Schroeder was adequately warned before submitting to the blood draw. The blood specimen was sent to the Wisconsin State Laboratory of Hygiene for testing. The result was .191.

¶3 Following receipt of the test result, Webster was obligated to notify Schroeder that his license would be administratively suspended. *See* WIS. STAT. § 343.305(8)(a). Webster was also required to mail a form to Schroeder explaining how to obtain review of his administrative suspension. *See* WIS. STAT. § 343.305(8)(am). On April 27, Webster mailed Schroeder notice of his administrative suspension; however, Webster failed to include the form explaining how to obtain review of an administrative suspension. As a result, Schroeder's license was not administratively suspended.

¶4 Schroeder moved the circuit court for an order prohibiting the County from relying on the presumption of admissibility for the blood test result. He argued the County had failed to comply with all the procedures outlined in the implied consent law and the penalty for noncompliance was the loss of the test result's presumption of admissibility. The court denied Schroeder's motion.

Schroeder was found guilty of operating a motor vehicle while under the influence of an intoxicant.

### DISCUSSION

¶5 On appeal, Schroeder asserts the County lost the presumption of admissibility for the blood test result because Webster failed to provide him with the form explaining how to obtain review of his administrative suspension. *See* WIS. STAT. § 343.305(8)(am). The presumption of admissibility allows the test result to be admitted into evidence without expert testimony. *See* WIS. STAT. § 343.305(5)(d) (“[R]esults of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant .... Test results shall be given the effect required under s. 885.235.”); *see also* WIS. STAT. § 885.235(1g) (Test results are admissible “if ... taken within 3 hours after the event to be proved;” the results are prima facie evidence the person was under the influence of an intoxicant.). It is well settled that the County can lose a test result’s presumption of admissibility if, before administering a test, an officer fails to give an individual the information outlined in § 343.305(4). *See State v. Zielke*, 137 Wis. 2d 39, 51-52, 403 N.W.2d 427 (1987). Schroeder, however, wishes to expand this penalty to violations under subsection 343.305(8)—the procedures for administrative suspension.

¶6 In support of this expansion, Schroeder relies on statements made in the context of WIS. STAT. § 343.305(4) violations. In *Zielke*, 137 Wis. 2d at 49, our supreme court stated, “[I]f the procedures set forth in sec. 343.305, Stats., are not followed the State ... loses its right to rely on the automatic admissibility provisions of the law.” In *State v. Wilke*, 152 Wis. 2d 243, 250, 448 N.W.2d 13 (Ct. App. 1989), we stated that substantial compliance with the implied consent

statute is required. Schroeder argues these statements show the County loses the presumption of admissibility if there is any WIS. STAT. § 343.305 procedural violation.

¶7 We disagree. First, *Wilke* and *Zielke* involve violations of WIS. STAT. § 343.305(4)—situations where the officer did not give proper warnings before having a defendant submit to or refuse a chemical test. See *Wilke*, 152 Wis. 2d at 247; *Zielke*, 137 Wis. 2d at 43-44. In *Wilke*, the court held, “The legislature has clearly expressed its intent that a person be informed of all the information contained in sec. 343.305(4).” *Wilke*, 152 Wis. 2d at 251. In *Zielke*, the court held the penalty for “failure to comply with sec. 343.305(3)(a) [currently § 343.305(4)]” is the loss of the presumption of admissibility, not suppression of evidence. *Zielke*, 137 Wis. 2d at 51-52. Neither case, however, involved a procedural violation in the context of an administrative suspension.

¶8 Schroeder offers no authority holding the loss of the presumption of admissibility extends to procedural violations under WIS. STAT. § 343.305(8). Rather, all of Schroeder’s cases involve an officer’s failure to give a defendant either all or part of the warnings outlined in § 343.305(4). See *Wilke*, 152 Wis. 2d 243 (defendant not given all statutory warnings prior to test); *Zielke*, 137 Wis. 2d 39; *State v. Geraldson*, 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993).

¶9 Further, WIS. STAT. § 343.305 has many procedural components. To hold that the County loses its presumption of admissibility whenever there is a procedural violation under the statute creates the absurd result of the County losing this presumption when procedures unrelated to the chemical tests are violated. For example, under Schroeder’s rationale, the County would lose its presumption of admissibility if the department of transportation fails to conduct “a

hearing ... within 30 days after the date of notification [of an administrative suspension],” contrary to WIS. STAT. § 343.305(8)(b)1.; or if the hearing examiner fails to “conduct the administrative hearing in an informal manner,” contrary to § 343.305(8)(b)3.

*By the Court.*—Judgment affirmed.

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

