

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 30, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2770-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRETT M. TRENTER,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
TIMOTHY G. DUGAN, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Brett M. Trenter appeals from an order revoking his operating privilege for unlawfully refusing to submit to chemical testing under Wisconsin's implied consent law. See § 343.305, STATS. Trenter claims that the trial court erred in reaching this conclusion because the "Informing the Accused" form that was read to him did not contain specific language required by § 343.305(4)(c), STATS. Because there was substantial compliance with the requirements of the statute, this court affirms.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

I. BACKGROUND

The facts relevant to this case are undisputed. On May 10, 1995, at approximately 2:06 a.m., while operating his motor vehicle in the city of Milwaukee, Trenter was arrested for Operating a Motor Vehicle While Under the Influence of an Intoxicant, contrary to § 346.63(1)(a), STATS. The "Informing the Accused" form was read to him. He refused to submit to a chemical test of his breath. Trenter requested a hearing on the reasonableness of his refusal, which was held on September 22, 1995. Following the hearing, the trial court resolved all issues adverse to Trenter and entered the order from which Trenter now appeals.

II. DISCUSSION

The interpretation of a statute and its application to a set of undisputed facts presents a question of law that this court reviews *de novo*. *State v. Wilke*, 152 Wis.2d 243, 247, 448 N.W.2d 13, 14 (Ct. App. 1989).

Trenter claims that the "Informing the Accused" form which was read to him was defective because it did not contain the language: "and was driving or operating a motor vehicle." This language appears in the following section of the statute:

At the time a chemical test specimen is requested..., the person shall be orally informed by the law enforcement officer that: If one or more tests are taken and the results of any test indicate that the person has a prohibited alcohol concentration *and was driving or operating a motor vehicle*, the person will be subject to penalties.

Section 343.305(4), STATS. (Emphasis added.) The form read to Trenter in this case stated:

1. You are deemed under Wisconsin's Implied Consent Law to have consented to chemical testing of your breath, blood or urine at this Law Enforcement Agency's expense. The purpose of testing is to determine the presence or quantity of alcohol or other drugs in your blood or breath.
2. If you refuse to submit to any such tests, your operating privilege will be revoked.
3. After submitting to chemical testing, you may request the alternative test that this law enforcement agency is prepared to administer at its expense or you may request a reasonable opportunity to have any qualified person of your choice administer a chemical test at your expense.
4. If you take one or more chemical tests and the result of any test indicates you have a prohibited alcohol concentration, your operating privilege will be administratively suspended in addition to other penalties which may be imposed.
5. If you have a prohibited alcohol concentration or you refuse to submit to chemical testing and you have two or more prior suspensions, revocations or convictions within a 10 year period and after January 1, 1988, which would be counted under s.343.307(1) Wis. Stats., a motor vehicle owned by you may be equipped with an ignition interlock device, immobilized, or seized and forfeited.

As conceded, this form does not contain the precise words "*and was driving or operating a motor vehicle.*" Nevertheless, this court concludes that the form is in substantial compliance with the implied consent statute, see *State v. Piskula*, 168 Wis.2d 135, 483 N.W.2d 250 (Ct. App. 1992) and, therefore, affirms the order revoking Trenter's operating privileges.

Substantial compliance with the implied consent statute has been accepted as sufficient to uphold a revocation order if every reasonable objective of the statute has been met. *Id.* at 140-41, 483 N.W.2d at 252. The reasonable objective of the implied consent statute is to inform drivers of their rights and penalties for either refusing to submit to a chemical test or for submitting to a chemical test which results in a prohibited alcohol concentration. *Id.*

In Trenter's case, this objective was satisfied despite the absence of the precise language quoted above. "Operating privilege" is referenced several times within the form read to Trenter. Further, it is clear from the overall context of the situation that the chemical testing is done for the purpose of determining whether Trenter was operating his motor vehicle while intoxicated. Accordingly, this court concludes that the form read to Trenter was in substantial compliance with the implied consent statute, and therefore affirms the order.

By the Court. – Order affirmed.

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