COURT OF APPEALS
DECISION
DATED AND RELEASED

MARCH 5, 1996

No. 95-3192

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TIMOTHY J. AHLERS,

Defendant-Appellant.

APPEAL from an order of the circuit court for Taylor County: DOUGLAS T. FOX, Judge. *Reversed.*

CANE, P.J. Timothy Ahlers appeals an order revoking his driving privileges for failure to consent to a breath test. His sole contention is that the record on appeal is insufficient to support a finding that at the time a chemical test was requested of him, the arresting officer informed him of the statutory notices required in § 343.305(4), STATS. This court agrees with Ahlers and therefore has no alternative but to reverse the order.

The State does not dispute that it had the burden at the refusal hearing to show that at the time the arresting officer requested Ahlers to consent to a chemical test, the officer informed Ahlers of the notices required under §

343.305(4), STATS.[1] The State also agrees that when the officer fails to comply with the implied consent statute, the driver's license cannot be revoked. *See* ***State v. Muente,*** 159 Wis.2d 279, 281, 464 N.W.2d 230, 231 (Ct. App. 1990).

The officer testified at the hearing that he read to Ahlers Section A, paragraphs one through five of the standard Informing the Accused form, but the form was never offered into evidence. Nor did the officer state what the information in the form contained. Consequently, there is no testimony that Ahlers was advised of anything other than that portions of a standard form were read to him; the record contains no evidence as to what the "standard" form contained.[2] As a result, this court on appellate review cannot determine whether the oral notices given to Ahlers complied with § 343.305(4), STATS.

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[1] Section 343.305(4), STATS., provides:

INFORMATION. At the time a chemical test specimen is requested under sub. (3)(a) or (am), the person shall be orally informed by the law enforcement officer that:

(a) He or she is deemed to have consented to tests under sub. (2);

(b) If testing is refused, a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior suspensions, revocations or convictions within a 10-year period that would be counted under s. 343.307(1) and the person's operating privilege will be revoked under this section;

(c) 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, the person's operating privilege will be suspended under this section and a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior convictions, suspensions or revocations within a 10-year period that would be counted under s. 343.307(1); and

(d) After submitting to testing, the person tested has the right to have an additional test made by a person of his or her own choosing.

[2] This court notes that versions of the "standard" Informing the Accused form has been changed or amended since the adoption of Wisconsin's complied consent law. *See* ***State v. Muente,*** 159 Wis.2d 279, 282 n.2, 464 N.W.2d 230, 232 n.2 (Ct. App. 1990). What version was read to Ahlers is also unknown.

Although the trial court may have been correct that the officer advised Ahlers of the required statutory notices, the record on appeal is barren of what was read to Ahlers. This court can only speculate what was read to Ahlers, but should not and will not speculate. What appeared obvious to the district attorney is not obvious on the record. Merely testifying that portions of a form were read says nothing unless that form is made part of the State's proof. Therefore, this court reluctantly reverses the order.

By the Court.—Order reversed.

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