COURT OF APPEALS
DECISION
DATED AND RELEASED

February 4, 1997

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. 96-2032

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEANNETTE PERKINS-HUNT,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed*.

FINE, J. Jeannette Perkins-Hunt appeals the trial court's revocation of her operating privilege, after determining that Perkins-Hunt improperly refused to submit to a test of the alcohol content of her blood, as required by § 343.305, STATS., Wisconsin's implied-consent law. Perkins-Hunt raises three issues for our review. First, she claims that the police did not have probable cause to stop and arrest her for drunk driving. Second, she contends that the police did not adequately explain to her her obligations under § 343.305. Third, she argues that she did not refuse to submit to testing under § 343.305. We affirm.

When a driver is alleged to have improperly refused to submit to a chemical test of his or her blood under § 343.305, STATS., the trial court must resolve three issues: (1) whether "the officer [stopping the driver] had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol," and "whether the person was lawfully placed under arrest" for drunk driving, § 343.305(9)(a)5.a; (2) whether the officer complied with § 343.305(4), which requires that the officer inform the driver of the driver's rights and responsibilities under the implied-consent law, and the consequences of a failure to consent to a test of the driver's blood-alcohol content, § 343.305(9)(a)5.b; and (3) whether the driver has "refused to permit the test," § 343.305(9)(a)5.c. The trial court resolved these issues against Perkins-Hunt.

A trial court's findings of fact will not be set aside on appeal unless they are "clearly erroneous." RULE 805.17(2), STATS. Moreover, absent specific detailed findings, we will affirm if the facts necessary to a trial court's determination are supported by the evidence. ***Marshall v. Lonberger***, 459 U.S. 422, 433 (1983) (Although trial court failed to make express findings on credibility, failure to grant relief reflects implicit adverse finding.); ***Schneller v. St. Mary's Hosp. Medical Ctr.***, 162 Wis.2d 296, 311, 470 N.W.2d 873, 879 (1991) (trial court's findings may be implicit from its ruling).

In this case, a Milwaukee police officer testified that she saw Perkins-Hunt leave a Milwaukee tavern early in the morning and stagger and have difficulty getting into her car that was parked nearby. Perkins-Hunt drove away, and the officer followed. The officer testified that she saw Perkins-Hunt swerve "several times across the center line" and "swerve partially halfway through the right-hand lane--or parking lane." The officer told the trial court that she stopped Perkins-Hunt when Perkins-Hunt almost caused an accident at a stop sign. According to the officer, she "detected a strong odor of alcoholic beverage emanating from" Perkins-Hunt. Additionally, according to the officer, Perkins-Hunt's speech was "slightly slurred" and her eyes were "bloodshot." Further, Perkins-Hunt was, according to the officer, combative and uncooperative.

Perkins-Hunt argues that the officer's testimony was not believable because there were medians along part of the roadway where the officer testified that she saw Perkins-Hunt cross the "center line," and because

there were other inconsistencies in the officer's testimony. Perkins-Hunt also argues that the officer's testimony was not plausible because the officer did not stop Perkins-Hunt sooner—that is, before the stop-sign incident.

The trial court recognized inconsistencies in the officer's testimony, but found nevertheless that there was "some kind of deviation" that justified the stop. This finding is supported by the evidence and is not, therefore, "clearly erroneous." Moreover, the State at a refusal hearing under § 343.305(9), STATS., need only show that a stop and arrest of a driver suspected of driving while under the influence of an intoxicant is supported by "probable cause"—that is, the "State need only show that the officer's account is plausible, and the [trial] court will not weigh the evidence for and against probable cause or determine the credibility of the witnesses." ***State v. Wille***, 185 Wis.2d 673, 681, 518 N.W.2d 325, 328 (Ct. App. 1994). The evidence before the trial court amply supports both Perkins-Hunt's stop and arrest for drunk driving. *See* ***State v. Babbitt***, 188 Wis.2d 349, 357, 525 N.W.2d 102, 104 (Ct. App. 1994) (listing examples that support probable cause to arrest for drunk driving). The trial court did not err in determining that § 343.305(9)(a)5.a was satisfied.

Perkins-Hunt's contention that the police failed to comply with § 343.305(4), STATS., centers around her assertion that she did not understand what the officers told her.[1] All that is required, however, is that the officer

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

> **(4)** 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:
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> (a) He or she is deemed to have consented to tests under sub. (2);
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> (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;
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> (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,

provide the driver with the "specific information" set out by the section; the officer need not "explain" the meaning of the words or concepts used, and a driver's alleged lack of comprehension does not negate an officer's compliance with § 343.305(4). ***County of Ozaukee v. Quelle***, 198 Wis.2d 269, 280–281, 542 N.W.2d 196, 200 (Ct. App. 1995). Perkins-Hunt does not dispute on appeal that she was read an informing-the-accused form or that the form as read complied with § 343.305(4). Under ***Quelle***, that ends our inquiry. Perkins-Hunt's second claim of trial court error is without merit.[2]

Perkins-Hunt's final claim on this appeal, namely that she did not refuse to take a chemical test of her blood-alcohol, is based on her contention that she did not understand what the officer read to her on the informing-the-accused form and thus that she did not comprehend that the officer was asking her to take such a test rather than, as she puts it in her appellate brief, "further `field sobriety tests,' similar to the ones she had already taken at the station." As already noted, however, a driver's subjective understanding of the information encompassed by § 343.305(4), STATS., is not material to a determination of whether that driver submitted or refused to submit to tests required by the informed-consent law. Perkins-Hunt's contention that she did not refuse to consent is thus without merit.

By the Court.—Order affirmed.

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

(..continued)

> 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] The trial court noted in the course of its oral decision that Perkins-Hunt had "a college degree" and was "on her way to a master's."