COURT OF APPEALS
DECISION
DATED AND FILED

November 28, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0813

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

v.

MARCUS A. FARINA,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Reversed.*

¶1 CURLEY, J. The State appeals from the trial court's order finding that Marcus A. Farina's refusal to submit to a test of his blood alcohol concentration was reasonable. The State contends that the trial court erred and

"misapplied the law of refusal" when it found that the arresting officer did not comply with the intent of WIS. STAT. § 343.305(4).[1]

¶2 This court reverses because the trial court erred in finding that WIS. STAT. § 343.305(4) required the officers to read the "Informing the Accused" form[2] "at the earliest point possible," the arresting officer did not misapply the statute and Farina refused within the meaning of the law.

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[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[2] WISCONSIN STAT. § 343.305(4) provides:

> INFORMATION. At the time that a chemical test specimen is requested under sub. (3)(a) or (am), 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 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."

I. BACKGROUND.

¶3 On November 8, 1999, Oak Creek Police Officer Robert Carter pulled Farina over after observing Farina speeding and passing other vehicles in a no-passing zone. After Carter stopped Farina, he smelled intoxicants on Farina's breath, which prompted him to call the back-up officer, Officer Schultz. Carter then administered a standard field sobriety test which Farina failed to successfully perform. Carter then arrested Farina for operating while intoxicated ("OWI").[3] The Officers then administered a preliminary breathalyzer test ("PBT"), which indicated that Farina's blood alcohol content ("BAC") was above the legal limit.

¶4 After determining that Farina had a prior OWI conviction, Carter decided, according to department policy, to have Farina submit to a blood test, as the primary chemical test for BAC under WIS. STAT. § 343.305(3). Carter proceeded to transport Farina, first to the Oak Creek Police Station to pick up a "blood kit," and then to St. Luke's Hospital to have the test done. During the drive to the police station and the hospital, an exchange occurred between Carter and Farina. The nature of this exchange is in dispute. Carter alleged that Farina became verbally abusive and told Carter that it would require physical force to take blood from him. Farina claims that Carter allegedly threatened to use physical force against him.

¶5 At the hospital, Carter read Farina the "Informing the Accused" form. Farina told Carter that he would not submit to the test and Carter checked the appropriate box on the form indicating Farina's refusal. Carter then attempted to obtain a search warrant to force Farina to submit to a blood test, but this effort

[3] Farina concedes that probable cause existed for the stop of his vehicle.

proved unsuccessful. Farina was then taken back to the Oak Creek Police Station where he was again read the "Informing the Accused" form, and was asked to submit to a breath test. Farina verbally indicated that he would not submit to the breath test, and the appropriate box was checked.[4]

¶6 The trial court found that: (1) Farina's refusal was not knowing, voluntary, and informed; (2) the officers failed to fully comply with the intent of WIS. STAT. § 343.305 since they did not read the "Informing the Accused" form to Farina "at the earliest point possible"; and (3) there was no refusal since Farina complied with the preliminary breathalyzer test. The State appeals from this ruling.

II. ANALYSIS.

¶7 The primary issue in this case is whether the trial court erred in finding that the arresting officer failed to comply with WIS. STAT. § 343.305, the implied consent statute. Interpretation of a statute is a question of law which this court reviews *de novo*. *See* ***Coston v. Joseph P.***, 222 Wis. 2d 1, 10, 586 N.W.2d 52 (Ct. App. 1998). Application of the implied consent statute to findings of fact is also a question of law that this court reviews de novo. *See* ***State v. Rydeski,*** 214 Wis. 2d 101, 106, 517 N.W.2d 417 (Ct. App. 1997).

¶8 The State argues that the trial court erred when it found that the arresting officer did not comply with the intent of WIS. STAT. § 343.305(4) because the officer failed to read the "Informing the Accused" form "at the earliest

[4] While not crucial to this case, the record indicated that the breathalyzer at the police station was not working properly and that the officers were aware of this. Therefore, it is questionable why the officers even offered this test to Farina.

point possible." The State also contends that the trial court incorrectly found that Farina did not refuse within the meaning of the law.

¶9 WISCONSIN STAT. § 343.305 provides that drivers on Wisconsin roads are considered to have given implied consent to chemical testing as a condition of operating a vehicle. *See* ***State v. Reitter,*** 227 Wis. 2d 213, 225, 595 N.W.2d 646 (1999). Consequently, drivers who are accused of operating a vehicle while intoxicated do not have a right to refuse a chemical test. *See* ***id.***

¶10 The legislature has determined what defendants must be told by an arresting officer prior to the administration of a chemical test. *See* ***id.*** WISCONSIN STAT. § 343.305(4) requires an officer to inform the accused regarding the nature of the driver's implied consent. The "Informing the Accused" form satisfies the statute, mandating that defendants be advised of the law and their rights under it. *See* ***id.***

¶11 Here, the trial court ruled that "in order to comply fully with the intent of the law that the person should, at the earliest point possible, be read the informing the accused." This court disagrees.

¶12 Contrary to the trial court's assertions, the law does not require the "Informing the Accused" form to be read "at the earliest point possible." The State correctly contends that nothing in the informing the accused statute, WIS. STAT. § 343.305(4), or any other statute, for that matter, requires the "Informing the Accused" form to be read "at the earliest point possible." Instead, § 343.305(4) simply requires that the form be read to the accused "at the time that a chemical test specimen is requested." WIS. STAT. § 343.305(4). Our supreme court has held that "the law requires no more than what the implied consent statute sets forth," ***Reitter***, 227 Wis. 2d at 225, and thus, this court will not read into

§ 343.305(4) any additional requirements. Furthermore, when the language of a statute is "clear and unambiguous, the court is to arrive at the intention of the legislature by giving the language its ordinary and accepted meaning." ***State v. Dean***, 163 Wis. 2d 503, 510, 471 N.W.2d 310 (Ct. App. 1991).

¶13 The relevant facts of this case are undisputed. The arresting officer read the "Informing the Accused" form to Farina when they got to the hospital before requesting Farina's consent to have his blood drawn. Farina refused. Under the clear and unambiguous language of the statute, this court is satisfied that the officer fulfilled his obligation to inform Farina and Farina's actions constituted a refusal. Since it is not required anywhere in the implied consent statute that the officers read the "Informing the Accused" form "at the earliest possible point," this court concludes that the trial court erred in finding that Farina's refusal to submit to a test of his blood alcohol concentration was reasonable. Therefore, this court reverses the trial court's order.

By the Court.—Order reversed.

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