

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 8, 2004**

Cornelia G. Clark  
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. 04-0597  
STATE OF WISCONSIN**

**Cir. Ct. No. 03TR012519**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANDREW M. HANSEN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Sheboygan County:  
L. EDWARD STENGEL, Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Andrew M. Hansen appeals from an order entered after a refusal hearing under the implied consent law, WIS. STAT. § 343.305, which revoked Hansen's driving privileges for one year. The circuit court

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

determined that Hansen wrongfully refused the arresting officer's request for a chemical test. Hansen contends that the court failed to apply the rules of evidence at the refusal hearing and that the State relied on inadmissible hearsay to meet its burden of proof. He further contends that the State failed to show that the arresting officer complied with § 343.305(4). We disagree and affirm the order of the circuit court.

¶2 On December 10, 2003, City of Sheboygan Police Officer James Olsen observed a car sitting perpendicular to traffic, at a right angle to the curb. Olsen also observed Hansen getting out of the driver's seat of the car. Three other people were outside the car: Roger Smith (an acquaintance who had been in the car), John Hansen (Andrew Hansen's brother and the owner of the car), and Tim Reineking, who lived in the house where the car had come to a stop.

¶3 Olsen questioned all four men, as well as Reineking's roommate, to ascertain who had been driving the car. Olsen also observed the location of a coat, a shoe, and vomit in the backseat of the car to help determine the location the various men occupied while in the car. After his investigation, Olsen concluded that Hansen had been driving the car.<sup>2</sup>

¶4 Olsen administered field sobriety tests, which Hansen failed. Olsen placed Hansen under arrest and took him to the police department where Olsen read him the Informing the Accused form. Hansen declined to take the Intoximeter test.

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<sup>2</sup> Andrew Hansen originally told James Olsen that Tim Reineking had been the driver of the car. Olsen interviewed Reineking and Reineking's roommate separately to confirm that Reineking had not been in the car at all. This left three potential drivers: John Hansen, whose shoe and coat were in the backseat; Roger Smith, who stated he was in the front passenger seat; and Andrew Hansen, whom Olsen had seen exit from the driver's seat.

¶5 At the refusal hearing, the State called Olsen as its only witness. Hansen objected to Olsen's testimony regarding what other witnesses said at the scene, arguing that hearsay was not admissible. The court initially agreed, but subsequently reversed its ruling and allowed Olsen to present what witnesses had told him.

¶6 Olsen also testified that he had read the Informing the Accused form to Hansen and that Hansen refused to voluntarily submit to a chemical test. The State did not mark or move into evidence the actual form at the hearing, nor did Olsen read into the record the contents of the form he used.

¶7 At the close of arguments, the court found that Olsen had complied with the requirements of WIS. STAT. § 343.305(4), and that he did have probable cause to believe that Hansen was the operator of the vehicle and was intoxicated.

¶8 Hansen appeals, first arguing that the circuit court improperly allowed the State to present hearsay evidence to establish that he was the driver of the car. We do not reverse evidentiary rulings of the circuit court if that court exercised its discretion by applying the proper legal standard to the facts of record. *State v. Kutz*, 2003 WI App 205, ¶33, 267 Wis. 2d 531, 671 N.W.2d 660, review denied, 2004 WI 20, 269 Wis. 2d 198, 675 N.W.2d 804 (Wis. Jan. 23, 2004) (No. 02-1670-CR).

¶9 Hearsay is a statement, other than one made by the person testifying, offered into evidence to prove the truth of the matter asserted. WIS. STAT. § 908.01(3). Here, however, whether Hansen was in fact the driver of the car was not the issue at the refusal hearing. See *State v. Nordness*, 128 Wis. 2d 15, 29, 381 N.W.2d 300 (1986). The issue was whether Olsen had probable cause to believe Hansen was the driver. See *id.* For this purpose, Olsen's testimony

regarding the statements of the passengers and the witness who lived nearby were admissible. Probable cause to arrest refers to that quantum of evidence which would lead a reasonable officer to believe that the person probably committed a crime. *Kluck v. State*, 37 Wis. 2d 378, 389, 155 N.W.2d 26 (1967). We conclude that the court properly overruled Hansen's hearsay objections because the statements were part of the quantum of evidence used by Olsen to determine whether probable cause existed and were not offered to prove that Hansen was indeed the driver.

¶10 Hansen next argues that the State failed to demonstrate that Olsen complied with WIS. STAT. § 343.305(4) because it did not move into evidence the Informing the Accused form used by Olsen, nor did it ask Olsen to read the contents of the form into the record. Questions about the sufficiency of a warning given in a particular case are resolved by determining whether the warning substantially complied with the statutory requirements expressed in § 343.305(4). *See State v. Piskula*, 168 Wis. 2d 135, 140, 483 N.W.2d 250 (Ct. App. 1992).

¶11 Olsen testified that he read the Informing the Accused form to Hansen and that Hansen had no questions about the form. Also, the Notice of Intent to Revoke, filed with the court on May 17, 2004, includes an allegation that the law enforcement officer complied with WIS. STAT. § 343.305(4) by reading "form SP4197, the Informing the Accused form." We have held that the Informing the Accused form substantially complies with the requirements of the statute. *See id.* The circuit court was satisfied that Olsen complied with the statutory requirements. We accept the circuit court's findings unless they are clearly erroneous. *Walser Leasing, Inc. v. Simonson*, 120 Wis. 2d 458, 461, 355 N.W.2d 545 (Ct. App. 1984). Upon our review of the record, we discern no basis for disturbing the court's conclusion.

¶12 We hold that the circuit court properly overruled Hansen’s hearsay objections because the testimony offered was not offered for the truth of whether Hansen had been the driver of the vehicle, but to demonstrate whether Olsen had probable cause for his belief that Hansen was the driver. Further, we conclude that the circuit court’s ruling that Olsen complied with the requirements of WIS. STAT. § 343.305(4) was not clearly erroneous.

*By the Court.*—Order affirmed.

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

