COURT OF APPEALS
DECISION
DATED AND FILED

January 15, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1722-CR **Cir. Ct. No. 2005CT276**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW JAMES BROWN PRATT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County: EDWARD F. VLACK, Judge. *Affirmed*.

¶1 PETERSON, J.[1] Andrew Pratt appeals a judgment of conviction for operating while under the influence (OWI), second offense. He argues the court

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

should have suppressed the results of his breath test because the Informing the Accused form read to him pursuant to Wisconsin's implied consent law contained misleading information. We reject his arguments and affirm the judgment.

BACKGROUND

¶2 In August 2004, River Falls police stopped a vehicle driven by Pratt. Pratt, who was nineteen years old at the time, performed marginally on field sobriety tests and was taken into custody for an absolute sobriety violation. *See* WIS. STAT. § 346.63(2m). The officer stated he did not arrest Pratt for OWI because he felt it was "borderline" whether Pratt was under the influence of alcohol.

¶3 At the police station, the officer read Pratt the standard Informing the Accused form and asked him to submit to a breath test. *See* WIS. STAT. § 343.305(4). The form stated, in relevant part:

> 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.
>
> The 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.

Pratt consented to the test, which indicated a blood alcohol content of .11%. The officer then cited Pratt for operating a vehicle with a prohibited alcohol concentration. *See* WIS. STAT. § 346.63(1)(b).

¶4 Pratt was ultimately charged with OWI and operating a vehicle with a prohibited alcohol concentration, both as a second offense. He moved to suppress the results of the breath test, arguing the Informing the Accused form contained misleading information. The court refused to suppress the test results. In a written decision, the court held the form correctly informed Pratt of the consequences of a refusal, and any error was at most technical and not grounds for suppression. Pratt was ultimately convicted of OWI after a jury trial.

DISCUSSION

¶5 The right to implied consent warnings is a statutory, not a constitutional, right. ***State v. Piddington***, 2001 WI 24, ¶20 n.10, 241 Wis. 2d 754, 623 N.W.2d 528. As a result, whether warnings violated the implied consent law is a question of statutory interpretation. ***Id.***, ¶13. We review questions of statutory interpretation without deference to the circuit court, but benefiting from its analysis. ***Id.***

¶6 Pratt's argument is based on the fact that the Informing the Accused form indicated he was arrested for an offense that "involves driving … while under the influence of alcohol," when in fact he was arrested for an absolute sobriety violation. *See* WIS. STAT. §§ 346.63(1)(a), (2m). He argues this affected his ability to choose whether to consent to the test because he was subject to a lesser penalty for refusal than a motorist arrested for OWI. *See* WIS. STAT. §§ 343.305(10)(b), (em).[2]

[2] If a motorist is arrested for an absolute sobriety violation and refuses the test, the penalty includes a revocation for six months, unless there is a passenger under sixteen in the vehicle at the time of the arrest. WIS. STAT. § 343.305(10)(em). The refusal is not considered a prior offense for purposes of any subsequent OWI conviction. ***Id.*** If the motorist is arrested for (continued)

¶7 To decide whether the content of an officer's warnings violates the implied consent law, we employ a three-part test:

> (1) Has the law enforcement officer not met, or exceeded his or her duty under §§ 343.305(4) and 343.305(4m)[3] to provide information to the accused driver;
>
> (2) Is the lack or oversupply of information misleading; and
>
> (3) Has the failure to properly inform the driver affected his or her ability to make the choice about chemical testing?

County of Ozaukee v. Quelle, 198 Wis. 2d 269, 280, 542 N.W.2d 196 (Ct. App. 1995).

¶8 In this case, we need go no further than the first step of the test. An officer may request a breath, blood, or urine test from a motorist arrested for an absolute sobriety violation or certain other alcohol or drug-related traffic offenses. WIS. STAT. § 343.305(3)(a). If the officer does so, the officer is required to give the warnings found in § 343.305(4). Section 343.305(4) states that the "law enforcement officer shall read" a specific statement to the motorist when making the request. The full text of the statement is contained within § 343.305(4).

¶9 In this case, the officer read Pratt the full statement found in WIS. STAT. § 343.305(4). He did not omit any of the warnings, and did not add any

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OWI, the penalty includes a revocation of between one and six years, depending on the number of prior OWI convictions and whether there is a passenger under sixteen in the vehicle at the time of the arrest. WIS. STAT. § 343.305(10)(b) The refusal is considered a prior conviction for purposes of any subsequent OWI conviction. WIS. STAT. § 343.307(1)(f).

[3] Prior to 1998, some of the warnings were contained WIS. STAT. §§ 343.305(4) and others in § 343.305(4m). In 1998, the legislature repealed WIS. STAT. §§ 343.305(4) and (4m) and created a new § 343.305(4) containing the full implied consent warnings. *See* 1997 Wis. Act 107 § 1 (effective August 1, 1998).

additional information. Because the officer met and did not exceed his duty under § 343.305(4), Pratt cannot establish a violation of the implied consent law. *See* ***Quelle***, 198 Wis. 2d at 280.

¶10 Pratt argues this result is contrary to the purpose of the implied consent law. He argues WIS. STAT. § 343.305(4) was created to inform motorists of their rights and consequences under the implied consent law, and this purpose was thwarted in his case.

¶11 We reject Pratt's argument, for three reasons. First, we are not at liberty to disregard the plain language of a statute when interpreting it. ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). WISCONSIN STAT. § 343.305(4) states that the "law enforcement officer shall read" a specific statement to the motorist. Nothing in the statute suggests an officer is to modify the warnings or give additional information to better fit the situation at hand. Instead, "under the statutory scheme, the police officer's role is simply to recite the warnings." ***State v. Geraldson***, 176 Wis. 2d 487, 497, 500 N.W.2d 415 (Ct. App. 1993).

¶12 Second, WIS. STAT. § 343.305(4) is not intended to require police to provide unlimited information to motorists. We have consistently held that motorists are not entitled to an explanation of anything on the form. ***Quelle***, 198 Wis. 2d at 280; *see also* ***State v. Reitter***, 227 Wis. 2d 213, 231, 595 N.W.2d 646 (1999). This is true even if the motorist is confused by the warnings or asks for clarification. ***Quelle***, 198 Wis. 2d at 284. Indeed, we have cautioned officers that the best practice is to avoid providing any additional information beyond that contained on the form. ***Geraldson***, 176 Wis. 2d at 496. Pratt's argument that the

officer should have clarified the form by giving Pratt additional information about the offense he was arrested for is directly contrary to this longstanding case law.[4]

¶13 Finally, we disagree with Pratt's assertion that the warnings as written thwart the purpose of the statute. The Informing the Accused form does not identify any specific penalties; instead, it states only that "[i]f you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties." That statement is correct. We acknowledge that the information in the first paragraph, combined with the proper legal research, might have allowed Pratt to derive a mistaken impression about the length of the revocation he faced if he refused to take the test. However, the Informing the Accused form is not a starting point for research by attorneys; it is a form read to citizens who have been arrested for alcohol-related traffic offenses. Nothing on the form itself misinformed Pratt of the potential consequences of refusing the test.

By the Court.—Judgment affirmed.

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

[4] Pratt also relies on ***State v. Piddington***, 2001 WI 24, ¶36, 241 Wis. 2d 754, 623 N.W.2d 528. However, ***Piddington*** dealt with the method used to convey the warnings when, for example, the motorist is deaf or does not understand English. ***Id.***, ¶28 n.17. Under those circumstances, the officer is required to make reasonable efforts to give the motorist "the same opportunity to understand the implied consent warnings as a hearing, English-speaking" motorist. ***Id.***, ¶25 n.14, ¶28. Nothing in ***Piddington*** altered the rule that officers are not required to provide information in addition to that on the form.