COURT OF APPEALS DECISION DATED AND FILED

September 28, 2010

A. John Voelker
Acting 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. 2010AP976 **Cir. Ct. No. 2009TR3245**

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

IN THE MATTER OF THE REFUSAL OF ANDREW M. LAFOND:

DOOR COUNTY,

PLAINTIFF-RESPONDENT,

V.

ANDREW M. LAFOND,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Door County: D. T. EHLERS, Judge. *Affirmed*.

¶1 PETERSON, J.[1] Andrew M. LaFond appeals an order revoking his operating privileges because of his failure to submit to a chemical blood test in violation of WIS. STAT. § 343.305(10). LaFond argues the County violated his due process and equal protection rights by failing to give him reasonable notice that a law enforcement officer can forcibly take a blood sample after an arrestee refuses to give it willingly. We affirm.

¶2 The facts are undisputed. On September 27, 2009, Door County Deputy Sheriff Brad Shortreed arrested LaFond for operating a motor vehicle while under the influence of an intoxicant, contrary to WIS. STAT. § 346.63(1)(a). Shortreed transported LaFond to a local hospital for a blood alcohol content test. At the hospital, Shortreed read LaFond the "Informing the Accused" form, as required by WIS. STAT. § 343.305(4). The form states:

> 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

[1] This appeal is decided by one judge pursuant to Wis. Stat. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

> 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.[2]

LaFond refused to consent to the blood test. Shortreed issued a notice of intent to revoke operating privileges based on LaFond's refusal. Shortreed then explained that LaFond's blood could be tested whether he consented or not,[3] and LaFond acquiesced to the test.

¶3 LaFond subsequently requested a refusal hearing. He later moved to dismiss the refusal proceeding, arguing the County had violated his constitutional rights to due process and equal protection by failing to inform him that his blood could be tested even if he refused consent. The trial court concluded LaFond had no constitutional or statutory right to be provided with this information. The court determined LaFond's refusal was improper, and ordered his license revoked. LaFond now appeals.

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[2] The "Informing the Accused" form restates verbatim the language of WIS. STAT. § 343.305(4), except that it omits one clause that is only applicable to "the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person."

[3] In ***State v. Bohling***, 173 Wis. 2d 529, 533-34, 494 N.W.2d 399 (1993), the supreme court held that the dissipation of alcohol from a person's bloodstream constitutes a sufficient exigency to justify a permissible warrantless blood draw at the direction of a law enforcement officer under the following circumstances: (1) the blood draw is taken to obtain evidence of intoxication from a person lawfully arrested for a drunk driving related violation or crime; (2) there is a clear indication that the blood draw will produce evidence of intoxication; (3) the method used to take the blood sample is a reasonable one and performed in a reasonable manner; and (4) the arrestee presents no reasonable objection to the blood draw.

LaFond concedes that Shortreed had authority to obtain a ***Bohling*** warrantless blood draw after LaFond refused to consent.

¶4 On appeal, as in the trial court, LaFond contends the County violated both his due process and equal protection rights. However, LaFond does not explain how the County's actions violated his right to equal protection. He does not support his equal protection argument with any legal reasoning or authority. We deem this argument undeveloped and decline to address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to address issues that are inadequately briefed).

¶5 Whether the County violated LaFond's right to due process raises a question of constitutional fact, to which we apply a two-step standard of review. *See* ***State v. Tulley***, 2001 WI App 236, ¶5, 248 Wis. 2d 505, 635 N.W.2d 807. First, we uphold the trial court's findings of fact unless they are clearly erroneous. ***Id.*** Second, we independently review the trial court's application of constitutional principles to those facts. ***Id.*** Because the underlying facts of this case are undisputed, we independently review the trial court's determination that the County did not violate LaFond's due process rights. *See* ***State v. LeQue***, 150 Wis. 2d 256, 265-66, 442 N.W.2d 494 (Ct. App. 1989).

¶6 Every driver in Wisconsin is deemed by statute to have given implied consent to a blood alcohol content test upon request by a law enforcement officer. *See* WIS. STAT. § 343.305(2). An accused has no constitutional or statutory right to refuse the test. ***State v. Crandall***, 133 Wis. 2d 251, 255, 394 N.W.2d 905 (1986). Thus, a refusal for any reason other than physical disability or disease invokes legal consequences. *See* WIS. STAT. § 343.305(9)(a)5.c., (10). There is no constitutional requirement that the accused be informed of these consequences. *See* ***Crandall,*** 133 Wis. 2d at 259-60. However, there is a statutory requirement that the accused be provided the information set forth in § 343.305(4). *See supra*, ¶2. If the accused has not received the statutorily

required information, a refusal to submit to a blood alcohol test may not result in the revocation of operating privileges. ***In re Smith***, 2008 WI 23, ¶64, 308 Wis. 2d 65, 746 N.W.2d 243.

¶7 In this case, it is undisputed that Shortreed properly read LaFond the information required by WIS. STAT. § 343.305(4). The sole issue is whether LaFond had a due process right to be provided with additional information, namely that a blood sample could be forcibly taken even if LaFond refused consent.

¶8 Our supreme court has held that the information required by what is now WIS. STAT. § 343.305(4) is all that is required to meet due process requirements. ***Crandall***, 133 Wis. 2d at 259-60.[4] Thus, the "Informing the Accused" form adequately informed LaFond of his rights and responsibilities under the Wisconsin implied consent law. *See* ***id.*** at 259. The form warned LaFond that refusal would result in his license being revoked and would subject him to other penalties. This warning "made it clear that refusing the test was not a 'safe harbor,' free of adverse consequences." ***Id.*** at 255 (quoting ***South Dakota v. Neville***, 459 U.S. 553, 566 (1983)) (one set of internal quotation marks omitted). LaFond knew that refusal carried consequences, and there was no requirement that he be specifically informed of all the possible consequences. *See* ***id.*** at 259-60.

[4] Wisconsin's implied consent law has been renumbered and rewritten since ***Crandall*** was decided. At that time, the "Informing the Accused" form only warned the accused that refusal to consent to the blood test would result in license revocation. *See* ***Crandall***, 133 Wis. 2d at 253. Crandall argued she had a due process right to be informed her refusal could be used against her at trial. ***Id.*** at 254. The supreme court held that she had no such right and that the "Informing the Accused" form satisfied due process requirements. ***Id.*** at 259-60. The current version of WIS. STAT. § 343.305(4) incorporates the warning the supreme court held unnecessary in ***Crandall***.

Because LaFond was provided all the information required by § 343.305(4) before he refused to submit to the blood alcohol test, we conclude his due process rights were not violated.

By the Court.—Order affirmed.

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