

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**JULY 10, 1996**

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. 95-3359**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**GLEN PROEBER, JR.,**

**Defendant-Appellant.**

APPEAL from an order of the circuit court for Waukesha County:  
MARIANNE E. BECKER, Judge. *Affirmed.*

ANDERSON, P.J. Glen Proeber, Jr., appeals from an order revoking his operating privileges for a period of one year, pursuant to § 343.305, STATS. We conclude that the trial court correctly determined that Officer David Wanie's warnings were appropriate and that Proeber's refusal was improper. Accordingly, we affirm.

The facts in this case are undisputed. On February 23, 1995, at 12:50 a.m., Wanie observed Proeber's vehicle weaving, stopping in the middle of an intersection and traveling at a low rate of speed without illuminated headlights. After Wanie stopped the vehicle, he detected a scent of alcohol in the car and proceeded to administer a variety of field sobriety tests to determine whether Proeber was intoxicated. After Proeber failed the field sobriety tests, he was arrested and brought to the City of New Berlin Police Department for booking.

At the police department, Wanie read the Informing the Accused Form (the form) to Proeber advising him of his right to consent to a chemical test to determine his blood alcohol content. Wanie read the implied consent law's requirements for persons holding both regular and commercial driver's licenses, pursuant to § 343.305(4) and (4m), STATS. The form identified which sections of the law applied to holders of regular and commercial driver's licenses, Sections A and B respectively. After Wanie read the form to Proeber, Proeber refused to submit to testing. Wanie served Proeber with a notice of intent to revoke his operating privileges. Proeber then demanded a hearing regarding the revocation, and a refusal hearing was scheduled. At the conclusion of the hearing, the trial court determined that Proeber was properly informed under the implied consent law and ordered that Proeber's operating privileges be revoked. Proeber appeals.

Proeber asserts that the trial court erred because Wanie did not "substantially comply" with § 343.305(4m), STATS. Since Proeber did not

actually hold a commercial driver's license, he contends that it was not necessary to read him the portion of the form applicable to persons with commercial driver's licenses. Proeber argues that this extraneous information confused him and caused him to refuse testing, which led to the revocation of his driver's license.

The facts in this appeal are undisputed. The application of a statute to a particular set of facts is a question of law, which we review de novo. *DOR v. Sentry Fin. Servs. Corp.*, 161 Wis.2d 902, 910, 469 N.W.2d 235, 238 (Ct. App. 1991).

This court has recently addressed Proeber's concerns. In *County of Ozaukee v. Quelle*, 198 Wis.2d 269, 280, 542 N.W.2d 196, 200 (Ct. App. 1995), this court set forth a stringent three-part test to assess the adequacy of the warning process under the implied consent law:

- (1) Has the law enforcement officer not met, or exceeded his or her duty under §§ 343.305(4) and 343.305(4m) 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?

*Id.* at 280, 542 N.W.2d at 200.

The first question is whether Wanie exceeded his duty under § 343.305(4) and (4m), STATS., to provide information to Proeber. We conclude that he did not. Section 343.305(4m) requires that if the subject holds a

commercial driver's license, then the information pertaining to persons holding such a license must be read. It does not say, however, as Proeber insists, that an officer cannot read that portion of the information to those who only hold a regular license. Proeber understood the information regarding persons holding a regular license. He was also informed that the information in Section B only applied to persons holding a commercial driver's license. There is no restriction prohibiting an officer from reading commercial license information to persons holding a regular license.

The sole restriction that the statute provides would become applicable if Proeber did in fact hold a commercial license. In such a scenario, pursuant to § 343.305(4m), STATS., Wanie would be required to inform the holder of a commercial license of his or her rights under the implied consent law. Proeber fails part one of the three-part test.

The second question under *Quelle* is whether the information provided by Wanie was misleading. We conclude that it was not. Proeber testified that he knew he did not hold a commercial license, that he was not driving a commercial vehicle at the time of the arrest and that Wanie informed him that the information regarding commercial licenses did not apply to him. We do not agree that giving commercial motor vehicle warnings to noncommercial operators creates confusion. These warnings simply advise an operator, whether commercial or noncommercial, that the implied consent law applies to both. *Village of Elm Grove v. Landowski*, 181 Wis.2d 137, 144, 510 N.W.2d 752, 755 (Ct. App. 1993). Therefore, the information pertaining to

persons holding commercial licenses, which was read to Proeber, could not be found to be misleading since he did not hold a commercial license. Proeber also fails part two of the three-part test.

Under the remaining section of the three-part test, the question is whether Wanie's alleged failure to properly inform Proeber affected Proeber's decision regarding chemical testing. Since Wanie informed Proeber that the information regarding commercial licenses did not apply to him, Proeber cannot establish that this information impaired his choice to submit to chemical testing. The fact that Proeber may have experienced confusion regarding the commercial driving license portion of the form does not change the fact that he improperly refused to submit to the test. Proeber fails the final portion of the three-part test.

*By the Court.* – Order affirmed.

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