COURT OF APPEALS
DECISION
DATED AND RELEASED

May 28, 1997

NOTICE

No. 96-3200

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

THOMAS J. HAYDOCK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed.*

SNYDER, P.J. Thomas J. Haydock appeals from a trial court order finding that his refusal to submit to a blood alcohol test was unreasonable. As a result, Haydock's operating privileges were revoked for a one-year period. On appeal, Haydock argues that his refusal was reasonable because the arresting officer provided him with inaccurate information when, in addition to reading the Informing the Accused form, the officer suggested that the penalties for refusing a

chemical test in Wisconsin were the same as in Illinois. We reject Haydock's contention and affirm.

Haydock, an Illinois resident, was arrested for operating while under the influence on June 9, 1996, in the Town of Bloomfield in Walworth County. Officer Clayton Kreitlow, who conducted the field sobriety tests, read Haydock the Informing the Accused form. Kreitlow requested that Haydock submit to an evidentiary breath test. Haydock refused. Kreitlow gave Haydock a citation for one count of unsafe lane deviation, one count of operating a motor vehicle while under the influence of an intoxicant, and a notice of intent to revoke operating privileges based on his refusal. Haydock requested a hearing to challenge the reasonableness of the refusal.

Kreitlow testified at the refusal hearing that after arresting Haydock he read him each paragraph of the Informing the Accused form. Kreitlow recalled that Haydock asked him "how Illinois and Wisconsin drunk driving arrests affected each other." Kreitlow could not recall any specific questions Haydock may have posed relating to the topic or whether he provided Haydock with an answer. Kreitlow testified that he was not familiar with the OWI laws and penalties in the state of Illinois.

Haydock confirmed Kreitlow's testimony that he was read the Informing the Accused form. However, Haydock additionally testified that Kreitlow informed him that the penalties for refusing a breath test in Wisconsin were the same as in Illinois and that this information influenced his decision to refuse the test. Haydock's attorney then noted that the refusal penalty in Illinois is a six-month revocation as opposed to a one-year revocation in Wisconsin.

At the close of the hearing, the trial court observed that "as a result of his refusal, apparently an administrative suspension was ordered in Wisconsin and that has the effect in Illinois of a six-month suspension." The trial court then denied Haydock's motion to find the refusal reasonable. The trial court offered the following: "I don't think [Kreitlow] has to go beyond Informing the Accused, and if he does, he said the penalties are the same … six months … so I believe he properly informed [Haydock]. There is no understatement." Haydock now appeals, renewing his argument that Kreitlow understated the penalty for the refusal.

Haydock argues that Kreitlow's comment that the penalties for a refusal were the same in Wisconsin and Illinois was "additional, inaccurate information, which understated the penalties for refusing an evidentiary chemical test in the state of Wisconsin" and that as a result Haydock's refusal to provide a breath sample was reasonable. This requires us to construe § 343.305(4), STATS., to determine whether the officer's actions substantially complied with the statutory guidelines. *See* ***State v. Sutton,*** 177 Wis.2d 709, 713, 503 N.W.2d 326, 328 (Ct. App. 1993). The test of substantial compliance is whether there was "'actual compliance in respect to the substance essential to every reasonable objective of the statute.'" *See* ***State v. Wilke,*** 152 Wis.2d 243, 250, 448 N.W.2d 13, 15 (Ct. App. 1989) (quoted source omitted).

The legislature has clearly expressed its intent that a person be informed of all the information contained in § 343.305(4), STATS., if the individual's license is to be revoked for a refusal. *See* ***Wilke***, 152 Wis.2d at 251, 448 N.W.2d at 16. In the instant case, it is undisputed that Kreitlow read Haydock an Informing the Accused form that complied with all of the requirements of § 343.305. Therefore, substantial compliance with the statutory mandates is

assured. The question presented is what effect, if any, did Kreitlow's statement to Haydock have when he was asked how the penalties compared between the two states.

First, we note that only Haydock testified with specificity as to Kreitlow's comments. While Kreitlow admitted that Haydock had asked him some questions, he was unable to remember how he had responded. Haydock, on the other hand, remembered very specifically that the officer told him that "Wisconsin laws are the same as Illinois laws" and also testified that this statement influenced his decision to refuse to submit to the Intoxilyzer test. We accept Haydock's recollection of what Kreitlow told him.

Haydock argues that because Illinois law requires a mandatory six-month suspension for a refusal, whereas in Wisconsin it is a year, the officer's statement that the laws are the same actually *understated* the possible penalties. Therefore, he argues, under the reasoning of ***Wilke*** and ***Sutton,*** substantial compliance with the statute was not achieved and the resulting revocation should be reversed by this court. We disagree.

In ***Wilke,*** we concluded that the plain language of § 343.305(4), STATS., requires that there be compliance with the "'substance essential to every reasonable objective of the statute.'" ***Wilke,*** 152 Wis.2d at 250, 448 N.W.2d at 15 (quoted source omitted). The warning given the accused in that case failed to inform her that she would be subject to penalties in addition to license suspension if it were found that her BAC was 0.10% or more. *See* ***id.*** at 247, 448 N.W.2d at 14. Because of this omission, we concluded that subsection (4) had not been complied with, and no action could be taken on the accused's driving privileges. *See* ***id.*** at 248-49, 448 N.W.2d at 15.

In ***Sutton,*** the arresting officer erroneously told the defendant that a possible jail sentence was a consequence of a refusal to submit to chemical testing. *See* ***Sutton,*** 177 Wis.2d at 714, 503 N.W.2d at 328. The defendant attempted to argue that this error was analogous to the error in ***Wilke*** and therefore required reversal of the revocation. *See* ***id.*** We concluded there that because the error was an overstatement of the potential penalties and there was no prejudice to the defendant because he still refused to take the test, there was substantial compliance with the statute. *See* ***id.*** at 715, 503 N.W.2d at 328.

Haydock now argues that consideration of these two decisions mandates that we conclude that Kreitlow's statement was an understatement of the potential penalties Haydock might face for a refusal, and therefore substantial compliance with the statute was not achieved. Accepting as true Haydock's statement that Kreitlow told him the penalties for a refusal are the same in Wisconsin as in Illinois, under the facts here presented that was not an understatement. As an Illinois resident, Haydock's refusal and the administrative suspension of his license by Wisconsin ultimately results in the imposition of Illinois penalties. Furthermore, Haydock failed to offer any evidence that he even knew what penalties he might be facing in Illinois as a result of a refusal. Kreitlow's comments in this instance did not preclude substantial compliance with the statutory mandates.

The statute and case law require that an individual be informed of the fact that by refusing to submit to a chemical test the individual will be subject to penalties. Haydock was so informed. The Informing the Accused form does not specify what additional penalties may be imposed, nor does § 343.305(4), STATS., require that the officer inform the individual of exactly what penalties may be imposed.

In sum, we conclude that the reading of the Informing the Accused form operated as substantial compliance with the legislative mandates. Any additional comments Kreitlow made were not understatements because Haydock offered no testimony that he knew what the Illinois penalty was and in fact Haydock was ultimately subject to the penalties of his state of residence.[1] Finally, the reading of the Informing the Accused form relayed to Haydock that by refusing the test he was leaving himself open to penalties in addition to the administrative suspension.

By the Court.—Order affirmed.

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

[1] The trial court also noted that "as a result of his refusal, apparently an administrative suspension was ordered in Wisconsin and that has the effect in Illinois of a six-month suspension."