COURT OF APPEALS
DECISION
DATED AND FILED

August 17, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0481

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LAWRENCE R. ILLINGWORTH, SR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

SCHUDSON, J.[1] Lawrence R. Illingworth, Sr., appeals from an order finding his refusal to submit to a chemical test, as required by § 343.305, STATS., Wisconsin's Implied Consent Law, unreasonable. Illingworth claims that

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

§ 343.305(4) deprives suspected drunk drivers of their due process rights. This court rejects Illingworth's claim and affirms the circuit court order.

On September 5, 1998, Milwaukee County Sheriff's Deputy Sandra Welsher stopped and detained Illingworth for operating a motor vehicle while under the influence of an intoxicant. Deputy Welsher read Illingworth the "Informing the Accused" Form and asked him to submit to a chemical test of his blood. Illingworth refused to submit to the test. At his refusal hearing, Illingworth raised his constitutional argument, which the circuit court rejected. The circuit court then revoked Illingworth's motor vehicle operating privilege for one year.

Illingworth contends that Wisconsin's Implied Consent Law is "unconstitutional on its face and its application in that it underinform[s] accused individuals about the consequences of submitting to a chemical test while erroneously over-informing them of consequences for refusing a chemical test." Thus, Illingworth claims that the statute deprives a test subject of the right to make an "informed choice" to either take or refuse the test.

The focus of Illingworth's appeal is the required warning language in § 343.305(4), STATS., which provides, in part:

> INFORMATION. At the time that a chemical test specimen is required under sub. (3) (a) or (am), the law enforcement officer shall read the following to the person from whom the test specimen is requested:
>
> "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.* The test results or the fact that you refused testing can be used against you in court.

(Emphasis added.)

Relying on ***South Dakota v. Neville***, 459 U.S. 553 (1983), in which the United States Supreme Court recognized that a chemical test subject must be correctly apprised of the consequences of refusing to submit to chemical testing, Illingworth contends that because the highlighted language understates the consequences of submitting to the test and overstates the consequences of refusing to submit to a chemical test, the statute unconstitutionally violates ***Neville***'s directive. This court cannot agree.

First, contrary to Illingworth's premise, ***Neville*** does not support a constitutional due process challenge to Wisconsin's Implied Consent Law. After analyzing the ***Neville*** decision, our supreme court held that the United States Supreme Court rejected conferring constitutional stature to the analysis of a state's refusal statute and then concluded that in Wisconsin "[t]he right to refuse a blood alcohol test is simply a matter of statutory privilege." ***State v. Crandall***, 133 Wis.2d 251, 255, 394 N.W.2d 905, 906 (1986).

Second, the due process issue Illingworth presents here has already been addressed in ***Crandall***, where our supreme court held that the information required by subsection (4) is all that is needed to meet due process requirements. *See* ***id.*** at 259-60, 394 N.W.2d at 908; ***State v. Reitter***, ___ Wis.2d ___, ___, 595 N.W.2d 646, 652 (1999) ("Section 343.305(4) requires officers to advise the

accused about the nature of the driver's implied consent, and the "Informing the Accused" Form meets the statutory mandate of alerting defendants of the law and their rights under it. The law requires no more than what the implied consent statute sets forth.")[2]. This court is bound by supreme court precedent. *See* ***Livesey v. Copps Corp.***, 90 Wis.2d 577, 581, 280 N.W.2d 339, 341 (Ct. App. 1979).

Finally, this court rejects Illingworth's contention that § 343.305(4), STATS., fails to adequately inform drivers and thereby misleads them into making an uninformed choice as to whether to submit to the chemical test. Pursuant to our statutes, a Wisconsin driver has no choice with respect to granting his or her consent to take the chemical test. *See* ***State v. Neitzel***, 95 Wis.2d 191, 201, 289 N.W.2d 828, 833 (1980). Consequently, a motor vehicle operator is deemed by law to have already consented to submitting to a test upon applying for and receiving a driver's license. *See* ***id.*** Informing a driver that he or she may lose his or her driving privilege by refusing a chemical test is sufficient to satisfy the Due Process Clauses of the United States and Wisconsin Constitutions. *See* ***Crandall***, 133 Wis.2d at 256, 394 N.W.2d at 907; *accord* ***Reitter***, ___ Wis.2d at ___, 595 N.W.2d at 652. Although Wisconsin recognizes a statutory right to refuse a chemical test when there has not been substantial compliance with the requirements in § 343.305(4), *see* ***State v. Schirmang***, 210 Wis.2d 324, 332, 565

[2] Other constitutional challenges to Wisconsin's Implied Consent Law have also failed. *See* ***State v. Crandall***, 133 Wis.2d 251, 394 N.W.2d 905 (1986) (holding that the Due Process Clause of the Wisconsin Constitution does not require that a suspect be forewarned that a refusal to submit to a chemical test could be used as evidence against him or her); ***County of Milwaukee v. Proegler***, 95 Wis.2d 614 , 291 N.W.2d 608 (Ct. App. 1980) (the failure to inform a suspect at the time of arrest that his or her operator's license can be revoked upon a plea of guilty does not violate due process); ***State v. Nordness***, 128 Wis.2d 15, 381 N.W.2d 300 (1986) (procedural due process does not require a determination at a refusal hearing that the defendant was the driver of the vehicle).

N.W.2d 225, 229 (Ct. App. 1997), Illingworth does not present that issue on appeal.

By the Court.—Order affirmed.

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