COURT OF APPEALS
DECISION
DATED AND FILED

February 7, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-1654

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES W. MCCONE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. *Affirmed.*

¶1 NETTESHEIM, J.[1] James W. McCone appeals from an order finding that he improperly refused to submit to a chemical test pursuant to the implied consent law. McCone contends that his refusal was proper because the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

arresting officer did not provide him with a written copy of the Informing the Accused form before asking him to submit to the test. Because the statutes and the administrative code do not support McCone's argument, we affirm the order.

FACTS

¶2 The facts are not in dispute. On November 7, 1999, Officer Ray Olig arrested McCone for operating a motor vehicle while intoxicated. Olig transported McCone to St. Agnes Hospital in the City of Fond du Lac for blood testing under the implied consent law, WIS. STAT. § 343.305. When they arrived at the hospital parking lot, Olig read the Informing the Accused form to McCone pursuant to § 343.305(4). In response, McCone refused to submit to the blood test. Olig then transported McCone to the Fond du Lac County Jail where he issued McCone a Notice of Intent to Revoke Operating Privilege form.

¶3 McCone requested and received a hearing as to whether his refusal was proper under the implied consent law. He argued that Olig was required to first provide him with a copy of the Informing the Accused form before requesting that he submit to a chemical test. McCone based this argument on the language of the Notice of Intent to Revoke form which states, in relevant part, that the law enforcement officer "complied with s. 343.305(4) Wis. Stats. by reading to the person the indicated portions of [the Informing the Accused form] and *provided that person a copy of [the form]*." (Emphasis added.)

¶4 The trial court rejected McCone's argument. The court noted that Olig had complied with the informing the accused directives of WIS. STAT. § 343.305(4) by reading the form to McCone. In addition, the court saw nothing in the language of the Notice of Intent to Revoke form which placed a temporal

duty on the officer to provide the accused with a copy of the Informing the Accused form before requesting a chemical test. McCone appeals.

DISCUSSION

¶5 McCone contends that the language contained in the Notice of Intent to Revoke form constitutes a policy determination by the Department of Transportation (DOT) that the law enforcement officer must provide an accused with a written copy of the informing the accused information before requesting a chemical test. He bases the argument on WIS. STAT. § 343.305(11) which directs that "[t]he department shall promulgate rules under ch. 227 necessary to administer [the implied consent law]." But the problem with this argument is that McCone points us to no *rule* promulgated by the DOT that supports his argument. And our independent examination of the administrative code has failed to unearth any such rule. The DOT Notice of Intent to Revoke form, standing alone, does not constitute an administrative rule. So on this threshold basis, we reject McCone's argument.

¶6 Moreover, we agree with the trial court that Olig fully complied with the law when he orally provided McCone with the informing the accused information required by WIS. STAT. § 343.305(4). This statute reads in part, "[a]t the time that a chemical test specimen is requested … the law enforcement officer shall *read* the following to the person from whom the test specimen is requested." (Emphasis added.) This statute requires that the statutory information be read. It does not require that the information be reduced to writing and a copy provided to the accused. And since the DOT has not enacted any rule which requires this additional action by the law enforcement officer, we uphold the trial court's ruling on this further ground.

¶7 McCone says that providing an accused with a written copy of the informing the accused information better serves the purposes of the implied consent law because it will facilitate the gathering of evidence against accused drunk drivers, *see* ***Scales v. State***, 64 Wis. 2d 485, 496, 219 N.W.2d 286 (1974), and ensure that the accused makes an intelligent and informed decision. We do not quarrel with this argument. We simply hold that the statutes and the administrative code do not accommodate it.

¶8 We affirm the order holding that McCone's refusal to submit to a chemical test was improper.

By the Court.—Order affirmed.

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