COURT OF APPEALS
DECISION
DATED AND RELEASED

JULY 19, 1995

No. 95-0377

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RANDY R. MERTZ,

Defendant-Appellant.

APPEAL from an order of the circuit court for Sheboygan County: TIMOTHY M. VAN AKKEREN, Judge. *Affirmed.*

ANDERSON, P.J. We affirm the order of the trial court revoking Randy R. Mertz's operating privileges because of his unreasonable refusal to submit to a chemical test of his blood.[1] Mertz challenges the Informing the

[1] The appendix to the appellant's brief did not comply with the requirements of RULE 809.19(2), STATS., that provides in part:

> The appellant's brief shall include a short appendix providing relevant docket entries in the trial court, the findings or opinion of the trial court and limited portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

Accused form used because it advised him of information that pertained solely to those who hold commercial operator's licenses and he also contests the degree of reasonable suspicion the arresting officer had to justify his stop and detention. We conclude that Mertz's claims are without merit.

INFORMING THE ACCUSED FORM

Mertz was arrested approximately five months after the implied consent law was amended to dispense with the requirement that all suspected drunk drivers were to be told of potential consequences facing those who held a commercial operator's license.[2] Despite the passage of time, the arresting officer informed Mertz of the negative consequences of a refusal on a commercial operator's license.

(..continued)

Mertz's appendix included a copy of the Informing the Accused portions of the legislative history of 1993 and an excerpt of the arresting officer's testimony. However, the appendix failed to contain the trial court's decision on the claims raised in this court and it was necessary for this court to search the separate record for the trial court's reasoning. One of the reasons RULE 809.19(2) requires the trial court's reasoning to be in the appendix is that many members of this court read appeals away from the office and in order to properly consider the claims raised they need immediate access to the trial court's reasoning. Because the appellant's brief utterly fails to comply with even the most basic requirements for an appendix, a separate order has been issued imposing a penalty on appellate counsel.

[2] Effective April 30, 1994, 1993 WIS. ACT 315 amended § 343.305(4m), STATS., to limit the need to inform drivers of consequences faced by those who held commercial operator's licenses:

> INFORMATION RELATED TO COMMERCIAL MOTOR VEHICLES. If the person has possession of a commercial motor vehicle license or if the incident giving rise to the request for a sample under sub. (3) (a) or (am) is related to the driving, operating or being on duty time with respect to a commercial motor vehicle, at the time when a sample is requested under sub. (3) (a) or (am), the law enforcement officer shall orally inform the person of all of the following, in addition to the information provided under sub. (4) ….

On appeal, Mertz argues that the amendment to the implied consent law was a legislative fiat that the recitation of the commercial operator's license information should only happen when a commercial operator has been arrested and that this court may not step in and interpose its own interpretation of what constitutes compliance. He admits that he was not harmed or misled by the officer's unthinking use of the outmoded Informing the Accused form. He asks us to reverse the decision of the trial court because there must be consequences when an officer gives an alleged drunk driver correct information in excess of that required by the implied consent law.

This issue requires this court to apply an undisputed set of facts to a statute, thereby presenting a question of law to be reviewed de novo. ***State v. Zimmerman***, 185 Wis.2d 549, 554, 518 N.W.2d 303, 304 (Ct. App. 1994).

Mertz appears to be arguing that by furnishing useless commercial operator's license information, the arresting officer disoriented him, thereby prejudicing him. We begin by examining and viewing the entire statutory framework, the process and Mertz's unique characteristics as a continuum. *See* ***Village of Oregon v. Bryant***, 188 Wis.2d 680, 689, 524 N.W.2d 635, 639 (1994). Our goal is to give effect to the legislature's intent in implementing the implied consent law to "quash the effects of drunk driving." ***State v. Nordness,*** 128 Wis.2d 15, 34, 381 N.W.2d 300, 307-08 (1986). To that end, we generally give considerable weight to the state's interest as long as the means it employs to effect its interests are within statutory bounds. ***Id***. at 34, 381 N.W.2d at 308.

In ***State v. Piskula***, 168 Wis.2d 135, 140, 483 N.W.2d 250, 252 (Ct. App. 1992), we concluded that substantial compliance with the implied consent statute will suffice if it is actual compliance with every reasonable objective of the statute.[3] The reasonable objective of the implied consent statute is to inform drivers of their rights and penalties for either refusing to submit to a chemical test or for submitting to a chemical test which results in a prohibited alcohol concentration. ***Id***. at 140-41, 483 N.W.2d at 252. In ***State v. Sutton,*** 177 Wis.2d 709, 715, 503 N.W.2d 326, 328 (Ct. App. 1993), we ruled that when more information is given than required, there is substantial compliance unless the overstatement prejudices the defendant. Here, Mertz admits that he was not prejudiced by the extraneous information.

REASONABLE SUSPICION FOR THE STOP

Mertz has a quarrel with the arresting officer's articulated reason for stopping him. He insists that the stop which led to his arrest for drunk drinking was based merely upon a pretext and is violative of constitutional protections against unreasonable searches and seizures.

Whether the facts known by the officer at the time constitute reasonable suspicion to justify a traffic stop is a legal issue that we decide de novo. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

[3] Whether the decision in ***State v. Piskula***, 168 Wis.2d 135, 483 N.W.2d 250 (Ct. App. 1992), is "good" law was answered in the affirmative in ***Village of Oregon v. Bryant***, 188 Wis.2d 680, 687 n.5, 524 N.W.2d 635, 638 (1994). It is no longer possible for the conclusions of ***Piskula*** to be questioned by appellants or this court. *See* ***id.***

In this case, the arresting officer testified, and the trial court found that: when he first saw Mertz it was almost four o'clock; there were no other vehicles in the area; that he estimated that Mertz was approaching the intersection at too high of a rate of speed to safely negotiate the left-hand turn he was signaling; and, that when Mertz completed the left-hand turn it was too wide and he failed to turn into the same lane he started the turn from.[4] Given these findings, which are not clearly erroneous, *see* § 805.17(2), STATS., the officer had a nonpretextual reasonable suspicion that supported his stop of Mertz. Mertz's second claim of error is therefore frivolous.

By the Court.—Order affirmed.

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

[4] Section 346.31(3), STATS., specifies the methods that may be used to safely complete left-hand turns at intersections. The officer testified that Mertz's turn comprised a violation of this codified rule of the road.