

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 4, 1995

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. 95-1638-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PATRICIA L. KARCH,

Defendant-Appellant.

APPEAL from an order of the circuit court for Manitowoc County:
DARRYL W. DEETS, Judge. *Reversed.*

SNYDER, J. Patricia L. Karch appeals from an order revoking her driving privileges. The sole issue is whether her refusal to sign a hospital consent form constituted a refusal to submit to chemical testing under § 343.305, STATS., the implied consent statute. We conclude that the State does not have the authority under this statute to deem an individual's unwillingness to sign a hospital consent form before taking a blood test a refusal. Accordingly, we reverse.

Karch was stopped by Officer Michael Stone of the Manitowoc police department for allegedly operating a motor vehicle while under the influence of an intoxicant. After her arrest, Karch was transported to the Holy Family Memorial Medical Center, and there the Informing the Accused form was read to her. Stone asked Karch to submit to a blood test, and she agreed. Subsequent to this agreement but prior to the actual blood draw, Stone asked Karch to sign a hospital consent form.¹ According to the officer, Karch refused to sign the hospital form, but stated that she was not refusing the blood test. Following departmental policy, Stone filled out a Command for Hospital Testing form. Shortly thereafter, the blood sample was obtained without resistance. Nevertheless, Stone treated the matter as a refusal to submit to chemical testing, and Karch was given refusal paperwork.

A hearing was held on the reasonableness of Karch's refusal. The court found that the contents of the consent form were innocuous and determined that Karch's declining to sign the hospital consent form was properly deemed a refusal under § 343.305, STATS. This appeal followed.

The question before this court is whether Karch refused to submit to a blood test when she refused to sign a hospital consent form prior to the blood being drawn. This issue requires the application of the implied consent statute to a set of undisputed facts. This presents a question of law which we

¹ This form was one Holy Family Memorial Medical Center required an individual to sign before a blood sample could be taken.

review independently of the trial court. *Gonzalez v. Teskey*, 160 Wis.2d 1, 7-8, 465 N.W.2d 525, 528 (Ct. App. 1990).

Section 343.305(2), STATS., requires any person so requested to submit to a blood, breath or urine test in order to determine the presence and/or quantity of alcohol, controlled substances or a combination thereof. The individual has one obligation after arrest—to submit to a chemical test if requested. *See* § 343.305(9).

If an individual is deemed to have refused to take a test, the person may request a hearing on the refusal under § 343.305(9)(a)4, STATS. The issues at the hearing are limited to the following:

- 1) Whether there was probable cause to arrest the defendant;
- 2) Whether the defendant refused to permit the test;
- 3) Whether the officer complied with § 343.305(4), STATS., which requires the reading of the Informing the Accused form;
- 4) Whether there was a medical reason for the defendant's refusal.

See § 343.305(9)(a)5.a-c. The supreme court has stated that the issues at a refusal hearing are strictly limited to these four and no more. *State v. Nordness*, 128 Wis.2d 15, 26, 381 N.W.2d 300, 304 (1986).

Applying *Nordness*, we conclude that the State was without power to impose as a condition precedent the signing of a hospital consent form. Such a form, required by a third party, is instituted solely to protect the hospital from liability arising from the failure to obtain consent before treating

an individual. This form is the creation of the hospital, not the legislature. As is clear from the record, the Manitowoc police department has a procedure for dealing with an individual's refusal to sign a hospital consent form.² This procedure allows for the timely collection of the blood sample regardless of the individual's willingness to sign the hospital form.

It should be noted that the facts elicited at the refusal hearing do not suggest that Karch was at all uncooperative after her arrest, other than her refusal to sign the hospital consent form.³ When asked by the officer to submit to chemical testing, Karch acquiesced. When presented with the hospital consent form, Karch declined to sign any paperwork, but reiterated that she was not refusing the blood test. Karch was cooperative when the blood sample was drawn.

We conclude that without any other evidence of refusal to submit to the requested blood test, Karch's failure to sign the hospital consent form cannot be considered a refusal under § 343.305, STATS. Therefore, we reverse.

By the Court. – Order reversed.

² The Manitowoc police department has a policy that if an individual on second or subsequent OWI offenses refuses to submit to a blood test, the officer fills out a Command for Hospital Testing form, which requires the hospital to do the test because the “exigency of the requested test is so great that a delay would result in the loss or destruction of the evidence sought thereby.”

³ On appeal, the State argues that since Stone testified that he had to ask Karch “four or five times” whether she would take the blood test, that delay constituted a refusal. The State cites *State v. Neitzel*, 95 Wis.2d 191, 289 N.W.2d 828 (1980), for this proposition. *Neitzel*, however, referenced “delay” only in the context of conferring with counsel. See *id.* at 197, 289 N.W.2d at 832. The record is clear that any initial delay was countenanced by Stone. Additionally, Stone testified that when Karch declined to sign the hospital consent form, “I told her that since she was refusing to sign the form, we would have to treat this as a refusal”

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