STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2019AP000146-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANTHONY J. MADLAND,

Defendant-Appellant

On Appeal from a Judgment of Conviction
Entered in Dunn County Circuit Court,
Judge James M. Peterson, Presiding

BRIEF OF PLANTIFF - RESPONDENT

RENEE M. TABER
Assistant District Attorney
State Bar #1103475

Attorney for Plaintiff-Respondent
Dunn County
District Attorney's Office
615 Stokke Pkwy, Ste 1700
Menomonie, Wisconsin 54751
(715) 232-1687
(715) 232-6886 (Fax)
renee.taber@da.wi.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Wisconsin Statutes

Cases

STATEMENT OF THE ISSUE

Did Madland request a different primary test, other than the blood test, rather than requesting an alternate test?

The circuit court correctly ruled "Yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication. The issue may be resolved by applying well-established legal principles to the facts of this case.

STATEMENT OF THE FACTS

The State stipulates the facts as provided by the defendant – appellant.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY DENIED MADLAND'S MOTION TO SUPPRESS EVIDENCE.

The circuit court correctly denied Madland's motion to suppress evidence when it concluded the "only reasonable interpretation" is that Deputy Shields conveyed that "you have to take the blood test before you can get another test."[1]

A. Relevant Law and Standard of Review

The standard of review of trial court decisions on motions to suppress is well established. "'Whether evidence should be suppressed is a question of constitutional fact.'" *State v. Johnson*, 2007 WI 32, ¶ 13, 299 Wis. 2d 675, 729 N.W.2d 182,

[1] *See* 66:9

quoting *State v. Knapp*, 2005 WI 127, ¶ 19, 285 Wis. 2d 86, 700 N.W.2d 899. "A finding of constitutional fact consists of the circuit court's findings of historical fact, and its application of these historical facts to constitutional principles." *Id.*, citing *State v. Turner*, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). An appellate court reviews findings of fact under the clearly erroneous standard, and the application of those facts to constitutional principles independently. *Id.*

B. The circuit court properly found that Madland requested a different primary test rather than an alternate test.

"Although Wis. Stat. § 343.305(4) and (5) use the term "alternative test," it is clear from these provisions that the accused does not have a right to choose a test *instead of* the one the officer asks him or her to take; rather, the 'alternative test' is *in addition to* that test." *State v. Schmidt*, 2004 WI App 235, ¶ 11, 277 Wis. 2d 561, 569, 691 N.W.2d 379, 383 (emphasis original); *See, e.g., State v. Piddington,* 2001 WI 24, ¶ 51, 241 Wis.2d 754, 623 N.W.2d 528 ("second, alternative test"); *State v. Renard,* 123 Wis.2d 458, 460, 367 N.W.2d 237 (Ct.App.1985) ("additional test").

In the unpublished, but persuasive case, *State v. Tollaksen*, No. 2012AP778-CR, unpublished slip op. (Ct. App. Jan. 10, 2013), the court found that Tollaksen requested a different test, however, the circuit court made a reasonable determination that Tollaksen requested a different test instead of, and not in addition to, the blood draw because he did not like needles. The court held that was not a definitive request for an additional test. *Id.* at ¶ 14

Moreover, in the unpublished, but persuasive case, *Village of Pleasant Prairie v. Brunello*, No. 2010AP1124-FT, unpublished slip op. (Ct. App. Sept. 29, 2010), the court concluded that Brunello's statement that he wanted a blood test was not a request for an alternate test, but a statement of his preference for the first test. The inquiry was made when the officer was explaining Brunello's obligation to submit to a chemical test under the implied consent law. The officer responded to Brunello's request by explaining that the Pleasant

Prairie police department had designated the breath test as the primary test and the blood test as the alternate test. ¶ 11. When it appeared that Brunello was adamant about wanting the blood test first, the officer took the time to explain to him that the blood test was not offered as the first test. After this explanation, Brunello consented to the breath test. The trial court drew the reasonable inference that Brunello was attempting to designate the primary test that he would submit to. *Id.* The court found that Brunello's request for a blood test could not be elevated to a request for an alternate test when, after completing the breath test, Brunello never made a request for an alternate test. *Id.*

Here, like *Tollaksen,* Madland just did not like needles and did not want his blood drawn with a needle. He did not definitively request an additional test. Like *Brunello*, Madland did not want the primary test that the agency was prepared to administer and had designated as its primary test, which was the blood test.

Madland's question and comments to Deputy Shields regarding the possibility of not getting a needle stuck in his arm clearly showed that he understood Deputy Shields asked him to take a blood test and that he was not requesting an alternate test, but a different primary test. (65: 20, 22, 23, & 24) This was further illustrated by Deputy Shields asking Madland, after the blood draw, if he wanted another test, and Madland responded "what's the point." (65:17)

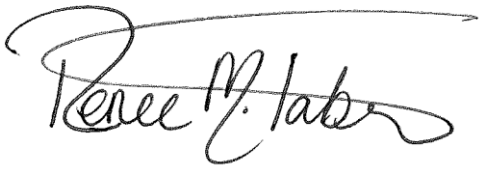
Contrary to the defense's assertion that Madland expressly requested alternative testing, the circuit court held that Deputy Shields conveyed that Madland had to "take the blood test before" he could "get another test." (66:9) The circuit reasoned that "if you look at the information of the Informing the Accused that was conveyed and the request of the blood test and so forth, that is the only reasonable interpretation." (66:9)

CONCLUSION

Ultimately, did Madland request a different primary test rather than an alternate test? The circuit court correctly held "yes;" thus, properly denying Madland's motion to suppress evidence. For the reasons set forth above, the State respectfully requests that this Court uphold the circuit court's denial of Madland's motion to suppress the evidence, thus, upholding his conviction.

Dated this 17th day of June, 2019.

Respectfully submitted,

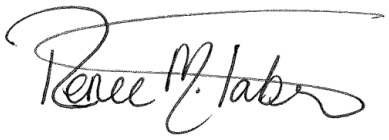


RENEE M. TABER
Assistant District Attorney
State Bar #1103475

Attorney for Plaintiff-Respondent
Dunn County District Attorney's Office
615 Stokke Pkwy, Ste 1700
Menomonie, Wisconsin 54751
(715) 232-1687
(715) 232-6886 (Fax)
renee.taber@da.wi.gov

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 855 words.



RENEE M. TABER
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

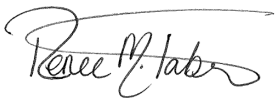
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 17th day of June, 2019.



RENEE M. TABER
Assistant District Attorney