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**COURT OF APPEALS**

**STATE OF WISCONSIN**

**COURT OF APPEALS**

**DISTRICT II**

**Appeal No. 2025AP661-CR**

**Racine County Circuit Court Case No: 2021CT866**

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STATE OF WISCONSIN,  
Plaintiff-Respondent,

v.

SAM M. SHAREEF,  
Defendant-Appellant.

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**ON APPEAL FROM THE CIRCUIT COURT FOR RACINE  
COUNTY, BRANCH 4,  
THE HONORABLE SCOTT CRAIG PRESIDING**

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**BRIEF OF RESPONDENT**

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**BRIEF OF RESPONDENT**

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**FACTS**

The State of Wisconsin, the Petitioner-Respondent, does not dispute the facts as presented by the Respondent-Appellant. However, the State intends to supplement the facts in its argument.

**STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION**

The State of Wisconsin agrees that oral argument is unnecessary in this case. Nor are we requesting publication as we do not believe the issues presented in this case are unique.

## ARGUMENT

### 1. **The officer complied with Wis. Stat. § 343.305 by reading the Informing the Accused Form verbatim.**

The Informing the Accused Form is required by law to be read to a suspect before obtaining an evidentiary test of the defendant's breath or blood.

Wis. Stat. § 343.305(4) states as follows:

At the time that a chemical test specimen is requested under sub (3)(a), (am), or (ar), 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 the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This 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.

If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified."

All parties agree that the officer did indeed read the required statement verbatim, as is required by law. (45:1) The defense is not contesting that the officer had probable cause to arrest Mr. Shareef for Operating While Intoxicated, which is one of the three prerequisites for requesting a blood sample. The point of contention comes with a statement the officer made to Mr. Shareef *before* reading the Informing the Accused form. Namely, the officer stated: "some of this stuff

I'm going to read to you is not going to apply to you.” (45:1) The State stipulates to the fact that the officer made the quoted statement and maintains that the officer's prefatory statement was indeed true and did not alter any statutory language.

In fact, it is not possible that all three of the prerequisite statements in the Informing the Accused apply to any one defendant. In other words, the defendant was either arrested for driving under the influence, or the operator of a vehicle that was involved in an accident that cause the death of, great bodily harm to, or substantial bodily harm to a person, or is driving a commercial motor vehicle after consuming an intoxicating beverage. Not only did the officer read the Informing the Accused form verbatim, but his prefatory statement was true. The officer's statement in no way changed the statutorily required language of the Informing the Accused form. Therefore the requirement to read the Informing the Accused form verbatim was satisfied.

**2. The prefatory comment did not violate the defendant's due process rights.**

In *State v Piddington*, 241 Wis.2d 754, 2001 WI 24, 623 N.W.2d 528, the Wisconsin Supreme Court lays out the purpose of the implied consent law. The Court points out that the purpose of the law is to facilitate the gathering of evidence against drunk drivers and notes that the law is to be construed liberally to accomplish the legislature's intent.

“In *State v Piddington*, “The purpose behind the implied consent law is to combat drunk driving by “facilitating the gathering of evidence against drunk drivers.” *State v Neitzel*, 95 Wis.2d 191, 203, 289 N.W.2d 828 (1980). “With this intent in mind we proceed to an interpretation of the statute considering the . . . object of the statute, mindful that the court must liberally construe the law to effectuate the legislature's intent.” *State v Zielke*, 137 Wis.2d 39, 47, 403 N.W.2d 427 (1987). The specific objective of Wis. Stat. § 343.305(4) within the implied consent statutory scheme is to “advise the accused about the nature of the driver's implied consent.” *State v Reitter*, 227 Wis.2d at 225. *Piddington* ¶ 17.

The Wisconsin Supreme Court then goes on to note that the arrestee has no rights that must be waived before chemical testing proceeds.

“In short, *Miranda* rules do not apply because [the] request to submit to a chemical test does not implicate testimonial utterances. *Reitter*, 227 Wis.2d at 225. Consequently, there are no rights that the arrestee can or must knowingly and intelligently waive before the chemical testing proceeds, and no concomitant need for the accused driver to understand the warnings.

“In consideration of the differences between the implied consent warnings and the *Miranda* warnings, the determination of whether the law enforcement officer reasonably conveyed the implied consent warnings is based upon the objective conduct of that officer, rather than upon the comprehension of the accused driver. This approach ensures that the driver cannot subsequently raise a defense of ‘subjective confusion,’ that is, whether the implied consent warnings were sufficiently administered must not depend upon the perception of the accused driver.” *Reitter*, 227 Wis.2d at 229; *Quelle*, 198 Wis.2d at 280-81. *Piddington* ¶ 20-21

The Court notes that substantial compliance with the statute is acceptable.

“The implied consent law requires only substantial compliance. ‘Substantial compliance will suffice if it is actual compliance in respect to the substance essential to every reasonable objective of the statute.’ *State v Muenta*, 159 Wis.2d 279, 281 (quoting *Midwest Mut. Ins. Co. v. Nicolazzi*, 138 Wis.2d 192, 200, 405 N.W.2d 732 (Ct. App. 1987). *Piddington* ¶33.

The State therefore maintains that Mr. Shareef’s due process rights were not violated.

**3. The blood draw was valid because it was conducted pursuant to a search warrant.**

Finally, and possibly the most salient point, Mr. Shareef’s blood was drawn pursuant to a valid search warrant. Although a defective reading of the Informing the Accused (which the State maintains did not occur here) may impact a conviction for a refusal, once a valid warrant is obtained and a blood draw

executed under the authority of that warrant, the State would argue there is no longer any argument to suppress the blood test results.

“Even though failure to advise the defendant as provided by the implied consent law affects the State’s position in a civil refusal proceeding and results in the loss of certain evidentiary benefits, e.g., automatic admissibility of results and use of the fact of refusal, nothing in the statute or its history permits the conclusion that failure to comply with Wis Stats § 343.305(4) prevents the admissibility of legally obtained chemical test evidence in the separate and distinct criminal prosecution for offenses involving intoxicated use of a vehicle.” *Zielke*, 137 Wis.2d at 51. *Piddington* ¶ 34

Both the US Constitution and the WI Constitution guarantee the right against unreasonable seizures. The 4<sup>th</sup> Amendment to the US Constitution, which is mirrored by Article 1 Section 11 of the WI State Constitution, guarantees the right of individuals against unreasonable searches.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. *U.S. Constitution, 4<sup>th</sup> Amendment*

This amendment establishes that, generally speaking, warrants are required for valid searches or seizures. A valid warrant is required to be based on probable cause, to be issued by a judge or magistrate, and to specifically describe the place or person to be searched and items to be seized.

A crucial aspect of this case, which the defendant seems to gloss over, is that Mr. Shareef refused to submit to a *warrantless* blood draw. Therefore, the officer obtained a warrant and Mr. Shareef’s blood was drawn pursuant to the warrant. No one is contesting the validity of the warrant. The State would argue that, because Mr. Shareef’s blood was drawn as a result of a valid warrant, there is no longer any question as to his due process rights. No one is arguing that the warrant lacked probable cause for the blood draw. No one is arguing that the warrant lacked specificity. No one is arguing that the warrant was based on false information. Mr. Shareef did file a brief contesting the validity of the warrant due

to concerns about its execution (23:1-11), but that issue was not raised on appeal and therefore the State will not address it. In other words, the blood draw was accomplished under the authority of a valid search warrant. The State maintains that this fact renders the argument regarding due process mute.

### CONCLUSION

The State argues that Mr. Shareef's due process rights were not violated by the brief prefatory statement made by the officer before reading the Informing the Accused form, and that any argument that his rights were violated are mute due to the fact that Mr. Shareef's blood was drawn pursuant to a valid warrant. The State therefore requests that the court uphold Mr. Shareef's conviction for Operating with a Restricted Controlled Substance 2<sup>nd</sup>, pursuant to Wis. Stat. § § 346.63(1)(am).

Dated at Racine, Wisconsin, this 8<sup>th</sup> day of September, 2025.

Respectfully submitted,

electronically signed by  
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### CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,126 words.

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).

Dated at Racine, Wisconsin this 8th day of September, 2025.

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