STATE OF WISCONSIN
IN SUPREME COURT

Appellate Case No. 2025AP661-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

SAM M. SHAREEF,

Defendant-Appellant-Petitioner.

PETITION FROM A DECISION OF THE COURT OF APPEALS, DISTRICT II, DATED DECEMBER 10, 2025, AFFIRMING A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR RACINE COUNTY, BRANCH IV, THE HONORABLE SCOTT CRAIG PRESIDING, TRIAL COURT CASE NO. 21-CT-866

PETITION FOR REVIEW

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STATEMENT OF THE ISSUE

WHETHER THE MISLEADING STATEMENT MADE BY THE ARRESTING OFFICER TO MR. SHAREEF PRIOR TO HIS RECITATION OF THE INFORMING THE ACCUSED FORM THAT NOT ALL OF THE INFORMATION WOULD "APPLY TO [HIM]" ROSE TO THE LEVEL OF A SANCTIONABLE VIOLATION OF THE IMPLIED CONSENT LAW DESPITE THE OFFICER'S SUBSEQUENT ACCURATE RECITATION OF THE FORM?

> Court of Appeals Answered: NO. The court of appeals held that it "cannot conclude the officer failed to reasonably convey the implied consent warnings to Shareef merely on the basis of the statement he made prior to reciting the Informing the Accused form. The officer read the form to Shareef verbatim, and, as the circuit court noted in its written decision, the officer's statement that not everything in the form applied to Shareef was true." Slip op. ¶ 10; P-App. at 116. The court continued, "it was not unreasonable for the officer to advise Shareef that some part of the form did not apply to him, ..." Slip op. ¶ 10; P-App. at 116.
>
> Trial Court Answered: NO. The circuit court concluded that, pursuant to *State v. Piddington*, 241 Wis. 2d 754, 623 N.W. 2d 528 (2001), *inter alia*, the "objective conduct of the officer" reasonably "convey[ed] the implied consent warnings" to Mr. Shareef, and since "there are no rights that the arrestee can or must knowingly and intelligently waive before the chemical test proceeds," there is "no concomitant need for the accused driver to understand the warnings." R45 at pp. 4-5; P-App. at 115-16.

STATEMENT OF THE CASE

By criminal complaint file on November 10, 2021, Sam Shareef was charged in Racine County with Operating a Motor Vehicle While Under the Influence of an Intoxicant, contrary to Wis. Stat. § 346.63(1)(a), and Operating a Motor Vehicle With Restricted Controlled Substance in Blood, contrary to Wis. Stat. § 346.63(1)(am). R30. Because Mr. Shareef allegedly refused to consent to an evidentiary chemical test of his blood, he was additionally charged with Unlawfully Refusing to Submit to an Implied Consent Test, contrary to Wis. Stat. § 343.305(9)(a). R22 at ¶ 4; R78 at 6:6-9.

Mr. Shareef entered not guilty pleas to the foregoing charges, and requested a hearing on the reasonableness of his alleged refusal. Shortly thereafter, counsel filed a motion to suppress the blood test evidence and dismiss the refusal charge

based upon the contention that his due process rights were infringed when the arresting officer provided Mr. Shareef with unqualified and ambiguous information prior to requesting that he submit to an implied consent test. R22.

An evidentiary hearing was held on Mr. Shareef's motion on October 21, 2022. R78. At the hearing, the parties stipulated to the relevant facts,[1] and the court received as Exhibit No.1 a flash drive containing a video capture of the encounter between the arresting officer and Mr. Shareef. R78 at 17:22 to 18:1.

At the conclusion of the hearing, the court indicated it would issue a written decision. R78 at 24:22-24. On October 28, 2022, the court entered its decision denying Mr. Shareef's motion. R45; P-App. at 103-08. In its decision, the court concluded that the "objective conduct of the officer" reasonably "convey[ed] the implied consent warnings" to Mr. Shareef, and since "there are no rights that the arrestee can or must knowingly and intelligently waive before the chemical test proceeds," there is "no concomitant need for the accused driver to understand the warnings." R45 at pp. 4-5; P-App. at 115-16.

On March 17, 2025, Mr. Shareef entered a plea of no contest to the charge of Operating a Motor Vehicle With Restricted Controlled Substance in Blood, whereupon the court adjudicated him guilty. R60 at p.1. The companion charge of operating while intoxicated was dismissed, and the remaining refusal charge was dismissed but read in at sentencing. R61.

Mr. Shareef appealed the denial of his motion to the court of appeals by Notice of Appeal filed on April 1, 2025. R69. Thereafter, by decision dated and released on December 10, 2025, the court of appeals affirmed the circuit court's ruling, concluding that "[t]he officer read the form to Shareef verbatim, and, as the circuit court noted in its written decision, the officer's statement that not everything in the form applied to Shareef was true." Slip op. ¶ 10; P-App. at 116. It is from the adverse decision of the court of appeals that Mr. Shareef now petitions this Court for review.

[1] *See* "Statement of Facts," *infra*.

STATEMENT OF FACTS

On October 30, 2021, Deputy Nathan Schmaling of the Racine County Sheriff's Office detained Mr. Shareef for allegedly swerving on the highway and deviating across four lanes of traffic. R30 at p.2.

After making contact with Mr. Shareef, Deputy Schmaling observed that he had bloodshot and glossy eyes, and further, that his speech was thick and slow. R30 at p.2. When asked whether he had consumed any intoxicants or drugs, Mr. Shareef denied consuming either. R30 at p.2. Mr. Shareef informed the deputy that he was merely tired and trying to get home from a festival in Chicago. R30 at p.2.

Based upon these observations, Deputy Schmaling asked Mr. Shareef to submit to a battery of field sobriety tests, however, Mr. Shareef declined to submit to the requested tests. R30 at p.2. Because he refused to participate in field sobriety testing, Mr. Shareef was arrested for Operating a Motor Vehicle While Under the Influence of an Intoxicant. R30 at p.2.

Shortly thereafter, Deputy Schmaling read the Informing the Accused form to Mr. Shareef and asked him to consent to a chemical test of his blood. R22 at ¶ 4.[2] Deputy Schmaling read the contents of the form verbatim to Mr. Shareef, however, prior to reciting the information, he told Mr. Shareef that "[s]ome of this stuff I'm going to read to you is not going to apply to you." R22 at ¶ 4. When asked whether he would consent to an evidentiary chemical test of his blood, Mr. Shareef refused to submit to the test and he was charged with Unlawfully Refusing to Submit to an Implied Consent Test. R22 at ¶ 4.

After Mr. Shareef declined to submit to a blood test, Deputy Schmaling applied for, and was granted, a warrant to seize a sample of Mr. Shareef's blood. R30 at p.2. A later analysis of Mr. Shareef's blood specimen revealed the presence of a restricted controlled substance and he was additionally charged with Operating a Motor Vehicle With Restricted Controlled Substance in Blood. R30 at p.1.

[2] When rendering its decision, the circuit court "generally accepted the statement of facts proposed by the defendant in his motions, and the portions of the body worn camera video played in court and entered as exhibit 1; file 1 and file 2." R45 at p.1.

STANDARD OF REVIEW

The issue presented in this appeal is a question of law premised upon an undisputed set of facts. As a result, this Court reviews the question of law *de novo*. *State v. Lee*, 175 Wis. 2d 348, 354, 499 N.W.2d 250 (Ct. App. 1993).

STATEMENT OF CRITERIA TO SUPPORT PETITION FOR REVIEW

1. Section 809.62(1r)(a): This Case Presents a Real and Significant Question of Constitutional Law.

This case presents a substantial question of law because the court of appeals diluted significant principles of constitutional law to the point of rendering the protections afforded by the Fourteenth Amendment's Due Process Clause meaningless. *See* Sections I. & II., *infra*. At some point, deviations from sound practice under the implied consent statute reach a threshold which should not be crossed, and Mr. Shareef contends that, with respect to advising a suspected impaired driver of their rights and responsibilities under Wis. Stat. § 343.305, law enforcement officers should—and must—"stick to the script" because when they *sua sponte* depart from it, the accused's ability to make an informed choice about whether to submit to testing is sullied. *See generally, State v. Sutton*, 177 Wis. 2d 709, 714, 503 N.W.2d 326 (Ct. App. 1993)("The reasonable objective of sec. 343.305(4), Stats., is to require the officer to inform the arrestee of the possible sanctions resulting from his taking or refusing to take the test.") The court of appeals has ignored repeated edicts from this Court which admonish that "reasonableness under the circumstances dictates that the directions and warnings to the accused be as simple and straightforward as possible." *Village of Oregon v. Bryant*, 188 Wis. 2d 680, 693, 525 N.W.2d 635 (1994). Because the implied consent statute thus implicates several aspects of due process, ranging from concepts of "notice" to the statutory and constitutional rights to access additional chemical test evidence, the court of appeals' decision presents a real and significant question of constitutional law which merits the granting of Mr. Shareef's petition.

2. Wis. Stat. § 809.62(1r)(c)2.: The Question Presented Is a Novel One Which Will Have Statewide Impact.

There exist *no* decisions of this Court which directly address whether ambiguous information provided to the accused prior to the recitation of the

Informing the Accused form is sanctionable when the form is thereafter read verbatim *even if* the pre-recitation information is misleading. Under the rubric of the court of appeals' decision, no matter how grossly misleading the pre-recitation information may be, it does not matter so long as the Informing the Accused form is later read verbatim. Frankly, this makes little sense, and given the frequency with which law enforcement officers "modify" the information provided to the accused before the Informing the Accused form itself is invoked, Mr. Shareef's case presents a question which will certainly have a statewide impact.

Literally **tens-of-thousands** of individuals are annually arrested in Wisconsin for operating while intoxicated violations which involve the recitation of the Informing the Accused form. In fact, it is *exceptionally rare* for there to be operating while intoxicated prosecutions in which the form is not read. Cases of Mr. Shareef's ilk arise in all seventy-two Wisconsin counties. Clearly, § 809.62(1r)(c)2. is satisfied with respect to the issue presented in this Petition as having "statewide impact."

3. Wis. Stat. § 809.62(1r)(c)3.: The Question Presented Is Likely to Recur Unless This Court Intervenes.

The question presented by Mr. Shareef is likely to recur based upon the numbers alone given the frequency with which individuals are arrested for impaired driving related violations in this State. With **tens-of-thousands** of arrests for impaired-driving offenses occurring annually in Wisconsin, there are undoubtedly thousands of cases in which law enforcement officers provide misleading or ambiguous information about the Informing the Accused form before it is even read. The gravity and pervasiveness of the issue raised compels review because of the very frequency with which it recurs daily throughout Wisconsin circuit courts. If no intervention is made by this Court to definitively address the issue Mr. Shareef raises, the justice system will go on repeatedly denying defendants their due process protections, which is contrary to long-standing principles of constitutional law. *See* Section II.A., *infra*. This Court should intervene to provide direction to courts throughout this State under § 809.62(1r)(c)3. lest this problem remain ongoing with the high frequency it already does.

ARGUMENT

I. THE COURT OF APPEALS FAILED TO ACKNOWLEDGE THAT EVEN WHEN THE INFORMING THE ACCUSED FORM IS READ VERBATIM, MISLEADING INFORMATION PROVIDED PRIOR TO THE FORM'S RECITATION CAN PREJUDICE A DEFENDANT.

In its decision, the court of appeals failed to recognize the pervasiveness of the problem presented by the facts of this case. In essence, the court of appeals decision held, in common parlance, "So what if additional ambiguous information is provided to the defendant so long as the Informing the Accused is ultimately read verbatim." Mr. Shareef grants that the vernacular used to characterize the court's holding is seemingly harsh, but it is not intended to be so. Rather, it is restated in this fashion because it is both accurate and helps Mr. Shareef get to his first point about the court's decision, namely the court's "logic" is demonstrably farcical. Mr. Shareef's contention in this latter regard is perhaps best made by a *reductio ad absurdum* argument.

Assume, *arguendo*, that prior to a verbatim recitation of the Informing the Accused form [hereinafter "ITAF"], a law enforcement officer tells a suspected impaired driver, "I've got to read you this form, but don't worry about it, *nothing* I'm going to read applies to you." Under the current incarnation of the law—at least insofar as the court of appeals has construed it—so long as the ITAF is thereafter read "verbatim," there has been substantial compliance with § 343.305 and the defendant has no recourse to a remedy *despite* being told they can ignore all the information just read to them. This is irrational, and while the court of appeals emphasized that the law is designed to facilitate the gathering of chemical test evidence against the accused, it failed to grasp that this is *not* its only purpose. The ITAF is designed to provide information to a suspect not only about their responsibilities under the law, but additionally, to allow the accused to make an informed choice about whether to invoke their constitutional right to refuse a blood test, whether to invoke their statutory due process right to an alternative test, or whether to exercise their constitutional right to gather additional chemical test evidence on their own accord. Thus, the ITAF has more than the single, tunnel-visioned purpose the court of appeals saw because it had blinders on regarding these other purposes.

The encounters between law enforcement officers and citizen-suspects must also account for the realities of these situations. That is, the badge-wearing, firearm-toting, uniformed police officer is in a position of authority over the suspect, and the suspect themselves likely has little to no experience with the circumstances in which they find themselves. Thus, when an officer says "don't worry, nothing I'm going to read applies to you" (from the foregoing hypothetical), the suspect-citizen is, far more often than not, going to accept what the officer is averring at face value precisely because he or she *is the officer* and is presumed "to know about this stuff." What is ironic about Mr. Shareef's hypothetical is that the defendant under the circumstances assumed is in a *better* position than Mr. Shareef was on the night of his arrest. More specifically, the defendant in the hypothetical at least knows an "absolute," *i.e.*, "none" of the information about to be provided applies to them. This person is "off the hook" for having to figure out anything on their own. This is *unlike* Mr. Shareef who was left twisting-in-the-wind to discern what information about to be read to him would "apply" versus "not apply." It is beyond Mr. Shareef's ken how the court of appeals could dissever the pre-recitation information from the ITAF itself since the two were directly linked both temporally (it was provided immediately prior to the form being read) and substantively (the officer's statement unequivocally related to the information on the ITAF).

Absurdly, the court of appeals also stated that "[t]his court concludes under these circumstances that the officer's advisement, including his prefatory statement, reasonably conveyed to Shareef the implied consent warnings. *Concluding otherwise would place an undue burden on officers and require perfect, rather than substantial, compliance with Wis. Stat. § 343.305.*" Slip op. ¶ 11 (emphasis added); P-App. at 106. To the contrary, the officer's burden would be *lessened*, not magnified, if one prohibits law enforcement officers from providing additional or extraneous information prior to the recitation of the ITAF because (1) there is no information the officer has to feel compelled to provide the accused by way of clarification or explanation before reading the form; and (2) precluding prefatory information from being provided promotes stauncher adherence to the *Bryant* court's warning that "reasonableness under the circumstances dictates that the directions and warnings to the accused be as simple and straightforward as possible." *Bryant*, 188 Wis. 2d at 693. Mr. Shareef's suggested approach actually *relieves* officers of the nagging notion that they must "explain" anything to the accused—thus, it is *nothing* like an "undue burden" as the court of appeals claimed.

Finally, the court of appeals also missed the mark when it came to applying the appropriate standard to the facts of the instant case, despite its expressly acknowledging the rule. The court of appeals stated:

> The *Piddington* court held that whether "law enforcement officers have complied with Wis. Stat. § 343.305(4) turns on whether they have used reasonable methods which would reasonably convey the [subsection's] warnings and rights[.]" 241 Wis. 2d 754, ¶ 22. "[T]he onus is upon the law enforcement officer to reasonably convey the implied consent warnings[,]" and "the State has the burden of proof of showing, by a preponderance of the evidence, that the methods used would reasonably convey the implied consent warnings." *Id.*

Slip op. ¶ 8; P-App. at 105. Tellingly, the court of appeals correctly recognized that the warnings on the ITAF have to be "reasonably conveyed," yet it turned a blind eye to any effect the mysterious statement "[s]ome of this stuff I'm going to read to you is not going to apply to you." How much more vague and nebulous can the word "stuff" be? It is undefined, unexplained, and unnecessary. Now here is the rub: Can something so imprecise and ill-defined ever be considered "reasonable?" Mr. Shareef contends that it cannot and still satisfy the underlying purposes of § 343.305(4), and this is why his petition is ripe for granting.

II. FAILING TO PROPERLY ADVISE MR. SHAREEF OF WHICH PARTS OF THE INFORMING THE ACCUSED FORM DO NOT "APPLY" TO HIM IMPERMISSIBLY INTERFERES WITH HIS DUE PROCESS RIGHTS.

A. The Implied Consent Law Conveys Information to an Accused Which Implicates Several Due Process Rights.

Under Wisconsin's Implied Consent Law, an individual is deemed to have given their implied consent to a blood, breath, or urine test when requested by a law enforcement officer after having been arrested on suspicion of committing an impaired driving related offense. Wis. Stat. § 343.305(3)(a) (2025-26). Before a law enforcement officer may request a test under § 343.305(3)(a), however, the officer is first obligated to provide the suspect with certain information. Wis. Stat. § 343.305(4) (2025-26). This information is set forth in the Informing the Accused form.

It cannot be gainsaid that the Informing the Accused form relates a significant amount of information to a suspected drunk driver regarding their rights and responsibilities under Wisconsin's Implied Consent Law. Much of the information the form conveys is not merely "procedural" in nature, but relates both to certain due process and substantive rights the accused enjoys.

For example, it has long been recognized in Wisconsin that "a driver has a 'right' not to take the chemical test designated by the officer." *County of Ozaukee v. Quelle*, 198 Wis. 2d 269, 277, 542 N.W.2d 196 (Ct. App. 1995). In fact, after *State v. Forrett (Forrett I)*, 2021 WI App 31, 398 Wis. 2d 371, 961 N.W.2d 132, *aff'd (Forrett II)* 2022 WI 37, 401 Wis. 2d 678, 974 N.W.2d 422, the court expressly held that a defendant enjoys a constitutional right to refuse blood testing under the Fourth Amendment. *Forrett I*, 2021 WI App 31, ¶¶ 10-14; *Forrett II*, 2022 WI 37, ¶ 8; *State v. Prado*, 2021 WI 64, ¶ 47, 397 Wis. 2d 719, 960 N.W.2d 869 The Informing the Accused form plainly provides information in this regard by expressly advising the suspect of their right to refuse testing and accept the consequences of that decision or to submit to the requested test.

Additionally, the Informing the Accused advises the suspect of their statutory due process right to an alternate test and their constitutional due process right to an additional test. Under the implied consent statute, after submitting to the primary test requested by law enforcement, a suspected drunk driver is entitled either to request an alternative chemical test the arresting agency is prepared to administer or to obtain an additional test for which the suspect may make his or her own arrangements. Wis. Stat. § 343.305(5)(a) (2025-26). A long-standing litany of common law decisions of both the Wisconsin Court of Appeals and Supreme Court has held that the accused's right to alternative testing is a guarantee of statutory due process. *See, e.g., State v. McCrossen*, 129 Wis. 2d 277, 385 N.W.2d 161 (1986); *accord, State v. Walstad*, 119 Wis. 2d 483, 351 N.W.2d 469 (1984); *State v. Ehlen*, 119 Wis. 2d 451, 351 N.W.2d 503 (1984); *State v. Disch*, 119 Wis. 2d 461, 351 N.W.2d 492 (1984); *State v. Renard*, 123 Wis. 2d 458, 367 N.W.2d 237 (Ct. App. 1985).

Further, in a fashion akin to the *Miranda* warnings, the Informing the Accused form also advises a person who chooses to refuse chemical testing that the fact of refusal can be used against them in court, although this use of the refusal evidence is now somewhat limited under cases like *Forrett I*, *Forrett II*, *State v.*

Dalton, 2018 WI 85, 383 Wis. 2d 147, 914 N.W.2d 120, and *State v. Banks*, 2010 WI App 107, 328 Wis. 2d 766, 790 N.W.2d 526.

Finally, the form also satisfies a due process "notice" component by advising the accused that if they have a chemical test result above the legal limit, their operating privilege will be subject to administrative suspension. *See generally*, *Thomas v. Fiedler*, 884 F.2d 990 (7th Cir. 1989).

In summary, the foregoing authority irrefutably establishes that the Informing the Accused form is not "one dimensional" in the sense that it only describes procedural mechanisms for submitting to evidentiary testing. Rather, the form has broader dimensionality in that it also serves to articulate information relating to due process rights which are reserved to the accused. Thus, the information contained within the four corners of the ITAF cannot simply be painted with a single color. It is this notion, that the ITAF implicates certain due process rights, which is at issue in Mr. Shareef's case because if an officer tells a suspect that not all of the information will "apply" to him, that person is at a loss to distinguish between merely procedural information versus due process information when attempting to divine what, precisely, will *not* "apply."

B. Remedy for Interfering With a Suspect's Due Process Rights.

The Informing the Accused form was deliberately designed to keep the Implied Consent Law in strict line with all aspects of the requirements of due process. *See generally*, *Fiedler*, 884 F.2d 990. This is where the problem lies for the State: when a law enforcement officer informs a suspect *prior to reading the* ITAF that not all of the information is going to apply to him, the absence of any further direction makes it impossible for the lay person to know which parts in particular of the form do not apply. Because aspects of the information relate to due process rights as described above, the officer is impermissibly interfering with due process. How or why should the suspect believe that information concerning the use of a refusal against him in court is or is not one of the things which does "not apply"? How should the accused determine whether the information relating to his exercising the right to refuse will or will not result in the refusal being used against him in court, or that "other penalties" will be imposed? Should the accused be expected to know that the officer may have meant that the individual was entitled to the alternate test but that the right to the additional constitutional test was not

applicable? In the absence of any mechanism by which to discern which information applies versus that which does not, there is no reason to believe that the accused will "guess" correctly. The use of the word "guess" in this instance is accurate because when a law enforcement officer is as vague as Deputy Schmaling was, the accused is offered no tools, constructs, models, or yardsticks by which to make an intelligent assessment.

The far easier and fairer standard to administer in situations where an officer provides vague information which affects a suspect's due process rights is to send a clear message to law enforcement: Do *not* provide information to the suspect above and beyond the Informing the Accused form.

After all, it is not unprecedent for courts of supervisory jurisdiction to impose penalties against the government under the implied consent statute when there has been an impermissible interference with the accused's right to be provided with accurate information. The erroneous iteration of the law is often sufficient to invoke sanctions. *See, e.g., State v. Wilke*, 152 Wis. 2d 243, 448 N.W.2d 13 (Ct. App. 1989)(sanctions imposed even though "there was no apparent link between" the misinformation and the decision to refuse); *County of Eau Claire v. Resler*, 151 Wis. 2d 645, 446 N.W.2d 72 (Ct. App. 1989)(loss of presumptions applied when "information concerning penalties" is not properly given); *Schirmang*, 210 Wis. 2d 324 (defendant not required to demonstrate how misstatement of applicable penalties affected his decision regarding taking the test), *overruled on other grounds, Smith*, 2008 WI 23 (*Wilke* "no nexus" analysis applies when statutorily required information not provided); *see also*, *State v. Blackman*, 2017 WI 77, 377 Wis. 2d 339, 898 N.W.2d 774 (suppression is the remedy for erroneously advising suspect regarding consequences of refusing to submit to chemical test regardless of actual effect on accused's decision).

Suppression of the State's test result has been sanctioned in those cases in which the accused has demonstrated that his due process right to access additional test evidence has impermissibly been fettered. *See State v. McCrossen*, 129 Wis. 2d 277, 385 N.W.2d 161 (1986); *State v. Renard*, 123 Wis. 2d 458, 367 N.W.2d 237 (Ct. App. 1985). In Mr. Shareef's case, because Deputy Schmaling never offered him a mechanism by which he could divine which parts of the Informing the Accused form did not apply, there is no reasonable universe in which the courts below could have been certain that Mr. Shareef picked-and-chose the right ones.

For example, how can any trier of fact know that Mr. Shareef understood that his right to an alternate test was not one of those things which he believed did not "apply" to him? To Mr. Shareef's point in this regard, the Wisconsin Supreme Court was almost prescient when it sagely observed in *Bryant*:

> While in the retrospection of a judicial setting, the provisions of the Implied Consent Law are clear, it must be remembered that the accused, who is the recipient of the information, has been determined, to a degree of probable cause, to be under the influence of alcohol. **Hence, reasonableness under the circumstances dictates that the directions and warnings to the accused be as simple and straightforward as possible.**

Bryant, 188 Wis. 2d at 693 (emphasis added). Picking up on the *Bryant* court's theme, one may reasonably inquire: How "simple and straightforward" can it possibly be for the lay person when he is left to his own devices to determine which information applies to him versus which does not?

In conclusion, since the Informing the Accused form contains information relating to a defendant's due process rights, and further, since a person in Mr. Shareef's position is offered no means by which to discern what information "applies" to him when he is informed that not all of it will, suppression of the State's blood test result has been—and remains—the only recognized sanction for interfering with those due process rights.

III. THE CIRCUIT COURT'S ERROR.

A. The Fundamental Error in the Court's Reasoning.

Curiously, the circuit court drew two conclusions when it denied Mr. Shareef's motion which are at odds with prevailing authority. More specifically, the court stated (1) that "there are no rights that the arrestee can or must knowingly and intelligently waive before the chemical test proceeds," and (2) there is "no concomitant need for the accused driver to understand the warnings." R45 at p.5; P-App. at 116. In addition, the court's reliance on *State v. Piddington*, 241 Wis. 2d 754, 623 N.W. 2d 528 (2001), when reaching these conclusions is misplaced. The problems inherent in the circuit court's interpretation of the applicable law are addressed below.

B. **Piddington *Is Not on Point With the Issue Presented.***

As a framework for its analysis, the circuit court adopted *Piddington* as the paradigm under which it approached the question presented by Mr. Shareef. R45 at p.3; P-App. at 114. There are two specific problems with the circuit court's reliance on *Piddington*. The first of these is that the *Piddington* court was **not** examining a circumstance in which there was *officer-induced* confusion. More particularly, when it determined that "reasonable methods" needed to be used when relaying the information on the Informing the Accused form to a defendant, it was **not** doing so in the context in which the arresting officer induced confusion by vaguely advising the defendant that not all of the information would apply to him, but instead, was a circumstance in which the defendant was profoundly deaf and the question was whether the statute only required that the accused be orally informed under § 343.305(4) without accommodating his disability. *Piddington*, 241 Wis. 2d at 763. This is not the issue Mr. Shareef presents for this Court's consideration.

Significantly, there is one portion of the *Piddington* decision which the circuit court overlooked, namely that the court held that the "focus" of the reasonableness inquiry "rests upon the conduct of the officer." *Id.* at 764. In this case, if one focuses on the conduct of Deputy Schmaling, the record is devoid of any proof that the deputy offered Mr. Shareef a mechanism by which he could ascertain which portions of the Informing the Accused form applied to him versus those which did not.

The second problem with the Court's reliance on *Piddington* relates to its adopting the *Piddington* court's statement that "there are no rights that the arrestee can or must knowingly and intelligently waive before the chemical test proceeds." *Id.* at 774; R45 at p.5; P-App. at 107. *Piddington* was decided in 2001, more than a decade-and-a-half prior to the decisions in *Forrett I*, *Forrett II*, *Dalton*, and *Prado*—all cases which, in one form or another, recognized that an accused *does* enjoy a Fourth Amendment right to refuse testing. Thus, there *are* rights implicated in an arrestee's decision, and to this extent, *Piddington* is no longer instructive post-*Forrett I*, *Forrett II*, *Dalton*, and *Prado*.

C. There Is a Need for the Accused to "Understand" the Warnings.

As noted above, part of the circuit court's ruling rested upon its belief that there is "no concomitant need for the accused driver to understand the warnings." R45 at p.5; P-App. at 107. Mr. Shareef concedes that, at first blush, this is broadly a correct statement of the law, however, this statement cannot be applied in a vacuum. That is, the moment that *the law enforcement officer introduces* the potential for misunderstanding or misapprehension, there is a sea change in the circumstances of the analysis. In other words, standing alone an accused has no defense by which he can avail him or herself by asserting that they did not "understand" the information which was provided. This idea, however, changes when it is the law enforcement officer who induces the potential for misunderstanding of his own accord, and the *Piddington* court implied that it recognized as much when it observed:

> 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.

Piddington, 2241 Wis. 2d at 774 (emphasis added). In this case, the "objective conduct of" Deputy Schmaling demonstrates that he made a vague, ill-defined statement to Mr. Shareef that "[s]ome of this stuff I'm going to read to you is not going to apply to you," and after he did, he provided no tools to Mr. Shareef by which he could determine what did apply to him versus that which did not. Colloquially, it is akin to telling a field laborer: "I want you to winnow the wheat from the chaff, but I'm not going to give you fanning mill with which to do it." Under these circumstances, Mr. Shareef contends that a law enforcement officer cannot be deemed to have "reasonably conveyed the implied consent warnings."

On a final point, Mr. Shareef wants to emphasize that an accurate, verbatim recitation of the Informing the Accused form does *not* cure the officer-induced problem because no matter how many times the form is read accurately *after* the vague statement that "[s]ome of this stuff . . . is not going to apply to you" is made, all of those verbatim recitations are *in the context* of the initially proffered confusing qualification. The former cannot be divorced from the latter, and therefore, no "accurate" reading of the form can remedy the problem.

Looking at this problem from a different perspective, by telling Mr. Shareef prior to the recitation of the Informing the Accused form that some of the statutorily mandated information will "not apply" to him, Deputy Schmaling is effectively *misreading* the form. More particularly, Deputy Schmaling's unqualified statement is the functional equivalent of his leaving out a clause, sentence, or even an entire paragraph of the Informing the Accused form during its recitation. Just as there is no mechanism by which the accused can ascertain whether all of the information has been provided to him if a word, sentence, or portion of the form is "skipped" by the officer during its reading, so too there is no mechanism by which an accused can determine which parts of the form are supposed "to apply" to him versus those which were not intended "to apply." There is no distinction in this difference.

Clearly, a law enforcement officer has an understanding or impression of what he or she believes will apply to the accused, but why should the defendant be left guessing as to what is in the officer's mind when being provided with the complex and detailed information in the Informing the Accused form, especially when faced with what is arguably the *most* impactful decision they are going to make regarding their case?

CONCLUSION

Since Deputy Schmaling provided ambiguous and unqualified information to Mr. Shareef prior to the recitation of the Informing the Accused form, the lower court should have suppressed the evidentiary chemical test result because the unqualified information interfered with Mr. Shareef's ability to exercise his due process rights, and the court of appeals should have acknowledged the same instead of excusing the deputy's misleading information with a "verbatim reading of the Informing the Accused" magical cure-all.

Dated this 29th day of December, 2025.

Respectfully submitted:

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CERTIFICATION OF LENGTH

I hereby certify that this petition conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 5,807 words.

I also certify that filed as a separate document is an appendix that complies with Wis. Stat. § 809.19(2)(a).

Finally, I hereby certify that I have submitted an electronic copy of this petition which complies with the requirements of Wis. Stat. § 809.19(12).

Dated this 29th day of December, 2025.

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