

FILED
07-07-2025
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appellate Case No. 2025AP661-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

SAM M. SHAREEF,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN
THE CIRCUIT COURT FOR RACINE COUNTY, BRANCH III,
THE HONORABLE SCOTT P. CRAIG PRESIDING,
TRIAL COURT CASE NO. 21-CT-866

BRIEF OF DEFENDANT-APPELLANT

MELOWSKI & SINGH, LLC

Dennis M. Melowski

State Bar No. 1021187

524 South Pier Drive

Sheboygan, Wisconsin 53081

Tel. 920.208.3800

Fax 920.395.2443

dennis@melowskilaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3-4
STATEMENT OF THE ISSUE.....	5
STATEMENT ON ORAL ARGUMENT	5
STATEMENT ON PUBLICATION	5
STATEMENT OF THE CASE.....	5
STATEMENT OF FACTS	6
STANDARD OF REVIEW	7
ARGUMENT	8
I. 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	8
A. <i>The Implied Consent Law Conveys Information to an Accused Which Implicates Several Due Process Rights</i>	8
B. <i>Remedy for Interfering with a Suspect’s Due Process Rights</i>	11
II. THE CIRCUIT COURT’S ERROR	13
A. <i>The Fundamental Error in the Court’s Reasoning</i>	13
B. <i>Piddington Is Not on Point with the Issue Presented</i>	13
C. <i>There Is a Need for the Accused to “Understand” the Warnings</i>	14
D. <i>Common Sense Dictates a Different Outcome</i>	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

U.S. Constitution

U.S. Const. amend. IV8,14

Wisconsin Statutes

Wisconsin Statute § 343.305(3)(a) (2025-26)8

Wisconsin Statute § 343.305(4)(2025-26).....8,14

Wisconsin Statute § 343.305(5)(a) (2025-26)9

Wisconsin Statute § 343.305(9)(a) (2025-26)5

Wisconsin Statute § 346.63(1)(a) (2025-26)5

Wisconsin Statute § 346.63(1)(am) (2025-26)5

Federal Court of Appeals Authority

Thomas v. Fiedler, 884 F.2d 990 (7th Cir. 1989) 10-11

Wisconsin Supreme Court Authority

State v. Blackman, 2017 WI 77, 377 Wis. 2d 339, 898 N.W.2d 774 12

State v. Dalton, 2018 WI 85, 383 Wis. 2d 147, 914 N.W.2d 120 10,14

State v. Disch, 119 Wis. 2d 461, 351 N.W.2d 492 (1984)..... 9-10,12

State v. Ehlen, 119 Wis. 2d 451, 351 N.W.2d 503 (1984)..... 9-10,12

State v. McCrossen, 129 Wis. 2d 277, 385 N.W.2d 161 (1986).....9,12

State v. Piddington, 241 Wis. 2d 754, 623 N.W. 2d 528 (2001) 3,5,13-15

State v. Walstad, 119 Wis. 2d 483, 351 N.W.2d 469 (1984).....9,10,12

Village of Oregon v. Bryant, 188 Wis. 2d 680, 525 N.W.2d 635 (1994) 13

Wisconsin Court of Appeals Authority

County of Eau Claire v. Resler, 151 Wis. 2d 645, 446 N.W.2d 72 (Ct. App. 1989)
..... 12

County of Ozaukee v. Quelle, 198 Wis. 2d 269, 277, 542 N.W.2d 196 (Ct. App. 1995)8,16

State v. Banks, 2010 WI App 107, 328 Wis. 2d 766, 790 N.W.2d 526..... 10

State v. Renard, 123 Wis. 2d 458, 367 N.W.2d 237 (Ct. App. 1985)9,10,12

<i>State v. Forrett</i> , 2021 WI App 31, 398 Wis. 2d 371, 961 N.W.2d 132, <i>aff'd</i> 2022 WI 37, 401 Wis. 2d 678, 974 N.W.2d 422	8,10,14
<i>State v. Forrett</i> , 2022 WI 37, 401 Wis. 2d 678, 974 N.W.2d 422	8,10,14
<i>State v. Lee</i> , 175 Wis. 2d 348, 499 N.W.2d 250 (Ct. App. 1993)	7
<i>State v. Schirmang</i> , 210 Wis. 2d 324, 565 N.W.2d 225 (Ct. App. 1997).....	12
<i>State v. Wilke</i> , 152 Wis. 2d 243, 448 N.W.2d 13 (Ct. App. 1989)	12

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?

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; D-App. at 106-07.

STATEMENT ON ORAL ARGUMENT

Mr. Shareef does NOT REQUEST oral argument as this appeal presents a question of law based upon a set of uncontroverted facts, and further, upon authority which is well established. Oral argument would neither illuminate the facts nor enhance what is the settled interpretation of the law.

STATEMENT ON PUBLICATION

Mr. Shareef does NOT REQUEST publication of this Court’s decision as the law relating to the issue he raises is manifest and not in need of further clarification or qualification.

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 a 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 retained private counsel who entered not guilty pleas to the foregoing charges, and who 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; D-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; D-App. at 106-07.

On March 17, 2025, Mr. Shareef entered a plea of no contest to the charge of Operating a Motor Vehicle with a 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.

It is from the adverse decision of the circuit court that Mr. Shareef appeals to this Court by Notice of Appeal filed on April 1, 2025. R69.

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.

¹ See "Statement of Facts," *infra*.

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 if he was willing 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 seizure 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 a Restricted Controlled Substance in Blood. R30 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).

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.

ARGUMENT

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).

For example, in *McCrossen*, 129 Wis. 2d 277, the supreme court addressed the defendant's contention that the charges against her had to be dismissed because her constitutional right to access potentially exculpatory evidence was violated due to the arresting agency's failure to provide an alternate chemical test. *Id.* at 286. The *McCrossen* court took great pains to emphasize that it was examining the defendant's claim on that very narrow ground, *i.e.*, whether her *constitutional* rights were violated and therefore warranted dismissal of the charges against her. *Id.* In concluding that dismissal was not warranted because access to alternative testing was not constitutionally mandated, the court held that the right to an alternate test was nevertheless a guarantee of statutory due process and that suppression of the primary test, rather than dismissal of the underlying charges, was the appropriate remedy for violating this right. *Id.* at 287.

In *Walstad*, a predecessor case to *McCrossen*, the Wisconsin Supreme Court examined whether the destruction of a breath ampoule violated a defendant's due process right to access potentially exculpatory evidence. *Id.* at 483-84. The court found that the destruction of the ampoule did not violate Walstad's rights as he framed them on appeal because an accused's right to alternative testing afforded him the necessary due process protections. The *Walstad* court stated:

In Wisconsin, the right to a second test is protected by statutory law, and it is, we believe, an assurance of constitutional due process. The second test affords the defendant the opportunity to scrutinize and verify or impeach the results of the

breathalyzer test administered by enforcement authorities. Additionally, the legislation requires that an apprehended driver be advised of the absolute right to a second test. **This is a legislatively conferred right which we will strictly protect.**

Walstad, 119 Wis. 2d at 527 (emphasis added).

The foregoing concept that the right to access alternative testing is a measure of due process was likewise no stranger to the court of appeals in *Renard*. In *Renard*, the defendant was taken to a hospital after an accident, and while there, he was placed under arrest for operating while intoxicated. *Id.* at 459. Renard asked whether he could take a breath test instead, but the arresting officer persuaded him to submit to a blood test since they were already at the hospital. *Id.* After submitting to the blood test, the arresting officer left the hospital without making further inquiry of Renard as to whether he still desired to have a breath test. *Id.* The court of appeals found that the arresting officer “had a duty before leaving to make an inquiry” of Renard regarding whether he wanted the alternate test. *Id.* at 461. The *Renard* court premised this duty upon the fact that the right to access the alternate test was a measure of statutory due process, and that the violation of this right warranted suppression of the State’s primary test result. *Id.*

In other cases, such as *Ehlen* and *Disch*, the Wisconsin Supreme Court repeatedly emphasized that the right to an alternative test is an “internal safeguard of due process.” *Ehlen*, 119 Wis. 2d at 457; *Disch*, 119 Wis. 2d at 479-80.

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 Informing the Accused form cannot simply be painted with a single color. It is this notion, that the Informing the Accused implicates certain due process rights, which is at issue in Mr. Shareef’s case because if an officer tells a suspect that not all 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 discern 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* Informing the Accused form that not all of the information is going to apply to him, the absence of any further direction or explanation 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, in each and every instance, “guess” correctly. The use of the word “guess” in this instance is extremely 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.

Simply put, there is no reasonable method by which this Court can divine what portions of a highly technical form a lay suspect can reasonably conclude would (versus would not) apply to him—and it should not have to. 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 unprecedented for courts of supervisory jurisdiction to impose penalties against the government under the Implied Consent Law 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 McCrossen*, 129 Wis. 2d 277; *Walstad*, 119 Wis. 2d 483; *Ehlen*, 119 Wis. 2d 451; *Disch*, 119 Wis. 2d 461; *Renard*, 123 Wis. 2d 458. In Mr. Shareef’s case, because Deputy Schmalting 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 court 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 *Village of Oregon v. Bryant*, 188 Wis. 2d 680, 525 N.W.2d 635 (1994):

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.**

Id. 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 accused when he is left twisting in the wind with regard to trying 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.

II. 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; D-App. at 107. 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 *State v. Piddington*, 241 Wis. 2d 754, 623 N.W. 2d 528 (2001), as the paradigm under which it

approached the question presented by Mr. Shareef. R45 at p.3. 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; D-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; D-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 and wholly gratuitous 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 a 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 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.

D. Common Sense Dictates a Different Outcome.

Contrary to the lower court’s belief that an antiseptic recitation of the Informing the Accused form somehow magically acts to disinfect any misleading or unqualified statements which may have preceded it, common sense dictates otherwise, and Mr. Shareef’s point in this regard is best made by analogy.

Assume, *arguendo*, prior to reading a suspect his *Miranda* rights, a law enforcement officer informs them that “I’m going to read you some information, but you should know that in most cases, even if you have an attorney, the defendant is found guilty.” If the officer thereafter recites the accused’s rights verbatim, the prefatory information—while wholly accurate because the vast majority of defendants are, in fact, convicted even if represented by counsel—is clearly going to make the accused second guess whether it is “worth it” to remain silent or request the assistance of counsel. There is no reasonable universe in which any court, acting in accordance with the common law, is going to find that the officer’s initial, unadorned qualification satisfies the rigors imposed by *Miranda*. It is no stretch to liken the recitation of the Informing the Accused form to the *Miranda* warnings either since the Wisconsin Supreme Court has already done so. *See County of Ozaukee v. Quelle*, 198 Wis. 2d 269, 276, 542 N.W.2d 196 (Ct. App. 1995)(“[w]e first observe that the warnings provided drivers under the implied consent law are analogous to those employed in *Miranda*-type cases”).

The point of the foregoing is simple: without clarifying for a lay person which portions of the information he is about to be read do or do not apply to him, the individual is left awash in a sea of *officer-induced* confusion (rather than the *Piddington* distinction of defendant-focused comprehension) because there is no basis upon which to reasonably believe the defendant has sufficient legal acumen to determine precisely what the officer meant. This is, in two words, “common sense.”

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.

Dated this 7th day of July, 2025.

Respectfully submitted:

MELOWSKI & SINGH, LLC

Electronically signed by:

Dennis M. Melowski

State Bar No. 1021187

Attorneys for Sam M. Shareef

Defendant-Appellant

CERTIFICATION OF LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 5,820 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 brief which complies with the requirements of Wis. Stat. § 809.19(12).

Dated this 7th day of July, 2025.

MELOWSKI & SINGH, LLC

Electronically signed by:

Dennis M. Melowski

State Bar No. 1021187

Attorneys for Sam M. Shareef

Defendant-Appellant