351 Wis.2d 739
Supreme Court of Wisconsin.

In the matter of the refusal
of Brandon H. BENTDAHL:
State of Wisconsin, Plaintiff–Appellant–Petitioner,
v.
Brandon H. Bentdahl, Defendant–Respondent.

No. 2012AP1426. | Argued Oct. 15, 2013. | Decided Dec. 27, 2013.

Synopsis

Background: Defendant was charged with refusal to submit to testing of his blood-alcohol level at time of his arrest for operating a motor vehicle while intoxicated (OWI) and operating with a prohibited alcohol concentration (PAC). After defendant was acquitted of the underlying OWI and PAC charges, he moved to dismiss the refusal charge. The Circuit Court, Columbia County, Alan J. White, J., granted the motion, and state appealed. The Court of Appeals reversed and remanded for Circuit Court to exercise its discretion as to whether to dismiss the refusal charge. State petitioned for review.

[Holding:] The Supreme Court, N. Patrick Crooks, J., held that trial court lacked discretionary authority to dismiss refusal charge.

Affirmed as modified and remanded.

West Headnotes (4)

[1] Appeal and Error
Cases Triable in Appellate Court

The interpretation of a statute presents a question of law, which an appellate court reviews de novo.

Cases that cite this headnote

[2] Appeal and Error
Review Dependent on Whether Questions Are of Law or of Fact

In determining an issue of statutory interpretation on appeal, although the Supreme Court considers the question independent of the decisions of the circuit court and the court of appeals, the Supreme Court nevertheless benefits from their analyses.

Cases that cite this headnote

[3] Automobiles
Judicial Remedies and Review in General

Automobiles
Procedure in or Arising Out of Criminal Prosecutions

Trial court lacked discretionary authority to dismiss charge of refusal to submit to testing of blood-alcohol level, where defendant pleaded not guilty to underlying charges of operating a motor vehicle while intoxicated (OWI) and operating with a prohibited alcohol concentration (PAC) and failed to request a refusal hearing within statutory ten-day time limit; trial court's discretionary authority to dismiss refusal charge was conditioned upon defendant pleading guilty to underlying charges and filing timely request for refusal hearing. W.S.A. 343.305.

Cases that cite this headnote

[4] Automobiles
Refusal to take test

Automobiles
Consent, express or implied

The purpose of Wisconsin's implied consent statute is to encourage drivers, upon a request by law enforcement, to submit to chemical testing; this allows for the efficient gathering of evidence that may be used to secure drunk-driving convictions. W.S.A. 343.305.

Cases that cite this headnote

Attorneys and Law Firms

****705** For the plaintiff-appellant-petitioner, the cause was argued by Michael C. Sanders, assistant attorney general, with whom on the briefs was J.B. Van Hollen, attorney general, and oral argument by Michael C. Sanders.

For the defendant-respondent, there was a brief by Barry S. Cohen, and Barry S. Cohen, S.C., Elkhart Lake, and oral argument by Barry S. Cohen.

Opinion

N. PATRICK CROOKS, J.

***740** ¶ 1 This is a review of an unpublished court of appeals' decision that reversed ***741** the circuit court.[1] The petitioner, the State, asks this court to determine whether *State v. Brooks*[2] applies when a defendant fails to request a refusal hearing within the statutory ten-day time limit and chooses to plead not guilty to the underlying operating a motor vehicle while intoxicated (OWI) or OWI-related offense. The State further asks this court to determine whether *Brooks* continues to be good law considering Wisconsin's implied consent statute, Wis. Stat. § 343.305 (2009–10).[3]

¶ 2 This case arises from Brandon H. Bentdahl's refusal to consent to chemical testing to determine his blood alcohol level at the time of his November 17, 2010, arrest for OWI and operating with a prohibited alcohol concentration (PAC). Bentdahl pleaded not guilty to the OWI and PAC charges; he did not request a hearing on the refusal charge within the ten-day time limit.

¶ 3 After a jury acquitted Bentdahl of the OWI and PAC charges, the Columbia County Circuit Court, the Honorable Alan J. White, presiding, granted Bentdahl's motion to dismiss the refusal charge. It held that an alleged sloppily written date on the notice informing Bentdahl of the State's intent to revoke his operating privileges for his refusal, which he received at the time of his OWI/PAC arrest, both deprived him of proper notice and deprived the circuit court of proper ***742** jurisdiction. The court of appeals reversed the circuit court's finding of improper notice, but remanded the case to the circuit court for that court to exercise its discretion as to whether to dismiss the refusal charge.

¶ 4 The State appealed, arguing that the court of appeals improperly extended the holding in *Brooks* when, relying on *Brooks,* it instructed the circuit court to determine whether it would exercise its discretion to dismiss the refusal charge. The State asks this court to hold that *Brooks* does ****706** not extend to situations where a defendant is acquitted of the underlying OWI and OWI-related charge at trial. In addition, the State asks this court to clarify whether *Brooks* is still good law.

¶ 5 Bentdahl argues that these questions are not properly before this court. He maintains that the court of appeals' decision was not adverse to the State and the State cannot appeal such a decision. As we will address, we conclude that the court of appeals' decision was, in part, adverse to the State; therefore, the State may appeal. In addition, Bentdahl argues that this case is not ripe for review and that the unique facts of this case make review unnecessary; however, these arguments are both undeveloped. Typically, this court does not address undeveloped arguments, *State v. Gracia,* 2013 WI 15, ¶ 28, n. 13, 345 Wis.2d 488, 826 N.W.2d 87, and we decline to do so in this instance.

¶ 6 We do not review the court of appeals' decision that notice was proper in this case, since that issue is not before us. The State's petition for review asked this court to address two issues related to *State v. Brooks.* While Bentdahl opposed the State's petition for review, he did not ask this court to review the portion of the court of appeals' decision that found proper notice. Additionally, neither party sets forth any argument regarding notice in the briefing to this court.

***743** ¶ 7 We conclude that the court of appeals improperly extended the holding of *Brooks,* when it held that a circuit court could dismiss a refusal charge under the circumstances presented by this case. Under *Brooks,* a circuit court has the discretionary authority to dismiss a refusal charge only if the defendant has already pleaded guilty to the underlying OWI or OWI-related charge by the time of his or her refusal hearing, which was timely requested. Extending *Brooks* to allow circuit courts the discretionary authority to dismiss refusal charges in cases where a defendant has pleaded not guilty to the underlying OWI, PAC, or other related charge would contravene the purpose of Wis. Stat. § 343.305, Wisconsin's implied consent statute. In other words, *Brooks,* which is longstanding precedent of this court, applies only when a defendant meets two requirements. Namely, a defendant must request a refusal hearing within the statutory ten-day time limit and must plead guilty to the underlying OWI or OWI-related charge.

¶ 8 The language of Wis. Stat. § 343.305(10) and our recent interpretation of that language in *Vill. of Elm Grove v. Brefka*[4] make clear that a circuit court has no discretionary authority to dismiss a refusal charge when a defendant fails to request a refusal hearing within the statutory ten-day time period. Therefore we remand this case to the circuit court with instructions to impose the applicable penalties, including revocation of Bentdahl's operating privileges, due to his refusal to consent to chemical testing at the time of his OWI/PAC arrest, and his failure to request a refusal hearing within the statutory time period.

***744 I. Background**

¶ 9 The facts of this case are undisputed. On November 17, 2010, a Portage police officer arrested Bentdahl for OWI and PAC violations. The officer read Bentdahl all of the information required by Wis. Stat. § 343.305(4),[5] by using what is known ****707** as the "Informing the Accused" form. Bentdahl refused the officer's request that he consent to a blood test, which is contrary to Wis. Stat. § 343.305(2).[6] The officer transported Bentdahl to a local hospital, where hospital staff obtained a blood sample without incident.

¶ 10 Following the blood draw, the officer gave Bentdahl notice of intent to revoke his operating privileges as required by Wis. Stat. § 343.305(9).[7] Bentdahl did not request a hearing on the refusal charge within ***745** the ten-day time limit set forth in Wis. Stat. § 343.305(9)–(10). Therefore, the circuit court revoked his operating privileges on December 17, 2010.

¶ 11 Bentdahl pleaded not guilty to the underlying OWI and PAC charges. On January 5, 2012, a jury acquitted him of both charges.

¶ 12 Approximately two weeks later, Bentdahl's counsel approached the State to discuss what he claimed was a sloppily written date on the notice Bentdahl received at the time of his OWI/PAC arrest. After viewing the date of notice and agreeing that the officer wrote out the date in a somewhat confusing fashion, the State agreed not to oppose Bentdahl's motion to vacate the refusal conviction. The circuit court later granted Bentdahl's motion, vacated the refusal conviction, and scheduled a date for a hearing on the refusal charge.

¶ 13 The circuit court held a hearing on the refusal charge. Bentdahl argued that the refusal charge should be dismissed based on a lack of proper notice or, alternatively, under *Brooks,* at the circuit court's discretion. The circuit court determined that the officer's poor penmanship denied Bentdahl proper notice; therefore, the circuit court did not have jurisdiction. Accordingly, the circuit court dismissed the refusal charge without reaching Bentdahl's alternative argument regarding the circuit court's discretion.

¶ 14 The court of appeals reversed the circuit court, reasoning that Bentdahl had proper notice. The court of appeals held, "[t]he officer's writing the date as ***746** '111710' with a messy '0' did not make the notice defective." *State v. Bentdahl,* No. 2012AP1426, unpublished slip op., ¶ 11, 2012 WL 6050302, at *2 (Wis.Ct.App. Dec. 6, 2012). It reasoned that "[i]t did not make sense to disregard the ten-day and thirty-day deadlines in the notice by inserting slashes so as to come up with a date that was ten days before the incident, ****708** when the date without slashes matched the date of the incident." *Id.,* ¶ 10.

¶ 15 The court of appeals, relying on *Brooks,* then remanded the case to the circuit court to address Bentdahl's alternative argument and determine whether that court would exercise its discretion to dismiss the refusal charge. In *Brooks,* this court held that a circuit court properly exercised its discretion in dismissing a refusal charge,

> when it based the dismissal upon the fact that Brooks had pleaded guilty to the underlying charge of operating a motor vehicle while under the influence of an intoxicant and, hence, the reason for the proceedings to impose sanctions for the refusal to take the intoxication test had been accomplished.

Brooks, 113 Wis.2d at 348, 335 N.W.2d 354. From our holding in *Brooks,* the court of appeals reasoned that "[t]hese same purposes may be served where a court dismisses a refusal charge against a defendant who was acquitted before the refusal hearing, in a trial where intoxication evidence was presented, depending on all of the pertinent facts." *State v. Bentdahl,* No. 2012AP1426, unpublished slip op., ¶ 12, 2012 WL 6050302 (Wis.Ct.App. Dec. 6, 2012).

¶ 16 The State asks this court to determine two issues related to *Brooks.* First, whether circuit courts can dismiss

refusal charges when the defendant pleads not guilty to the underlying OWI, PAC, or other OWI-related charges. Second, whether the discretionary authority ***747** granted to circuit courts under *Brooks* ' holding is consistent with the mandatory language of Wis. Stat. § 343.305(9)–(10).

II. Standard of Review

[1] **[2]** ¶ 17 This case requires us to interpret the meaning of Wis. Stat. § 343.305, Wisconsin's implied consent statute. "The interpretation of a statute presents a question of law, which we review de novo." *Meriter Hosp., Inc. v. Dane Cnty.*, 2004 WI 145, ¶ 12, 277 Wis.2d 1, 689 N.W.2d 627. "Although we consider this question independent of the decisions of the circuit court and the court of appeals, we nevertheless benefit from their analyses." *Id.*

III. Analysis

A.

[3] ¶ 18 We are asked to interpret Wisconsin's implied consent statute and determine whether circuit courts have discretionary authority to dismiss refusal charges under different factual circumstances from those we previously addressed in *Brooks.* Wisconsin's implied consent statute provides that, by driving on Wisconsin's public roads, drivers give consent to "one or more tests of his or her breath, blood or urine" to identify the presence of intoxicating substances in his or her system if requested by law enforcement. Wis. Stat. § 343.305(2). Recently, we explained Wis. Stat. § 343.305 succinctly:

> Upon arrest of a person for violation of an OWI-related statute, a law enforcement officer may request the ***748** person to provide a blood, breath, or urine sample for chemical testing. Wis. Stat. § 343.305(3)(a). At the time of the request for a sample, the officer must read to the person certain information set forth in § 343.305(4), referred to as the Informing the Accused form.
>
> If the person submits to chemical testing and the test reveals the presence of a detectable amount of a restricted controlled substance or a prohibited alcohol concentration, the person is subjected to an administrative suspension of his operating privileges. Wis. Stat. § 343.305(7)(a). The person has the ****709** right to an administrative hearing and to judicial review. Wis. Stat. § 343.305(8). The administrative hearing is limited to certain issues that are set forth by statute. Wis. Stat. § 343.305(8)(b)2.
>
> If, on the other hand, the person refuses to submit to chemical testing, he is informed of the State's intent to immediately revoke his operating privileges. Wis. Stat. § 343.305(9)(a). The person is also informed that he may request a refusal hearing in court. Wis. Stat. § 343.305(9)(a)4.

State v. Anagnos, 2012 WI 64, ¶¶ 22–24, 341 Wis.2d 576, 815 N.W.2d 675 (footnote omitted) (describing the 2009–10 version of Wis. Stat. § 343.305).

B.

¶ 19 We note that, although the facts of this case involve a warrantless blood draw to determine blood alcohol concentration, the Fourth Amendment is not at issue in this case. Just last term, the United States Supreme Court considered whether a warrantless blood draw from a suspected drunk driver could be upheld under the Fourth Amendment. *Missouri v. McNeely*, —— U.S. ——, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013). The warrantless blood draw in this case occurred on November 17, 2010, before the ***749** April 17, 2013, *McNeely* decision and we reiterate that our decision today does not consider any issues related to warrantless blood draws.

¶ 20 Bentdahl challenges whether this case is properly before this court. Specifically, Bentdahl argues that the court of appeals' decision was not adverse to the State and, therefore, the State cannot appeal that determination. The State contends that the court of appeals determination was adverse, in part, to its position.

¶ 21 As a preliminary matter, we hold that the court of appeals issued a decision that was partially adverse to the State, which is sufficient to allow the State to appeal. A party may appeal "an adverse decision of the court of appeals" to this court. Wis. Stat. § 809.62(1m)(a). The Wisconsin statutes define an adverse decision as "a final order or decision of the court of appeals, the result of which is contrary, in whole *or in part*, to the result sought in that court by any party seeking review." Wis. Stat. § 806.62(1g)(a) (emphasis added). Furthermore, an adverse decision "includes the court of appeals' denial of or failure to grant the full relief sought or the court of

appeals' denial of the preferred form of relief."[8] Wis. Stat. § 806.62(1g)(b). Here, the court of appeals ruled in favor of the State on ***750** the issue of notice. However, the court of appeals also remanded the case to the circuit court for that court to exercise its discretion as to whether to dismiss Bentdahl's refusal charge. This is not the relief requested by the State. Instead the State had requested that the court of appeals instruct the circuit court to enter a refusal conviction against Bentdahl. The court of appeals' instructions were a part of its decision, which denied the State the full relief that it sought; therefore, the State may appeal.

****710 C.**

¶ 22 We next consider several issues related to *Brooks.* First, we consider whether *Brooks* grants discretionary authority to circuit courts to dismiss refusal charges when the defendant chooses to plead not guilty to the underlying OWI or OWI-related charge. Second, we determine whether *Brooks* applies when a defendant does not request a refusal hearing within the ten-day time limit. Finally, we consider whether *Brooks* should be overruled.

¶ 23 The State argues that the court of appeals improperly extended the holding of *Brooks* when it remanded this case to the circuit court with instructions to decide whether or not it would choose to exercise its discretion to dismiss the refusal charge. The State asserts that the purpose of the implied consent statute is to gather evidence to secure convictions and remove drunk drivers from Wisconsin roads. It concludes that an extension of *Brooks* to the facts of this case does not achieve the purpose of the implied consent ***751** statute, but rather, would encourage drivers to refuse to consent to chemical testing.

¶ 24 Furthermore, the State contends that that language of Wis. Stat. § 343.305(9)–(10), as interpreted by *Brefka,* 348 Wis.2d 282, ¶ 4, 832 N.W.2d 121, does not allow a circuit court any discretionary authority, and that we must either overturn *Brooks* or limit its application to the 1979–80 version of the Wisconsin statutes, which that case considered. For these reasons, the State contends that the court of appeals should have remanded this case to the circuit court with instructions to impose the applicable penalties against Bentdahl on the refusal charge.

¶ 25 In contrast, Bentdahl asks this court to affirm the court of appeals' instructions to the circuit court. Under Bentdahl's interpretation, *Brooks* grants circuit courts broad discretionary authority to dismiss refusal charges regardless of the way the related OWI charges are resolved. This discretion, Bentdahl argues, is not limited to the factual circumstances contemplated in *Brooks.* Finally, Bentdahl argues that overturning *Brooks* and eliminating a circuit court's discretionary authority to dismiss refusal charges entirely would unnecessarily clog courts by discouraging guilty pleas to OWI-related offenses.

¶ 26 We agree with the State that the court of appeals improperly extended the holding of *Brooks* when it applied it to the facts of this case. We hold that circuit courts have no discretionary authority to dismiss refusal charges when the defendant chooses to plead not guilty to the underlying OWI or OWI-related charge. We further hold that a circuit court has no discretionary authority to dismiss refusal charges when the defendant fails to request a refusal hearing within ***752** the ten-day time limit. However, as we will explain, we decline the State's invitation to overrule *Brooks.*

¶ 27 In *Brooks,* this court considered whether a circuit court had abused its discretion when it dismissed a refusal charge against a defendant who had already pleaded guilty to the underlying OWI charge at the time of his refusal hearing, which he had timely requested. *Brooks,* 113 Wis.2d at 348–49, 335 N.W.2d 354; Wis. Stat. § 343.305(3)(b)4. (1979–80) (requiring that a refusal hearing be requested "on or prior to the citation return date"). In that case, we held that the circuit court "appropriately exercised its discretion." *Brooks,* 113 Wis.2d at 348, 335 N.W.2d 354. Our analysis focused on the purpose of the implied consent statute and the fact that the defendant in *Brooks* had pleaded guilty to the underlying OWI charge. *See id.* at 348–49, 335 N.W.2d 354.

****711** **[4]** ¶ 28 The purpose of Wisconsin's implied consent statute is to encourage drivers, upon a request by law enforcement, to submit to chemical testing. *Id.* at 348, 335 N.W.2d 354. This allows for the efficient gathering of evidence that may be used to secure drunk-driving convictions. *Id.; State v. Neitzel,* 95 Wis.2d 191, 203, 289 N.W.2d 828 (1980).

¶ 29 Having established the purpose of the implied consent statute, to secure OWI-related convictions, our reasoning in *Brooks* then turned to whether this purpose was met when a defendant had already pleaded guilty to the underlying OWI charge at the time of his or her refusal hearing. *Brooks,* 113 Wis.2d at 353–57, 335 N.W.2d 354. We found "[i]f the person

who is charged with OWI ... subsequently pleads guilty, there no longer remains a need for penalties for failure to submit to a test which has become unnecessary in the particular case." *Id.* at 348–49, 335 N.W.2d 354.

***753** ¶ 30 The reasoning in *Brooks* did not broadly grant discretionary authority to circuit courts. *See id.* at 359, 335 N.W.2d 354. Instead the specific reasoning in *Brooks* was tied to the fact that the defendant pleaded guilty to the underlying OWI charge by the time of his refusal hearing, which he timely requested. *See id.* In *Brooks,* this court repeatedly reasoned that the purpose of the implied consent statute, to gather evidence to convict drunk drivers, was served when the defendant pleaded guilty to the underlying OWI charge. *Id.* In *Brooks* we stated:

> Accordingly, we conclude that the general purpose behind the laws relating to operating while under the influence of intoxicants and implied consent to take alcohol tests—to get drunk drivers off the road as expeditiously as possible and with as little possible disruption of the court's calendar—is best served by the exercise of discretion in the dismissal of a refusal case once there has been a plea of guilty to the OWI charge.

Id.

¶ 31 The reasoning in *Brooks* applies only when a defendant enters a guilty plea to the underlying OWI or OWI-related charge and when the defendant complies with the statutory time limit to request a refusal hearing. Unlike Brooks, Bentdahl did not plead guilty to the underlying OWI or PAC charges, and unlike Brooks, Bentdahl did not request a refusal hearing within the ten-day time limit set forth in Wis. Stat. § 343.305(9)–(10). The policy reasons for allowing circuit courts discretionary authority to dismiss refusal charges simply do not apply when a defendant chooses to plead not guilty. This is especially true when a defendant, like Bentdahl, is acquitted of the underlying OWI-related charges. In other words, giving circuit courts discretionary authority to dismiss refusal charges when a defendant pleads not ***754** guilty to the underlying OWI-related charge would eliminate a great deal of the incentive to comply with the implied consent statute.

¶ 32 Furthermore, the language of the implied consent statute governing court-ordered penalties for refusal does not grant discretionary authority to circuit courts. *See* Wis. Stat. § 343.305(9)–(10). Wisconsin Stat. § 343.305(10) provides, in part, "[i]f no hearing was requested, the revocation period *shall* begin 30 days after the date of the refusal." Wis. Stat. § 343.305(10) (emphasis added). Per the statutory language, if no hearing is requested within the ten-day time period, then revocation is mandatory.

¶ 33 This court recently interpreted the language of Wis. Stat. § 343.305(9)(a)4. and (10)(a) and held that the ten-day time limit to request a refusal hearing is mandatory and not subject to excusable neglect. ****712** *Brefka,* 348 Wis.2d 282, ¶ 4, 832 N.W.2d 121. Therefore, a circuit court has no competency to hear a defendant's request to extend the ten-day time period. *Id.*

¶ 34 Although *Brefka* considered the narrow question of whether a defendant could extend the ten-day time limit to request a refusal hearing due to excusable neglect, our decision in *Brefka* is instructive to our decision today. First, *Brefka* considered the meaning of "shall" in Wis. Stat. § 343.305(10)(a) [9] and concluded that the word is "mandatory" rather than "discretionary." *Id.,* ¶ 34. Therefore, in *Brefka,* we concluded that "Wisconsin Stat. § 343.305(9)(a)4. and (10)(a) impose a mandatory requirement that the refusal hearing must be requested within ten days of ***755** service of the Notice of Intent. *Id.,* ¶ 39. Second, we stated in *Brefka* that "[t]he penalty for a refusal followed by a failure to request a refusal hearing within ten days is also mandatory in requiring that '[i]f no hearing was requested, the revocation period shall begin 30 days after the date of the refusal.' " *Id.* (quoting Wis. Stat. § 343.305(10)(a)). The plain language of Wis. Stat. § 343.305(9)(a)4. and (10)(a) along with our recent interpretation of that language in *Brefka* leads us to conclude that a circuit court has no discretionary authority to dismiss a refusal charge if the defendant does not request a refusal hearing within the statutory ten-day time limit. [10]

¶ 35 Finally, we decline the State's invitation to overrule *Brooks.* As previously discussed, *Brooks* is not applicable to this case since it presented a totally different fact situation. We see no reason to disturb the holding in *Brooks.* Our decision in *Brooks* is longstanding ***756** precedent that fosters plea agreements in OWI and OWI-related cases. As we stated in *Brooks,* when a defendant has pleaded guilty to the underlying OWI charge or charges by the time of the refusal hearing, "the exercise of discretion ... by the

trial court may well have the tendency to increase OWI convictions as well as to conserve limited judicial resources by encouraging guilty pleas and reducing the number of time consuming refusal hearings." *Brooks,* 113 Wis.2d at 357, 335 N.W.2d 354. *Brooks* continues to grant circuit courts discretionary authority to dismiss refusal charges when a defendant requests a hearing within the statutory ten-day time period and pleads guilty to the underlying OWI or OWI-related offense.

IV. Conclusion

¶ 36 We do not review the court of appeals' decision that notice was proper in this case, since that issue is not before us. We conclude, however, that the court of ****713** appeals improperly extended the holding of *Brooks,* when it held that a circuit court could dismiss a refusal charge under the circumstances presented by this case. Under *Brooks,* a circuit court has the discretionary authority to dismiss a refusal charge only if the defendant has already pleaded guilty to the underlying OWI or OWI-related charge at the time of his or her refusal hearing, which was requested timely. Extending *Brooks* to allow circuit courts the discretionary authority to dismiss refusal charges in cases where a defendant has pleaded not guilty to the underlying OWI, PAC, or other related charge would contravene the purpose of Wis. Stat. § 343.305, Wisconsin's implied consent statute. In other words, *Brooks,* which is longstanding precedent of this court, applies only when a defendant meets two ***757** requirements. Namely, a defendant must request a refusal hearing within the statutory ten-day time limit and must plead guilty to the underlying OWI or OWI-related charge.

¶ 37 The language of Wis. Stat. § 343.305(10) and our recent interpretation of that language in *Brefka* make clear that a circuit court has no discretionary authority to dismiss a refusal charge when a defendant fails to request a refusal hearing within the statutory ten-day time period. Therefore we remand this case to the circuit court with instructions to impose the applicable penalties, including revocation of Bentdahl's operating privileges, due to his refusal to consent to chemical testing at the time of his OWI/PAC arrest, and his failure to request a refusal hearing within the statutory time period.

¶ 38 The decision of the court of appeals is modified and affirmed and, as modified, the cause remanded to the circuit court.

Parallel Citations

840 N.W.2d 704, 2013 WI 106

Footnotes

1 *State v. Bentdahl,* No. 2012AP1426, unpublished slip op., 2012 WL 6050302 (Wis.Ct.App. Dec. 6, 2012).

2 *State v. Brooks,* 113 Wis.2d 347, 335 N.W.2d 354 (1983). In *Brooks,* this court upheld a circuit court's discretionary decision to dismiss a refusal charge when the defendant had already pleaded guilty to the underlying OWI charge by the time of his refusal hearing. *Id.* at 348, 335 N.W.2d 354.

3 All subsequent references to the Wisconsin Statutes are to the 2009–10 version unless otherwise indicated.

4 *Vill. of Elm Grove v. Brefka,* 2013 WI 54, 348 Wis.2d 282, 832 N.W.2d 121 (2013).

5 Section 343.305(4) provides, in part, "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."

6 Wisconsin Stat. § 343.305(2) provides:

> Implied consent. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer under sub. (3)(a) or (am) or when required to do so under sub. (3)(ar) or (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3)(a), (am), or (ar), and may designate which of the tests shall be administered first.

7 Pursuant to Wis. Stat. § 343.305(9)4., part of the notice given to Bentdahl contains the following language:

> That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10–day period, the revocation period commences 30 days after the notice is issued.

8 We have previously clarified the meaning of an adverse decision in both *Neely v. State*, 89 Wis.2d 755, 279 N.W.2d 255 (1979) and *State v. Castillo*, 213 Wis.2d 488, 570 N.W.2d 44 (1997). In *Neely*, we determined that the meaning of "decision" is properly considered as the result reached by the deciding court and we held that "a party to whom the result is favorable may not petition for review of the decision simply because that party disagrees with the rationale expressed in the opinion." *Neely*, 89 Wis.2d at 758, 279 N.W.2d 255. In *Castillo*, we further clarified that an adverse decision does not result merely because the court of appeals determined that certain issues were unnecessary to reach. *Castillo*, 213 Wis.2d at 492, 570 N.W.2d 44.

9 The relevant portion of Wis. Stat. § 343.305(10)(a) provides: "If no hearing was requested, the revocation period *shall* begin 30 days after the date of the refusal." (emphasis added).

10 Although under Wis. Stat. § 967.055(2) a prosecutor may petition the court for a dismissal of a refusal charge, which a court seemingly could grant upon a finding that dismissal is in the public interest, the plain language of Wis. Stat. § 343.305(9)(a)4. and (10)(a) along with our recent interpretation of those statutory provisions in *Brefka* lead us to conclude that a circuit court has no discretionary authority to dismiss a refusal charge if the defendant does not request a refusal hearing within the statutory ten-day time limit. *Compare* Wis. Stat. § 967.055 *with* Wis. Stat. § 343.305(9)(a)4. and (10)(a) *and Brefka*, 348 Wis.2d 282, ¶¶ 4, 39, 832 N.W.2d 121. In addition, the defendant must also plead guilty to the underlying OWI or OWI-related charge.

> We do recognize, however, that factual circumstances distinct from those at issue today may arise, which make a request for a refusal hearing within the ten-day time limit or entry of a plea of guilty impossible. We do not decide what the discretionary authority of the circuit court would be under such circumstances.

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