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State Prosecution Support Division

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MARCH 27, 2015

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Williams v. State

The Supreme Court of Georgia holds that there is a clear distinction between "Implied Consent" and "Actual Consent" pursuant to the Fourth Amendment and Georgia Constitution, and that the State must show both before the result of a state-administered chemical test is admissible

In *Williams v. State*, S14A1625 (March 27, 2015), the Supreme Court of Georgia articulated for the first time a clear distinction between a DUI suspect's "consent" for purposes of the Implied Consent statute and "actual consent" (which would permit a warrantless search of a suspect's bodily fluids) under the Fourth Amendment and Georgia Constitution. The Defendant was arrested and charged with Driving Under the Influence of Alcohol and Failure to Maintain Lane. The stop resulted from the officer's reasonable articulable suspicion, and the Defendant was arrested based on probable cause. After placing the Defendant in custody, the arresting officer did not read the *Miranda* warning to the Defendant, but did read the statutory Implied Consent notice and requested the Defendant to submit to blood and urine testing. The Defendant verbally responded to the notice by saying "yes." No other conversation about the Defendant's tests took place. Furthermore, the parties agreed that exigent circumstances did not exist, and that the officer did not obtain a search warrant for the defendant's blood or urine.

Prior to trial, the Defendant moved to suppress the results of his state-administered tests. He argued that consent obtained pursuant to the Implied Consent statute *alone* does not amount to voluntary consent under the Fourth Amendment or the related portion of the Georgia Constitution. In denying his motion, the trial court rejected the arguments that: (1) Implied Consent implicates the Fourth Amendment; and (2) that Implied Consent is not a valid exception to the Fourth Amendment's search warrant requirement.

The Supreme Court of Georgia held that the trial court's reasoning was flawed because the extraction of blood from a DUI subject does, in fact, implicate the search and seizure provisions of the United States and Georgia Constitutions. Furthermore, warrantless searches are presumptively invalid, and the state bears the burden of establishing the existence of one of a small number of specifically established exceptions in order to justify the failure to obtain a warrant. And here, the Court focused on two well-established exceptions to the warrant requirement in the context of state-administered blood tests—exigent circumstances and consent.

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In regard to exigent circumstances, the Court noted that in *Schmerber v. California*, 384 U.S. 757 (1966), the Supreme Court of the United States recognized the legal nexus between the elimination of alcohol from the human body and the existence of an exigency that would permit an officer to obtain a blood sample without a warrant.[1] That holding was subsequently refined in *Missouri v. McNeely*, 569 U.S. ___, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013), which held that although the dissipation of alcohol by a suspect's body may support a finding of exigency, it does not do so categorically. Instead, "[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." *Id*. at 1563. Since the parties here stipulated no exigencies existed, the Court next examined whether there was valid consent to justify the warrantless search of the Defendant.

The Court observed that there was no question that the Defendant submitted to the state-administered chemical test of his blood after the arresting officer read him the appropriate Implied Consent notice. However, citing *Cooper v. State,* 277 Ga. 282 (2003), ***the Court clarified that there is a distinction between "consent" for purposes of the Implied Consent statute and "consent" under the Fourth Amendment***. Furthermore, the Court suggested that one of the implications of *McNeely* is a heightened need for the state to demonstrate "actual consent" as an exception to the warrant requirement in addition to a suspect's Implied Consent. The Court stated that while *McNeely* did not directly address whether a suspect's consent to the testing of bodily substances satisfied the Fourth Amendment, the courts of other states have indicated that "mere compliance with statutory implied consent requirements does not, per se, equate to actual, and therefore voluntary, consent on the part of the suspect so as to be an exception to the constitutional mandate of a warrant." See *People v. Harris*, 2015 WL 708606 (Cal.App. 4 Dist., 2015); *Weems v. State*, 434 S.W.3d 655 (Tex. App. 2014); *State v. Padley*, 354 Wis.2d 545 (Wis. App. 2014); *State v. Moore*, 354 Or. 493 (Or. 2013); and *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013).

Here, the Court held that the trial court failed to consider whether the Defendant gave "actual consent" to the procuring and testing of his blood, despite the fact that he said "yes" after being read the Implied Consent notice. To make such a determination, the Court noted that a trial court must examine "the voluntariness of the consent under the totality of the circumstances." Therefore, the trial court's order was vacated and the case was remanded for further proceedings.

Prosecutors handling DUI cases involving state-administered chemical tests obtained based on an affirmative response to the Implied Consent warning are strongly encouraged to analyze the facts of each case for circumstances demonstrating the

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free and voluntary nature of the defendant's submission to testing. Defendants are likely to challenge the admission of the results of their tests using one or more of the following arguments: (1) the Defendant was under arrest (and likely in handcuffs) when they agreed to be tested; (2) the Implied Consent warning itself is allegedly "inherently coercive;" or (3) the Defendant was "too impaired" to be able to give actual consent. Furthermore, prosecutors are advised to work with their local law enforcement agencies to develop a protocol whereby officers can establish free and voluntary consent pursuant to the Fourth Amendment and Georgia Constitution in addition to the Implied Consent statute.

End Notes

1. In fact, in *Strong v. State*, 231 Ga. 514 (1973) the Georgia Supreme Court itself had expressly provided that the body's elimination of alcohol constituted an exigent circumstance in and of itself, and allowed for a warrantless blood test incident to arrest. However, based on *Missouri v. McNeely*, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013), the Court specifically overruled that portion of *Strong*.

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