Case Name: Williams v. The State (In the Supreme Court of Georgia, S14A1625, Decided March 27, 2015)

FACTS/PROCEDURAL HISTORY:
On September 22, 2012, Williams was arrested by an officer of the Gwinnett County Police Department and charged with DUI and failure to maintain lane; the officer had "reasonable articulable suspicion" to stop Williams and probable cause to arrest him. Williams was placed in custody but was not advised of his Miranda rights. The officer read Williams the age-appropriate statutory implied consent notice and pursuant to it requested that Williams submit to blood and urine tests. The officer told Williams that it was "a yes or no question," and Williams verbally responded "yes." There was no other conversation about consent for the testing, i.e., the officer did not ask Williams "if [Williams] was willing to freely and voluntarily give a test."The officer "read [Williams] the implied consent and that was pretty much the end of it." It "was an ordinary DUI," there "were no exigent circumstances," and no search warrant was obtained. Williams was taken to a medical center where blood and urine samples were taken for the purpose of his criminal prosecution. The state court denied Williams's motion to suppress his blood test, expressly rejecting the "reasoning" that statutory implied consent implicated Fourth Amendment concerns, and the contention that the statutory consent, in and of itself, was not a valid exception to the Fourth Amendment's requirement of a search warrant.

ISSUE:
Is Georgia's implied consent statute constitutional in the following respect - does voluntary consent under the statute automatically amount to voluntary consent for purposes of the Fourth Amendment and of the Georgia State Constitution?

HOLDING:
No, specific factual circumstances must be established before consenting to a blood draw can be found to be constitutional. A suspect's right under the Fourth Amendment to be free of unreasonable searches and seizures applies to the compelled withdrawal of blood, and the extraction of blood is a search within the meaning of the Georgia Constitution. Cooper v. State, 277 Ga. 282, 285 (III) (587 SE2d 605) (2003). In general, searches are of two types: those conducted with a search warrant or those undertaken without one, and searches conducted outside the judicial process are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. Thus, a warrantless search is presumed to be invalid and the State has the burden of showing otherwise.

The first well-recognized exception to the warrant requirement in the context of a state-administered blood test is the presence of exigent circumstances. The United States Supreme Court in Schmerber v. California, 384 U.S. 757 (86 SCt 1826, 16 LE2d 908) (1966), addressed the Fourth Amendment implications of a warrantless blood draw in a DUI case. The Supreme Court stated it was to determine "whether the police were justified in requiring [the petitioner in that case]to submit to the blood test, and whether the means and procedures employed in taking his blood respected relevant Fourth Amendment standards of reasonableness."

Accordingly, "[i]n the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may

disappear unless there is an immediate search." Id. at 770. The Court reasoned that inasmuch as "[s]earch warrants are ordinarily required for searches of dwellings," there could not be a lesser requirement in the instance of "intrusions into the human body," but noted this was so "absent an emergency." Thus, Schmerber established the legal nexus between the transient and dissipating nature of an intoxicant in the human body and presence of an exigency for the purpose of securing a blood test without the necessity of a search warrant.

This Court carried such nexus further in Strong v. State, 231 Ga. 514 (202 SE2d 428) (1973), when it determined that in the situation in which there is probable cause to arrest an individual for DUI, the "evanescent nature of alcohol in the blood," in and of itself, necessitated that the defendant's blood sample be extracted in order "to prevent a failure of justice from a certain disappearance of this evidence." Id. at 518. In other words, the dissipation of the intoxicant in the body automatically, as a matter of law, provided the exigency for a warrantless blood test incident to the arrest. However, prior to the bench trial and the denial of the motion to suppress in Williams's case, the United States Supreme Court issued its decision in Missouri v. McNeely, 569 U. S. ___ (133 SCt 1552, 185 LE2d 696) (2013), in which it rejected a per se rule that the natural metabolization of alcohol in a person's bloodstream constitutes an exigency justifying an exception to the Fourth Amendment's search warrant requirement for nonconsensual blood testing in all DUI cases.

Thus, to the extent that Strong v. State holds otherwise, it is hereby overruled. In the present case, there is no dispute that there were no exigent circumstances. Consequently, the analysis in this case must then focus on the voluntary consent exception to the warrant requirement because it is well settled in the context of a DUI blood draw that a valid consent to a search eliminates the need for either probable cause or a search warrant.

As noted, it is uncontroverted that Williams submitted to the blood test after the police officer read him the implied consent notice for suspects age 21 or over. However, in Cooper v. State, supra, this Court plainly distinguished compliance with the implied consent statute from the constitutional question of whether a suspect gave actual consent for the state-administered testing. We emphasized such remaining question in regard to the validity of the consent, confirming that "[w]hen relying on the consent exception to the warrant requirement, the State has the burden of proving that the accused acted freely and voluntarily under the totality of the circumstances."

In considering Williams's motion to suppress, the state court failed to address whether Williams gave actual consent to the procuring and testing of his blood, which would require the determination of the voluntariness of the consent under the totality of the circumstances. Consequently, the judgments of the state court are vacated and the case is remanded to that court for proceedings consistent with this opinion. Judgments vacated and case remanded with direction. All the Justices concur.