

IN THE SUPREME COURT OF FLORIDA

WILLIAM WILLIAMS,

Petitioner,

v.

CASE NO. SC15-1417

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS

PAMELA JO BONDI
ATTORNEY GENERAL

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #909130

WESLEY HEIDT
BUREAU CHIEF
FLORIDA BAR #773026
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990

COUNSEL FOR RESPONDENT

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Cases:

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Other:

Art. I, § 12, Fla. Const. 3,4

§ 316.1933, Fla. Stat. 4

§ 316.1939, Fla. Stat. 3

SUMMARY OF ARGUMENT

At issue in this case is the constitutionality of imposing criminal penalties for refusing a breath test under the terms of Florida's implied consent statute. The United States Supreme Court has now definitively addressed this issue, finding that breath tests are a reasonable means to combat the scourge of drunk driving, and that states may criminally punish a refusal to comply with the terms of these statutes.

The district court of appeal properly affirmed the trial court's order denying the Petitioner's motion to dismiss. Review should be dismissed, or the lower court's conclusion approved based on the reasoning of the United States Supreme Court's recent decision on this issue.

ARGUMENT

THE DISTRICT COURT OF APPEAL PROPERLY CONCLUDED THAT REQUIRING A BREATH TEST UNDER THE IMPLIED CONSENT STATUTE DOES NOT VIOLATE THE FOURTH AMENDMENT, AS NOW EXPRESSLY RECOGNIZED BY THE UNITED STATES SUPREME COURT.

In their respective briefs on the merits in this case, the parties addressed the ramifications of the United States Supreme Court's 2013 decision in Missouri v. McNeely, 133 S.Ct. 1552 (2013). Specifically, the parties discussed whether the Court's holding in McNeely rendered invalid breath tests ordered pursuant to state implied consent laws. If requiring such a breath test violates the Fourth Amendment, then penalizing a person who refuses this test, such as Petitioner, would be improper.

After the parties' briefs were filed, the United States Supreme Court definitively answered this question. In Birchfield v. North Dakota, 136 S.Ct. 2160 (2016), the Supreme Court addressed whether the Fourth Amendment prohibits the application of criminal sanctions for refusing to submit to a breath test required by a state's implied consent law. After discussing at length the privacy interests implicated by such a test, and weighing those interests against the State's interest in securing the evidence provided by the test, the Court concluded as follows:

Having assessed the effect of BAC tests on privacy interests and the need for such tests, we conclude that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. The impact of

breath tests on privacy is slight, and the need for BAC testing is great.

136 S.Ct. at 2184.

Because the warrantless breath test was permissible under the Fourth Amendment, defendant Bernard had no right to refuse it, and the criminal sanctions for such refusal did not violate his Fourth Amendment rights. Id. at 2186.

The same conclusion must be reached in addressing the constitutionality of Florida's implied consent statute. Similar to the statute approved in Birchfield, Florida's law requires an individual who has been arrested for driving under the influence to submit to a breath test, with criminal penalties applied to the refusal to do so under certain limited circumstances. § 316.1939(1), Fla. Stat. Under the holding in Birchfield, this statute does not violate the Fourth Amendment, and the Fifth District Court of Appeal correctly rejected the Petitioner's argument to the contrary.

This Court is bound by the Florida Constitution to construe the right to be free from unreasonable searches in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Art. I, § 12, Fla.

Const. Accordingly, the decision in Birchfield is unquestionably binding here, and no further review is required.¹

The lower court reached the correct result, finding that breath tests under Florida's implied consent statute do not violate the Fourth Amendment and that the refusal to submit to such tests can result in criminal sanctions. Williams v. State, 167 So. 3d 483 (Fla. 5th DCA 2015). Review in the instant case should be dismissed, or the result below approved based on the reasoning in Birchfield.

¹Respondent notes that the Birchfield decision specifically declined to address urine tests under implied consent statutes, nor did it directly discuss mandatory blood tests in the context of accidents involving death or serious bodily injury. See § 316.1933, Fla. Stat. Neither factual situation is presented in the instant case, however, and accordingly the application of Birchfield in those situations must be left for a future case.

CONCLUSION

Based on the arguments and authorities presented herein and in its Answer Brief on the Merits, Respondent respectfully requests this honorable Court approve the decision of the Fifth District Court of Appeal.

Respectfully submitted,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Kristen L. Davenport
KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Florida Bar # 909130

/S/Wesley Heidt
WESLEY HEIDT
BUREAU CHIEF
Florida Bar # 773026
444 Seabreeze Blvd. Ste. 500
Daytona Beach, FL 32118
(386) 238-4990
crimappdab@myfloridalegal.com

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Supplemental Answer Brief On the Merits has been furnished to Eric Latinsky and Aaron Delgado, counsel for Petitioner, 227 Seabreeze Boulevard, Daytona Beach, Florida 32118, by e-service to adelgado@communitylawfirm.com and elatinsky@communitylawfirm.com, this 27th day of July, 2016.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/ Kristen L. Davenport
Kristen L. Davenport
Counsel for Respondent