Wisconsin Supreme Court
9:45 a.m.
Wednesday, April 12, 2017

2015AP1261-CR State v. Brar

Supreme Court case type: Petition for Review
Court of Appeals: District IV
Circuit Court: Dane County, Judge John W. Markson, affirmed
Long caption: State of Wisconsin, Plaintiff-Respondent, v. Navdeep S. Brar, Defendant-Appellant-PETITIONER

Issues presented: This drunken driving case examines what constitutes actual consent to a blood draw when no search warrant is obtained, and whether the facts here would negate any such consent as constitutionally involuntary. The Supreme Court reviews the issues in light of the U.S. Supreme Court decision in Missouri v. McNeely, ___ U.S. ___, 133 S. Ct. 1552 (2015). The issues, as presented by the defendant Navdeep S. Brar:

- Whether consent justified the warrantless blood draw?
- Whether the state proved consent to be voluntary?

Some background: Brar was convicted of operating while intoxicated (OWI), third offense. Middleton Police Officer Michael Wood had stopped Brar for speeding. During the stop, Wood arrested Brar for OWI. The stop and the arrest are not being challenged by Brar.

After the arrest, Wood transported Brar to the Middleton Police Department, where Wood read the Informing the Accused form to Brar. What happened next is subject to some differing interpretations. As directed at the end of the form, Wood asked Brar whether he would "submit to an evidentiary chemical test of your blood."

At a later suppression hearing, Wood testified that Brar gave a response to the effect of "Of course, [I don't] want to have [my] license revoked." Wood testified that he understood Brar's response to mean that he was consenting to a blood draw. Brar, however, then asked what kind of test would be conducted. Wood responded that it would be a blood test. Brar responded by asking whether a search warrant was required for a blood test. Wood shook his head, indicating that no search warrant was required.

Brar says an audio recording of the conversation contradicts Wood's testimony, and that there is no audible response when Wood asked Brar if he would submit to the test. Brar claims that his continuing to ask the officer questions shows that he never actually consented to the blood draw. Further, Brar says Wood misled him about the need for a search warrant, which caused him to acquiesce in allowing the blood draw and rendered any possible consent involuntary.

Brar's suppression motion was denied.

He challenges the circuit court's factual finding that he consented to the blood draw and to the legal conclusion of both the circuit court and the Court of Appeals that his consent was constitutionally valid.

He asks the Supreme Court to determine what constitutes consent to a blood draw, in light of the U.S. Supreme Court's decision in McNeely that the dissipation of alcohol, by itself, is not sufficient to avoid the necessity of a search warrant for a blood draw.

Brar points out that the U.S. Supreme Court has established an objective test for determining the scope of a person's consent to a Fourth Amendment search. Florida v. Jimeno, 500 U.S. 248, 251 (1991). He argues that a reasonable bystander would not have understood his expressions of desire to avoid revocation of his driver's license as an agreement to a bodily invasion, especially when it was part of a back-and-forth that was immediately followed by questions about what type of test would be conducted and whether a warrant was needed before any such test could be performed.

A decision by the Wisconsin Supreme Court is expected to provide police and lower courts guidance on what is required for a suspect to provide consent and for that consent to be knowing and voluntary.