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IN THE SUPREME COURT OF FLORIDA

BYRON MCGRAW,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. SC18-792

ON DISCRETIONARY REVIEW FROM THE
THE FOURTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Petitioner was involved in a single car rollover crash. McGraw v. State, 2018 WL 1413038, *1 (Fla. 4th DCA Mar. 21, 2018). The crash rendered petitioner unconscious and fire rescue personnel had to cut away portions of the vehicle to extricate petitioner from it. Id. Petitioner, who had the odor of alcoholic beverages emanating from his person, was transported to the hospital via ambulance. Id. A police officer followed the ambulance to the hospital to investigate a possible DUI offense. Id. at *2.

Petitioner remained unconscious at the hospital, so the police officer and a nurse both conducted a "sternum rub" to see if there would be any kind of reaction. Id. Petitioner did not respond to the sternum rubs, so the police officer requested the nurse draw petitioner's blood. Id. The police officer's request for a blood draw was pursuant to section 316.1932(1)(c) of the Florida Statutes, which states that any person who is incapable of refusing a blood test due to "unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent" to a blood draw and test.

Petitioner moved to suppress the results of the blood test based upon recent decisions from the United States Supreme Court. Id. The trial court held an evidentiary hearing and concluded "Florida's implied consent law does not provide consent for a warrantless blood draw" and that "the officer's testimony supported

no other exception to the warrant requirement." Id. The trial court also found that the police officer "proceeded in an objectively reasonable reliance on the validity of the implied consent law. As a result of the officer's good faith reliance on a presumptively valid statute, the court denied the motion to suppress." Id. The trial court denied petitioner's motion to suppress based upon the "good faith" exception and certified a question of great public importance to the Fourth District Court of Appeal. Id. at 1-2.

The Fourth District accepted jurisdiction over petitioner's case and thoroughly analyzed the impact of Missouri v. McNeely, 569 U.S. 141 (2013) and Birchfield v. North Dakota, 136 S.Ct. 2160 (2016) on section 316.1932(1)(c) of the Florida Statutes. The Fourth District noted that the decision in Birchfield "held that implied consent laws that do not impose criminal penalties are constitutionally valid. If no implied consent law could survive the Fourth Amendment, the Court would have stated as much." McGraw, 2018 WL 1413038 at *5. After surveying a host of post-Birchfield cases from other states, the Fourth District concluded that the Colorado Supreme Court's decision in People v. Hyde, 393 P.3d 962 (Colo. 2017) was the most persuasive and answered the rephrased certified question affirmatively. McGraw, 2018 WL 1413038 at *1 & *9.

Judge Gross dissented in part from the majority's opinion in McGraw. According to Judge Gross, the Fourth District should have answered the question

certified by the trial court in the negative.[1] Id. at *9. However, Judge Gross agreed with the majority that the trial court's ruling should be affirmed under the "good faith" exception to the exclusionary rule. Id. The majority concluded that it need not reach the argument on the "good faith" exception because no Fourth Amendment violation occurred in this case. Id. at *8. Nevertheless, the majority stated that if it were to reach the issue, it would "affirm the trial court's application of the good faith exception." Id.

Petitioner subsequently moved to certify a question of great public importance to this Court. Id. at *15. The Fourth District granted petitioner's motion, and petitioner sought discretionary review before the Court.

SUMMARY OF ARGUMENT

The trial court in this case denied petitioner's motion to suppress his blood draw based upon the "good faith" exception to the warrant requirement. All three judges in McGraw agreed the trial court's ruling should be affirmed on this basis.

[1] The Fourth District rephrased the trial court's certified question as follows: "Under the Fourth Amendment, may a warrantless blood draw of an unconscious person, incapable of giving actual consent, be pursuant to section 316.1932(1)(c), Florida Statutes (2016)("Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to [a blood draw and testing]."), so that an unconscious defendant can be said to have "consented" to the blood draw?" Id. at 1.

Despite this agreement, the Fourth District chose to address whether petitioner's blood draw ran afoul of the Fourth Amendment. The Court should decline jurisdiction over this case pursuant to the fundamental maxim of judicial restraint that courts should not decide constitutional issues unnecessarily.

Petitioner contends the Fourth District in McGraw expressly declared section 316.1932(1)(c) valid. Nothing within the "four corners" of the McGraw opinion directly, explicitly, definitely, or unmistakeably declares section 316.1932(1)(c) valid. Therefore, the Court should decline jurisdiction over this case because McGraw does not expressly declare section 316.1932(1)(c) valid.

The decision in McGraw does not expressly construe the Fourth Amendment of the federal Constitution. Instead, the Fourth District merely applied existing precedent from the United States Supreme Court. Thus, the Court should decline jurisdiction over this case.

ARGUMENT

THE COURT SHOULD DECLINE JURISDICTION OVER THIS CASE BECAUSE IT HAS A DUTY TO REFRAIN FROM PASSING ON THE VALIDITY OF A STATUTE IF THE CASE CAN BE PROPERLY DECIDED ON ANOTHER GROUND.

Petitioner seeks to invoke the discretionary jurisdiction of this Court pursuant to Article V, section 3(b)(3), of the Constitution of the State of Florida. The Court should decline jurisdiction over this case because Florida law is crystal clear "that

courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds." Singletary v. State, 322 So. 2d 551, 552 (Fla. 1975)(refraining from deciding constitutionality of statutes where case was resolved on speedy trial issue); Dufour v. State, 69 So. 3d 235, 253 (Fla. 2011)(refusing to reach constitutional challenge raised by defendant where case could be resolved on other grounds).

The trial court in this case denied petitioner's motion to suppress because it found that the police officer "proceeded in an objectively reasonable reliance on the validity of the implied consent law." McGraw, 2018 WL 1413038 at *1. The entire panel of the Fourth District agreed with the trial court's finding on this point, i.e., petitioner's motion to suppress was properly denied under the "good faith" exception. McGraw, 2018 WL 1413038 at *8 & *13-15. Because every judge in this case ultimately concluded that the motion to suppress was properly denied under the "good faith" exception, the Court should decline jurisdiction over this case pursuant to the fundamental maxim of judicial restraint that "'courts should not decide constitutional issues unnecessarily.'" State v. Efthimiadis, 690 So. 2d 1320, 1322 (Fla. 4th DCA 1997)(citation omitted).

Petitioner contends the Fourth District's decision in the instant case expressly declared section 316.1932(1)(c) valid. (JB. 6). The Court should not exercise jurisdiction over this case on this ground because nothing in the Fourth District's

opinion expressly declares section 316.1932(1)(c) valid. Art. V, § 3(b)(3), Fla. Const. (the Court has discretionary jurisdiction to review a district court decision "that expressly declares valid a state statute").

Petitioner fails to indicate how the Fourth District expressly declared valid a state statute in this case. Black's Law Dictionary (6th ed.) defines expressly as: "[i]n an express manner; in direct or unmistakeable terms; explicitly; definitely; directly." Nothing within the "four corners" of the Fourth District's opinion in this case directly, explicitly, definitely, or unmistakeably declares section 316.1932(1)(c) valid. McGraw, 2018 WL 1413038. The question certified by the trial court asked whether section 316.1932(1)(c) remains constitutionally valid, but the Fourth District never answered that question. McGraw, 2018 WL 1413038 at *1. Instead, the Fourth District rephrased the certified question and omitted any reference to the constitutionality of section 316.1932(1)(c). Thus, the opinion in McGraw does not expressly declare valid a state statute and the Court should not exercise jurisdiction over this case.

Petitioner argues McGraw expressly construes the Fourth Amendment to the United States Constitution. (IB. 6). To support the Court's jurisdiction on this basis, McGraw must have "explain[ed], define[d] or overtly expresse[d] a view which eliminates some existing doubt as to a constitutional provision. . ." Rojas v. State, 288 So. 2d 234, 236 (Fla. 1974). Simply applying a constitutional provision

or precedent is insufficient. "Applying is not synonymous with Construing; the former is NOT a basis of our jurisdiction, while the Express construction for a constitutional provision is." Id.

The Fourth District applied the United States Supreme Court's decisions in McNeely and Birchfield to section 316.1932(1)(c) in McGraw. Under the application of existing United States Supreme Court precedent, the Fourth District determined that only implied consent laws which impose criminal penalties for non-compliance violate the Fourth Amendment. McGraw, 2018 WL 1413038 at *8. The statute at issue in this case does not impose criminal penalties for non-compliance, so the Fourth Amendment was not expressly construed in McGraw. Id. Thus, the Court should decline jurisdiction over this case.

Petitioner also contends the Court should accept jurisdiction over this case because there is a split among the states concerning whether the Fourth Amendment, after Birchfield, permits a warrantless blood draw of an unconscious driver pursuant to a state's implied consent statutes. (JB. 7-9). Such an argument must fail because most of the cases cited by petitioner are inapposite for various reasons, i.e., because the State conceded the statute at issue was unconstitutional, because a different statute gave drivers the right to refuse a test, because the opinions were ultimately vacated or overruled, etc. (JB. 7-8). Petitioner's suggestion that the issue in this case is one of "great public importance" overlooks

the reality that this issue does not arise frequently and is not likely to have widespread impact. In fact, the United States Supreme Court commented that it is uncommon to administer blood tests to unconscious drivers in drunk-driving arrests. Birchfield, 136 S. Ct. at 2185. The United States Supreme Court's observation is bolstered by the fact that this is "a case of first impression for the state of Florida" even though Birchfield was decided nearly two years ago. (JB. 7). Accordingly, the Court should decline jurisdiction because this case does not involve an issue of great public importance.

Finally, petitioner contends the opinion in McGraw somehow "creates tension with the Fifth District's decision in State v. Liles, 191 So. 3d 484 (Fla. 5th DCA 2016)." (JB. 9). There is no tension between McGraw and Liles. The defendants in Liles initially refused to submit to a blood test but eventually complied when the police stated they would forcibly take the blood, if necessary. Petitioner, in contrast, never refused to submit to a blood test in this case. The blood draws at issue in Liles were obtained pursuant to section 316.1933(1)(a) of the Florida Statutes. Petitioner's blood was drawn under an entirely different statute, section 316.1932(1)(c). Thus, there is no "tension" between McGraw an Liles, especially when both opinions concluded that the blood draws were admissible under the

good faith exception to the exclusionary rule.[2] Accordingly, the Court should decline jurisdiction over this case.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the State respectfully requests this Honorable Court decline jurisdiction over this case.

Respectfully submitted,

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[2] Petitioner's reliance on Williams v. State, 167 So. 3d 483 (Fla. 5th DCA 2015) is misplaced because it involved breath tests, not blood tests. (JB. 9-10). Furthermore, this Court vacated the Fifth District's decision in Williams v. State, 2016 WL 6637817 (Fla. 2016).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this brief has been furnished via email (appeals@pd15.org and beisenberg@pd15.state.fl.us) to Benjamin Eisenberg, Assistant Public Defender, 421 Third Street, West Palm Beach, FL 33401 on June 8, 2018.

/s/ Richard Valuntas
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Times New Roman 14 point type and complies with the font requirements of Rule 9.210.

/s/ Richard Valuntas
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