In the Interest of C. W., a child., A17A0084

Georgia Court of Appeals, Criminal Case (6/28/2017, 7/31/2017)

by: Margaret Gettle Washburn

In this recent case, the Court of Appeals affirmed the Chatham County Juvenile Court in granting C.W.'s motion to suppress evidence of his blood-alcohol level obtained through a warrantless blood test in his trial for driving under the influence of alcohol, underage possession of alcohol, reckless driving and speeding. The Court of Appeals found that the State did not show C. W. voluntarily consented to the blood test.

Presiding Judge McFadden authored the opinion for the Court.

The State filed a delinquency petition against C. W. for driving under the influence of alcohol, OCGA § 40-6-391 (a) (1), (k) (1), underage possession of alcohol, OCGA § 3-3-23, reckless driving, OCGA § 40-6-390, and speeding, OCGA § 40-6-181.

The evidence presented at the motion to suppress hearing showed that a Georgia State Patrol trooper saw 16-year-old C. W. driving his car at a speed of 79 mph on a road with a posted speed limit of 55 mph. The trooper stopped C. W.'s car and asked him to get out, stating that C. W. smelled of an alcoholic beverage, his speech was slurred, his eyes were bloodshot, glossy and watery. C. W. eventually told the trooper that he had drunk three beers earlier in the day. The trooper administered field sobriety tests and a portable breath test, which indicated the presence of alcohol on C. W.'s breath, and the trooper arrested C. W. and handcuffed him.

The trooper read C. W. the implied consent notice for persons under the age of 21. C. W. agreed to submit to the state-administered chemical test. The trooper then drove C. W. to a police precinct to undergo a blood test, but more than an hour passed between the reading of the implied consent warning and the blood test. The officer testified that he was "very stern" with C. W.

At the precinct, a paramedic drew C. W.'s blood at the precinct. **The paramedic had the trooper sign the consent form on C. W.'s behalf because C. W. is a minor, their protocols prohibit a minor from consenting, and C. W. was in the trooper's custody. C. W. did not read the consent form and neither the paramedic nor the trooper read it to him. C. W.'s parents were not present when his blood was drawn; the paramedic did not recall that C. W.'s parents had been notified that his blood would be drawn; and C. W.'s father arrived after his blood had been drawn.** (emphasis supplied-ed).

The juvenile court granted C. W.'s motion to suppress evidence of his blood-alcohol level obtained through the blood test, finding that the State did not show C. W. voluntarily consented to the blood test and there was no warrant for the search. The State appealed and the Court of Appeals affirmed

the Chatham County Juvenile Court, finding that the evidence presented at the hearing on the motion to suppress did not demand a finding contrary to the Juvenile Court's ruling.

The Court of Appeals found that a blood test is a search within the meaning of the Fourth Amendment. *Williams v. State*, 296 Ga. 817, 819 (771 SE2d 373) (2015). A warrantless search is "per se unreasonable under the Fourth Amendment, and that a warrantless search is presumed to be invalid. The State has the burden of showing otherwise. The District Attorney argued that the juvenile C. W. consented to the blood test, and that no search warrant was needed, as per *Williams*, supra, … "it is well settled in the context of a DUI blood draw that a valid consent to a search eliminates the need for a search warrant".

To meet this burden, the State was required to show that C. W. acted freely and voluntarily in giving actual consent. See *Williams* and *State v. Brogan*, 340 Ga.App. 232 (797 SE2d 149) (2017).

The Chatham County Juvenile Court found that C. W.'s consent to the blood test was **not** voluntary, and that given the circumstances, a "reasonable person would not have felt free to decline the [trooper's] request to submit to the blood test." Thus, juvenile court granted the motion to suppress, finding that C. W.'s consent to the blood test was not voluntary. The State also argued a juvenile may consent to a blood test. But the Juvenile Court did not rule that C. W.'s consent was coerced, as a matter of law, due to the reading of the implied consent notice. Nor did the Court rule that C. W.'s age meant that he could not consent to a blood test.

The Court of Appeals found that, as the above contentions of the State were not before the Court, and in evaluating the "totality of these circumstances, we are reminded that in the absence of evidence of record *demanding* a finding contrary to the judge's determination, the appellate court will not reverse the ruling sustaining a motion to suppress. And here, the evidence supports the trial court's findings and certainly does not *demand* a conclusion contrary to the court's ruling".

The Court further held: "The state argues that the fact the trooper read the implied consent notice to C. W. does not per se mean that his consent was coerced. The state also "argues that the evidence supported a finding of voluntary consent. Were we reviewing a denial of a motion to suppress, this argument might be persuasive. But we are reviewing a grant of a motion to suppress, and the evidence did not demand a finding contrary to the trial court's decision. For this reason, we must affirm." *Brogan*, 340 Ga. App. at 236 (citations and punctuation omitted)."

*Judgment affirmed. Branch, J., concurs. Bethel, J., concur*s *specially.*

Judge Bethel, concurring specially, agreed with Presiding Judge McFadden's opinion because it "provided the required deference to the trial court." However, he was concerned that: "the opinion could be used to support the proposition that a defendant's age may provide the exclusive basis for a motion to suppress based on a finding of a lack of voluntariness with regards to a consent to a blood draw in future cases. Because I do not believe the age of the defendant can or should provide the sole basis for such a finding or motion, I concur specially".

Judge Bethel found these factors: "1) C.W. was 16 years old at the time; 2) the officer spoke sternly to C.W.; 3) the stop lasted long enough for the trooper to conduct three field sobriety tests; 4) upon

a finding of probable cause, C.W. was arrested and handcuffed; 5) the trooper advised C.W. of the statutorily required advised consent standard applicable to drivers under the age of 21; and 6) the trooper transported C.W. to the precinct for the blood draw".

Judge Bethel noted that factors 3-6 are the functionally essential elements of a lawful DUI stop and arrest, that these factors are not the basis of fear, intimidation, threat of physical punishment, or lengthy detention that would call into question an otherwise voluntary consent to search. Judge Bethel found that this left only 2 determining factors: C.W.'s age and a [trooper's] stern voice. "Allowing age alone to be the determining factor would leave law enforcement with no lawful means of conducting this sort of search on young drivers and I do not believe that the Fourth Amendment requires such a rule. I do not believe that the Presiding Judge explicitly suggests that standard. But, I fear his opinion could be read to support that conclusion. Accordingly, I concur specially."