JD Supra

"Georgia Court of Appeals Approves Use of Search Warrants to Acquire Evidence of Intoxication in DUI/Drunk Driving Cases"

CASE NAME: McAllister v State (A13A1897, DO-071 C; January 22, 2014)

FACTS:
On March 30, 2012, Officer Daniel Higgins of the Cherokee County Sheriff's office was manning a vehicle safety checkpoint in Cherokee County, Georgia. The roadblock was well marked. Deputy George Rose observed a white Cadillac approach the checkpoint around 10:30 p.m. The vehicle's left turn signal was activated, and as it approached him, Deputy Rose noticed that the vehicle's passenger side tires twice crossed over the middle line dividing the lanes of traffic. Deputy Rose began to converse with the driver. He noticed that McAllister was nervous while speaking and that his eyes were red and glassy. Rose also observed McAllister's speech to be slurred and his overall demeanor to be confused. Deputy Rose detected an odor of alcoholic beverage coming from the vehicle. After being directed to a certain spot, Mr. McAllister drove his vehicle past that point, slammed on his brakes and appeared unsteady on his feet when he stepped out of the vehicle. After failing the HGN test, and declining to attempt other field tests for medical reasons, Deputy Rose placed Mr. McAlister under arrest and charged him with DUI/drunk driving.

McAlister refused to submit to chemical testing after being read his implied consent rights for Georgia drivers. Immediately afterwards, the deputy completed an application for a warrant for a blood test of McAllister. The local magistrate approved the warrant; and thereafter, Mr. McAllister was transported to a local hospital for a blood draw, where the results established a blood alcohol level of .127 percent.

PROCEDURAL HISTORY:
At the call of the case for trial Mr. McAllister argued a motion to suppress the results of his blood alcohol test, arguing that the warrant acquired for the blood draw was invalid based upon Mr. McAllister's previous refusal to submit to testing under Georgia's implied consent law. The trial court denied the defendant's motion, and this appeal followed.

ISSUE:
Was the trial court correct in ruling that the search warrant for the blood draw was valid considering that the defendant had previously exercised his rights to refuse chemical testing under the Georgia implied consent statute?

HOLDING:
No. The trial court was correct in denying the defendant's motion to suppress. In 2006, the Georgia legislature amended the implied consent statute adding the following language: "Nothing in this code section shall be deemed to preclude the acquisition or admission of evidence of a violation of code section 40-6-391 if obtained by voluntary consent or a search warrant as authorized by the constitution or laws of this state or of the United States is obtained." The plain meaning of this language supports the State's argument that the search warrant used to take McAllister's blood, in this DUI/drunk driving case, was valid under the implied consent statute. The legislature's addition of the language noted above clarified that the language relied upon in the statute by Mr. McAllister only applies to warrantless chemical tests given by the state in the event that a driver has refused such testing after the implied

consent warning. In the case at bar, the proper procedure and protocols were followed by the arresting officer and the magistrate for the issuance of a search warrant prior to the forced blood draw.

ACCORDINGLY THE TRIAL COURT'S DENIAL OF THE DEFENDANT'S MOTION TO SUPPRESS THE BLOOD RESULTS IN THIS CASE IS UPHELD.