

“Georgia Supreme Court Suppresses Evidence of Defendant’s Refusal to take a Breath Test in Drunk Driving Case”

CASE: Sauls v State; Case No. S12G1292; June 17, 2013; Georgia Supreme Court

FACTS:

The defendant Sauls was pulled over for erratic driving. After performing field sobriety tests Sauls was arrested for DUI (drunk driving). Pursuant to Georgia law, the arresting officer read Sauls his rights under the Georgia implied consent Statute”. The officer failed to read the notice to Sauls in its entirety, omitting the following information, “Your refusal to submit to the required testing may be offered into evidence against you at trial.” Subsequently, Sauls refused to provide a breath sample.

PROCEDURAL HISTORY:

The trial court granted Sauls's motion to suppress the evidence of his refusal to provide a breath sample. The basis for the trial court’s ruling was that the officer’s omission material altered a critical portion of the implied consent notice. The Court of Appeals reversed the trial court’s ruling and this appeal to the Georgia Supreme Court followed.

ISSUE:

Can evidence of the defendant’s refusal to provide a breath sample be used against him when the arresting officer failed to inform him of that fact prior to offering him the breath test?

HOLDING:

No. The police officer’s failure to inform Sauls that refusing the test could be used against him in a criminal proceeding rendered the notice legally inadequate. Georgia law provides that the implied consent notice “shall be read in its entirety but need not be read exactly so long as the substance of the notice is sufficient.” If the police officer, even inadvertently, gives the driver implied consent notice which contains misleading information or omits critical information, then the notice is given impairs the driver’s ability to make an informed decision about whether to submit to testing; and consequently, the driver’s test results or evidence of the driver’s refusal to submit to testing must be suppressed from the trial. A material omission may be as potentially misleading as an error of commission. While not every omission or misstatement of the implied consent notice given to a driver is of such significance that the notice will not be substantively accurate; that it what occurred at the case at bar.

In summary, the complete omission by the arresting officer of the fact that the driver's refusal to provide a breath sample could be used against him at trial deemed the notice legally insufficient and Sauls could not make an informed decision about whether or not to submit to testing.

Accordingly, the judgment of the Court of Appeals is reversed and the case remanded to the Trial Court with this evidence suppressed.