

Diaz v. Bernini

Full Citation: Diaz v. Bernini, 435 P.3d 457 (Ariz. 2019).

Date Filed: Feb. 28, 2019

Opinion's Author: Justice Pelander

Joined By: Chief Justice Bales, Vice Chief Justice Brutinel, and Justices Timmer, Bolick, Gould, and Lopez.

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: Defendant was arrested on April 2, 2016, and subsequently charged with Driving Under the Influence.¹ After being read an admonition by the investigating officer, Defendant agreed to a breath test which revealed a blood alcohol level above the legal limit.²

Procedural History: This case is currently before the Arizona Supreme Court. Defendant moved to suppress the breath test result, arguing that her consent was not voluntary under the Fourth Amendment or Arizona's implied consent statute.³ The municipal court held that the investigating officer's admonition was coercive and ruled that Defendant's consent to testing was involuntary.⁴ Finding the good-faith exception to the exclusionary rule inapplicable in this circumstance, the municipal court granted Defendant's motion to suppress.⁵

On appeal, the superior court affirmed the municipal court's finding of involuntariness but found that the good-faith exception applied and reversed the suppression order.⁶

The court of appeals accepted jurisdiction and addressed whether Arizona's implied consent statute required suppression.⁷ The court held that a DUI arrestee's agreement to testing under the implied consent statute was required to be voluntary; otherwise, the officer has not satisfied the necessary pre-conditions to testing and had taken the sample unlawfully.⁸ In this case, however, the court of appeals found no facts suggesting that Defendant was coerced or misled to submit to testing, and that her consent was therefore voluntary and admissible.⁹

Defendant has challenged the court of appeals' determination that the State met its burden of proving voluntary consent and argues that the municipal court correctly found the good-

¹ Diaz v. Bernini, No. CR-18-0250-PR, 2019 WL 964363, at *1 (Ariz. Feb. 28, 2019).

² *Id.*

³ *Id.*; ARIZ. REV. STAT. ANN. § 28.1321 (2019).

⁴ *Diaz*, 2019 WL 964363, at * 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

faith exception inapplicable.¹⁰ The State has cross-petitioned for review, arguing that the court of appeals erred in holding that Arizona’s implied consent statute requires voluntary agreement to submit to breath tests, which are inadmissible if said consent is not procured.¹¹

Issue: A DUI arrestee is required, under section 28-1321 of the Arizona Revised Statutes, to give consent before submitting to a breath test to analyze the arrestee’s blood alcohol content. Does the statute require that the arrestee’s consent be voluntary?

Holding: Apart from constitutional considerations, the Arizona implied consent statute (section 28-1321 of the Arizona Revised Statutes) does not require that the arrestee’s agreement be voluntary.

Disposition: Superior Court ruling that reversed the municipal court’s suppression order is affirmed. The court of appeals’ opinion is vacated, and the case is remanded to the municipal court for further proceedings consistent with this opinion.

Rule: Under section 28-1321 of the Arizona Revised Statutes, an arrestee’s consent need not be voluntary for the results of a breath test to be admissible evidence.

Reasoning:

- **Voluntary consent to a breath test is not constitutionally required.** Under *Birchfield*,¹² a warrantless breath test is a permissible search incident to an arrest for drunk driving, and the government need not establish voluntary consent.¹³
- **Section 28-1321 of the Arizona Revised Statutes’ requirement of an express agreement does not require that consent be voluntary.** The statute permits arrestees to either “expressly agree” or “refuse” testing—it does not require, or imply, a voluntary consent requirement.¹⁴
- **The Fourth Amendment’s requirement of voluntary consent or exigent circumstances for warrantless blood tests are not applicable to breath tests.** Because breath tests involve “negligible” physical intrusion, and do not implicate significant privacy concerns (in contrast to blood tests), the Fourth Amendment voluntariness for blood tests is inapplicable to breath tests.¹⁵

¹⁰ *Id.* at *2.

¹¹ *Id.*

¹² *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016).

¹³ *Diaz*, 2019 WL 964363, at * 2.

¹⁴ *Id.* at *4.

¹⁵ *Id.* at *5.