State v. De Anda

Full Citation: State v. De Anda, 434 P.3d 1183 (Ariz. 2019).
Date Filed: February 28, 2019
Opinion's Author: Chief Justice Bales
Joined By: Vice Chief Justice Brutinel, Justices Pelander, Timmer, Bolick, Gould, and Lopez.

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

Facts: De Anda was stopped by police while driving. A police officer read De Anda an admin per se form. After the officer finished reading the form, De Anda submitted to a blood draw test. The test revealed that his blood alcohol concentration ("BAC") was 0.142, which was over the legal limit. He was arrested. De Anda was charged with two counts of aggravated driving under the influence ("DUI") and aggravated DUI with an alcohol concentration of 0.08 or more.

Procedural History: This case is currently before the Arizona Supreme Court. At the trial level, De Anda moved to suppress the blood test results. He argued that under case law (*Valenzuela II*[1]) and statutory law (section 28-1321), his consent was involuntary. De Anda argued his consent was involuntary because he was told by the police officer that if he refused to submit to the BAC test that, under Arizona law, his driving privileges would be suspended. The trial court denied De Anda's motion. The trial court found that the blood draw was voluntary because the language of the form, the circumstances surrounding the arrest, and other criteria set forth in *State v. Butler*.[2]

On appeal, De Anda repeated the same argument. The Arizona Court of Appeals rejected these arguments and De Anda's convictions were affirmed.

Issue: Whether, in light of *Valenzuela II*, the sequence of the officer's statements in itself rendered De Anda's consent involuntary.

Holding: No, the officer did not tell De Anda that he was required to submit to the test and therefore the trial court did not abuse its discretion when finding De Anda's consent was voluntary.

Disposition: The trial court's denial of De Anda's Motion to Suppress is affirmed.

Rule: An officer identifying the consequences of a refusal to submit to a BAC test before asking whether a person would submit to the testing does not render the person's subsequent consent involuntary under the Fourth Amendment.

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[1] State v. Valenzuela, 371 P.3d 627 (Ariz. 2016).
[2] 302 P.3d 609 (Ariz. 2013).

Reasoning:

- **Fourth Amendment and Consent**: The court began its discussion with an overview of the interplay between consent and the Fourth Amendment.[3] The court declared that under *State v. Butler*, "[w]hether consent to a search is voluntary under the Fourth Amendment is assessed from the totality of the circumstances."[4] In Arizona, the legality of DUI investigations implicate both the Fourth Amendment and Arizona's implied consent statute, section 28-1321.[5] The statute states that a person driving a motor vehicle in Arizona "gives consent" to certain testing if arrested for driving while impaired.[6] The court made clear, however, that consent does not authorize the warrantless testing of arrestees.[7] Additionally, the court noted that the Fourth Amendment still requires an arrestee's consent be voluntary to justify a warrantless blood draw, independent of section 28-1321.[8] An arrestee's consent must itself be "freely and voluntarily given" to satisfy the Fourth Amendment, which Arizona's implied consent statute does not itself satisfy.[9]

- **Comparison with *Valenzuela II***: In the previous Arizona Supreme Court case of *Valenzuela II*, the court recognized that consent is not voluntarily given "if the subject of a search acquiesces to a claim of lawful authority."[10] In that case, after a police officer advised an arrested driver that Arizona law "'requires you to submit'" to the tests selected by the officer, the driver voluntarily consented.[11] There, the court held that a "showing only that consent was given in response to this admonition fails to prove that an arrestee's consent was freely and voluntarily given."[12] However, the court noted that the ruling did not mean that officers must cease to advise arrestees about the law's requirement and consequences for refusal.[13] Here, the court was not persuaded that the admin per se form read to De Anda was coercive.[14] Unlike form that was found coercive in *Valenzuela II*, this form did not repeatedly state that Arizona law required submission to testing.[15] The court found that the form read to De Anda implicitly acknowledged he could refuse testing.[16] Finally, the court noted that *Valenzuela II* held the voluntariness of the consent after an admonition is a totality of the circumstances test.[17]

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[3] State v. De Anda, 434 P.3d 1183, 1184–85 (Ariz. 2019).
[4] *Id.* at 1185 (citing *Butler*, 302 P.3d at 612).
[5] *Id.* (citing ARIZ. REV. STAT. ANN. § 28-1321 (2019)).
[6] *Id.* (citing ARIZ. REV. STAT. ANN. § 28-1321(A) (2019)).
[7] *Id.* (citing *Butler*, 302 P.3d at 613).
[8] *Id.* (quoting *Butler*, 302 P.3d at 613).
[9] *Id.* (citing *Butler*, 302 P.3d at 613).
[10] *Id.* (quoting State v. Valenzuela, 371 P.3d 627, 629 (Ariz. 2016) (citation omitted)).
[11] *Id.* (citing *Valenzuela II*, 371 P.3d at 629).
[12] *Id.* (quoting *Valenzuela II*, 371 P.3d at 629).
[13] *Id.* (citing *Valenzuela II*, 371 P.3d at 636).
[14] *Id.* at 1186.
[15] *Id.*
[16] *Id.*
[17] *Id.* (citing *Valenzuela II*, 371 P.3d at 633–34).

- **Abuse of Discretion**: Because the court found voluntariness to be a factual question, the Arizona Supreme Court was only reviewing the lower courts' holdings for abuse of discretion.[18] Here, the admin per se form read to De Anda did not itself establish De Anda's consent was either voluntary or involuntary.[19] Since the lower courts correctly considered the totality of the circumstances when denying De Anda's Motion to Suppress, the trial court's finding that consent was freely and fairly given was not an abuse of discretion.[20]

[18] *Id.* at 1185.
[19] *Id.* at 1187.
[20] *Id.*