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Summary of Byars v. State, 130 Nev. Adv. Op. 85

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CONSTITUTIONAL LAW: WARRANTLESS BLOOD DRAWS

Summary

The Court determined that (1) pursuant to *Missouri v. McNeely*², the natural dissipation of marijuana in the blood stream does not constitute a per se exigent circumstance permitting a warrantless blood draw, (2) NRS 484C.160(7)³, which allows officers to use force to obtain blood samples, violates the Fourth Amendment of the United States Constitution⁴, and (3) when a warrantless blood draw is nonetheless taken in good faith, evidence obtained from the blood draw is admissible at trial.

Background

In 2012, Nevada Highway Patrol Trooper William Murwin pulled over Michael Byars for speeding. Murwin smelled marijuana and performed sobriety tests on Byars before arresting him on the belief that he was under the influence of a controlled substance. Murwin informed Byars that he would perform a blood test pursuant to Nevada's implied consent law, NRS 484C.160(1)⁵, but Byars refused. At the hospital, Byars struggled to avoid the blood draw, striking Murwin and another deputy. Officers used force to obtain Byars' blood sample nonetheless, permitted by NRS 484C.160(7)⁶. The results of the blood draw revealed THC in Byars' bloodstream.⁷

During an inventory search of Byars' car, troopers found a handgun in a storage area of the car. The State also discovered evidence that Byars had a criminal history under the alias "Marcus Jones". At trial, Byars admitted both to using the name Marcus Jones and to being convicted of prior felonies in Nevada.

The State charged Byars with five felony-level counts: being an unlawful user of a controlled substance in possession of a firearm under NRS 202.360(1)⁸; unlawful use or being under the influence of a controlled substance under NRS 453.411(3)(a)⁹; two counts of battery by a prisoner in lawful custody or confinement under NRS 200.481(2)(f)¹⁰; and being a felon in possession of a firearm under NRS 202.360(1)(a)¹¹. The district court bifurcated Byars' trial between the first four counts and the fifth count, and found Byars guilty on all five counts, merging count one with count five for sentencing purposes.

¹ By Katherine Frank.

² 133 S. Ct. 1552, 1568 (2013).

³ NEV. REV. STAT. § 484C.160(7) (2009).

⁴ U.S. Const. amend. IV.

⁵ NEV. REV. STAT. § 484C.160(1) (2009).

⁶ § 484C.160(7).

⁷ THC (tetrahydrocannabinol) is the psychoactive constituent of marijuana.

⁸ NEV. REV. STAT. § 202.360(1) (2007).

⁹ NEV. REV. STAT. § 453.411(3)(a) (2013).

¹⁰ NEV. REV. STAT. § 200.481(2)(f) (2013).

¹¹ NEV. REV. STAT. § 202.360(1)(a) (2007).

Discussion

The warrantless blood draw violated the Fourth Amendment

Byars correctly argued that when the officers took a forced blood sample from him, they acted in violation of the Fourth Amendment to the United States Constitution¹² and Article 1, Section 18 of the Nevada Constitution¹³ because the warrantless blood draw did not fall within either recognized exception to the warrant requirement – exigent circumstances and consent

The exigent circumstances exception to the warrant requirement does not apply

A warrantless search is reasonable under the Fourth Amendment when there are compelling law enforcement needs because of the exigencies of a situation.¹⁴ Courts have been split in applying the exigent circumstances exception, but its application has been recently clarified by the U.S. Supreme Court in *Missouri v. McNeely*¹⁵. There, the Court held that the natural dissipation of alcohol in the bloodstream, though a relevant factor in a “totality of the circumstances” exigent circumstances analysis, was insufficient on its own to justify warrantless blood draws in drunk-driving cases.¹⁶ In such a situation, “officers can reasonably obtain a warrant . . . without significantly undermining the efficacy of the search.”¹⁷ Similarly, the natural dissipation of marijuana in the bloodstream does not constitute a per se exigent circumstance. Looking at the totality of the circumstances, the State failed here to establish exigent circumstances needed to justify the warrantless blood draw.

The consent exception to the warrant requirement does not apply

Though the State argued that the warrantless blood draw was reasonable under the Fourth Amendment because Byars gave implied consent under NRS 484C.160(1)¹⁸, Byars correctly asserts that he did not give consent and that NRS 484C.160(7)¹⁹, which allows officers to force a blood draw, is unconstitutional. Nevada’s implied consent statute gives drivers no choice to withdraw “consent” or to choose a penalty rather than submit to a drug test. Thus, NRS 484C.160(7)²⁰ essentially allows officers to conduct a warrantless blood draw where no valid consent or other exception to the warrant exception to the Fourth Amendment²¹ exists, making the statute unconstitutional.

The good-faith exception to the exclusionary rule applies

¹² U.S. CONST. amend. IV.

¹³ NEV. CONST. art. I, § 18.

¹⁴ 133 S. Ct. at 1558 (quoting *Kentucky v. King*, 131 S. Ct. 1849, 1856 (2011)).

¹⁵ *Id.* at 1568.

¹⁶ *Id.*

¹⁷ *Id.* at 1561.

¹⁸ § 484C.160(1).

¹⁹ § 484C.160(7).

²⁰ *Id.*

²¹ U.S. CONST. amend. IV.

The State correctly argued that because Murwin relied on the presumptive constitutionality of Nevada's laws in good faith, the evidence obtained from Byars' blood sample need not be suppressed. The exclusionary rule exists solely to deter unconstitutional police conduct. Thus, where the good-faith exception to the warrant requirement applies, the exclusionary rule does not.

The district court erred by convicting Byars of being an unlawful user in possession of a firearm after merging the count with the conviction for felon in possession of a firearm

Byars argued that a single instance of substance use does not justify a conviction of being an unlawful user or addict in possession of a firearm under NRS 202.360(1)(c)²², but the Court does not reach this issue. The State conceded on appeal that the district court erred in finding Byars guilty of being an unlawful user in possession of a firearm after merging this count with the count of being a felon in possession of a firearm.

The State adequately proved the corpus delicti of the felon-in-possession charge

Regarding the count of felon in possession of a firearm, Byars argued that the State failed to prove the *corpus delicti* of the crime. However, the State's introduction of Byars' convictions under the alias "Marcus Jones" was sufficient for a prima facie showing that Byars was a convicted felon, supporting a reasonable inference that the crime, felon in possession of a firearm, was committed.

The convictions for misdemeanor DUI and felony being under the influence of a controlled substance do not violate the Double Jeopardy Clause

Byars incorrectly argues that his convictions for misdemeanor DUI and felony being under the influence of a controlled substance violate the Double Jeopardy Clause and are redundant.

Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution²³ prohibits multiple prosecutions and punishments of an individual for one crime. This did not occur here, because a violation for having an illegal quantity of a controlled substance in the bloodstream is separate from a violation for driving while under the influence of that substance. The State merely proved the threshold amount of marijuana in the blood as a separate element than the "under the influence" element of NRS 453.411²⁴.

Redundancy

²² NEV. REV. STAT. § 202.360(1)(c) (2007).

²³ U.S. CONST. amend. V.

²⁴ See NEV. REV. STAT. § 453.411(1) (2013).

Byars argues that a defendant is not subject to multiple convictions for the same conduct. However, as the Court has repeatedly disapproved of this “same conduct” theory, Byars’ argument has no merit.²⁵

Sufficient evidence supports the convictions for battery

Byars argues that his two convictions for battery should be reversed because the State provided insufficient evidence that he intended to strike the officers during the forced blood draw. The Court rejects Byars’ argument, concluding that the State’s evidence was sufficient for a rational trier of fact to find that Byars engaged in the “willful” use of force against the two officers.²⁶

Byars was in custody when he committed the batteries

Though he argues otherwise, Byars was validly convicted under NRS 200.481²⁷ because the batteries occurred while he was in custody. The Court has held that a person is “in custody” when under lawful arrest²⁸, as Byars was here.

The district court did not abuse its discretion by refusing to sever the first four counts

District courts have the discretion to join or sever charges.²⁹ Here, the district court bifurcated Byars’ trial between the first four counts and the fifth count to prevent prejudice to Byars. The district court did not abuse its discretion in refusing to sever the first four counts, however, because they all related to the same transaction – Byars’ marijuana use and the related events regarding the blood draw.

Remarks made during the State’s closing arguments were not prejudicial

Finally, Byars argues that the State’s remarks in closing arguments were unfairly prejudicial. However, none of the specific statements which Byars claims were prejudicial included assertions of fact that were not already contained in the record. Considering the content of the statements at closing argument and the high threshold for overturning a jury verdict, the Court finds that Byars was not denied a fair trial.

Conclusion

Regarding the warrantless blood draw, the Court applied *Missouri v. McNeely*³⁰, holding that the dissipation of marijuana in Byars’ blood stream did not fall within the exigent circumstances exception to the warrant requirement. Further, the Court held that, despite Nevada’s implied consent statute, the Nevada statute allowing officers to use force to obtain the

²⁵ See e.g., Jackson v. State, 128 Nev. __, __, 291 P.3d 1274, 1282 (2012).

²⁶ See NEV. REV. STAT. § 200.481(1)(a) (2013).

²⁷ § 200.481(2)(f).

²⁸ See Dumaine v. State, 103 Nev. 121, 124, 734 P.2d 1230, 1232 (1987).

²⁹ See Weber v. State, 121 Nev. 554, 570-571, 119 P.3d 107, 119 (2005).

³⁰ 133 S. Ct. 1568.

blood draw violates the Fourth Amendment because it allows for warrantless searches in the absence of valid consent or another valid exception to the warrant requirement.

Finding that Murwin nevertheless obtained the evidence against Byars in good faith, the Court held that the exclusionary rule does not apply here. Thus, the Court determined that reversal of the judgment of conviction against Byars in full would be improper.

However, the Court held that the district court erred by merging Count 1 (unlawful user of a controlled substance in possession of a firearm), with Count 5 (felon in possession of a firearm) and finding Byars guilty with regard to Count 1. The State conceded on appeal that the district court erred here. The Court reversed and remanded to the district court to correct the judgment of conviction in this respect, while affirming the decision in all other respects.