



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. FRANCISCO L. ENCINAS VALENZUELA
CR-15-0222-PR**

PARTIES:

Petitioner: Francisco Encinas Valenzuela

Respondent: The State of Arizona

FACTS:

In August 2012, a Department of Public Safety (DPS) officer responded to a call about an unconscious man sitting behind the wheel of a vehicle on a state highway. The officer found Valenzuela asleep while seated in the driver's seat of a truck with the transmission in drive, an open container of alcohol in the center console, and the odor of alcohol coming from the vehicle. After waking Valenzuela, the officer conducted field sobriety tests. The officer then arrested him for driving or being in actual physical control of a vehicle while under the influence of alcohol (DUI). At the station, the officer read Valenzuela an administrative implied consent affidavit ("admin per se") form. According to the officer, to obtain consent for testing (1) he did not make any threats or promises; (2) Valenzuela understood the questions asked; and (3) Valenzuela readily agreed to provide breath and blood samples. Breath tests yielded results over .22 percent breath alcohol content; blood test results were .263 percent blood alcohol content. Valenzuela knew his driving privileges were suspended. The State charged Valenzuela with five counts of aggravated DUI.

The trial court denied Valenzuela's motion to suppress the blood and breath test results. The court rejected his argument that the search was "per se unreasonable," instead finding that Valenzuela's consent was unequivocal and not involuntary when analyzed under the totality of the circumstances in compliance with the Fourth Amendment of the United States Constitution. After a bench trial the court convicted Valenzuela on all counts.

The court of appeals majority affirmed the conviction. It reasoned that based on the totality of the circumstances, Valenzuela's consent was voluntary.

ISSUE:

The Fourth Amendment prohibits law enforcement officials from demanding that those placed under arrest submit to a search for evidence to be used against them in a criminal trial. Here, the officer demanded Valenzuela submit to a search invoking "Arizona law" as authority. Valenzuela submitted to the law, and the State used the fruits of the search against him in a criminal trial. Did the officer violate Valenzuela's Fourth Amendment right?

DEFINITIONS:

Admonition: Generally, a warning. Here, this refers to the “admin per se” form an officer reads to a DUI suspect after arrest and in anticipation of performing chemical tests under Arizona Revised Statutes (A.R.S.) § 28-1321.

Arizona’s implied consent statute, A.R.S. § 28-1321, provides in relevant part:

A. A person who operates a motor vehicle in this state gives consent . . . to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter [concerning DUI] while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

B. After an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by subsection A of this section, and if the violator refuses the violator shall be informed that the violator's license or permit to drive will be suspended or denied for twelve months, or for two years for a second or subsequent refusal within a period of eighty-four months, unless the violator expressly agrees to submit to and successfully completes the test or tests. A failure to expressly agree to the test or successfully complete the test is deemed a refusal.

Unequivocal: Not open to doubt; unambiguous.

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