IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
SARASOTA COUNTY, STATE OF FLORIDA

STATE OF FLORIDA
Plaintiff,

v. CASE NO: 2018-CT-3271

RICKY EMANUEL RIDDLE SR.,
Defendant,
_____________________________/

ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS URINALYSIS RESULTS

THIS CAUSE having come to be heard on Defendant's Motion to Suppress on April 16, 2018, and the Court having reviewed the evidence presented, heard argument of counsel, and after otherwise being fully advised of the premises, hereby grants the Defendant's motion to suppress the results of the urinalysis.

FACTS

The Defendant was lawfully stopped and subsequently arrested for Driving Under the Influence. While at jail the Defendant initially decline to provide a breath sample. The defendant was next read implied consent wherein he provided two breath samples with results of .049 and .051. The arresting officer then asked the Defendant to provide a urine sample.[1] The Defendant refused. The law enforcement officer then read the implied consent warning again. After hearing

[1] The administration of a breath test does not preclude the administration of another type of test. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in section 877.111, Florida Statutes (2017) or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. ***Section 316.1932(1)(a), Florida Statute (2017).*** The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The Defendant did not contest that the law enforcement officer had reasonable cause.

of the consequences of refusing pursuant to the implied consent warning, the Defendant agreed to provide a urine sample. The sample is alleged to be positive for the presence of cocaine.

For purposes of this motion, the parties stipulated that there was probable cause to make the arrest and the lawfulness of the warrantless search of the "*urine draw and subsequent urinalysis*" was the sole issue for the court to decide.

ISSUE

Whether the taking of a warrantless urine sample acquired after reading Florida's Implied Consent warning[2] was obtained with the voluntary consent of the Defendant? For the reasons set forth below, this court finds that the warrantless urine sample collected in this case was the result of an unreasonable search and seizure, without the voluntary consent of the Defendant. The Defendant's motion to suppress is GRANTED.

Argument and Analysis

The Fourth Amendment to the United States Constitution prohibits unreasonable searches. Searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' " *Arizona v. Gant, 556 U.S. 332, 338, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009)*. Those exceptions include "exigent circumstances," "search incident to arrest" and "consent."

The exception at issue in this case is consent. The State maintains the search in this case was lawful because the Defendant gave his consent.

[2] BREATH TEST - I am now requesting that you submit to an approved test of your breath for the purpose of determining the alcoholic content of your breath. OR URINE TEST - I am now requesting that you submit to a test of your urine for the purpose of determining the presence of any chemical or controlled substance. OR BLOOD TEST - I am now requesting that you submit to an approved test of your blood for the purpose of determining its alcoholic content and/or the presence of any chemical or controlled substance.
Will you take the test? □ YES □ NO
If you fail to submit to the test I have requested of you, your privilege to operate a motor vehicle will be suspended for a period of one (1) year for a first refusal, or eighteen (18) months if your privilege has been previously suspended as a result of a refusal to submit to a lawful test of your breath, urine or blood. **Additionally, if you refuse to submit to the test I have requested of you and if your driving privilege has been previously suspended for a prior refusal to submit to a lawful test of your breath, urine or blood, you will be committing a misdemeanor.** Refusal to submit to the test I have requested of you is admissible into evidence in any criminal proceeding. Do you still refuse to submit to this test knowing that your driving privilege will be suspended for a period of at least one year and that you will be charged criminally for a subsequent refusal?

When a prosecutor seeks to rely upon consent to justify the lawfulness of a search, they have the burden of proving that the consent was, in fact, freely and voluntarily given." ***Bumper v. North Carolina, 391 US 543, 548 (1968).***

The State maintained that Mr. Riddle's consent was lawful because it was obtained after the officer read *Florida's Implied Consent*. The Defense posits that the urine sample collected in this matter violated the Defendant's protection against unreasonable searches and seizures, as guaranteed by the *Fourth Amendment* and *Fourteenth Amendment* of the United States Constitution, and *Article I, Section 12* of the Florida Constitution. See ***Mapp v. Ohio, 367 U.S. 643, 650 (1961).*** More specifically, the Defendant argues that his consent was not freely and voluntarily obtained.

In 2016, the Supreme Court of the United States decided ***Birchfield v. North Dakota, 136 S. Ct. 2160 (2016).*** The *Birchfield* opinion addressed three separate appeals with regard to three separate DUIs. *Birchfield* provides the lower courts with a comprehensive review of the applicability of the Fourth Amendment to breath and blood tests in DUI cases.

The Petitioner in *Birchfield*, Danny Birchfield, was arrested for DUI in North Dakota. At the jail, the State Trooper who arrested Mr. Birchfield advised him of his obligation under North Dakota law to undergo BAC testing and told him, as state law requires, that refusing to submit to a blood test could lead to criminal punishment. Mr. Birchfield still refused to submit to a blood test. *Id.* at 2163.

The second petitioner contained within the *Birchfield* case is William Bernard. Mr. Bernard was arrested for DUI. At the jail, officers read Minnesota's implied consent, which like North Dakota's informs motorists that refusing to submit to a BAC test can be a crime. Mr. Bernard still refused to provide a breath sample. *Id.* at 2163.

The third petitioner, Steve Beylund, was arrested for DUI in North Dakota and taken to a nearby hospital. After North Dakota's implied consent was read to him, Mr. Beylund consented to a blood draw. It is Mr. Beylund's case that is analogous to the facts at issue in the instant case.

The Court in *Birchfield* held that a warrantless breath test may be administered as a search incident to a lawful arrest, but a more intrusive blood test may not. ***Id.* at *2185.*** The Court held that the impact of breath tests on privacy is slight and the need for BAC testing is great. ***Id.* at *2184*.** The Court went on to state that "[t]here must be a limit to the consequences to which motorist may be deemed to have consented by virtue of a decision to drive on public roads[,]" and therefore,

it rejected the notion of implied consent to blood tests. ***Id.* at *1285-86*.** Blood tests are significantly more intrusive. ***Birchfield v. North Dakota, 136 S. Ct. 2160 (2016).*** Since Beylund was told that he was obligated to submit to a blood test, the Court remanded Mr. Beylund's case to determine if the consent truly was voluntary under the totality standard. ***Id.* at 2186; *Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973).***

Thus, the first question in this case is whether a urine test is more akin to a breath test or blood test. *Birchfield* did not address warrantless urine tests administered as a search incident to a lawful arrest. Applying the *Birchfield* framework, the Minnesota Supreme Court has held warrantless urine tests are not permissible as a search incident to a valid arrest of a suspected drunk driver. *State v. Thompson*, 886 N.W.2d 224, 230–33 (Minn. 2016), *cert. denied*, ––– U.S. –––, 137 S.Ct. 1338, 197 L.Ed.2d 520 (2017). The Minnesota Supreme Court concluded the physical intrusion of a urine test on an arrestee's bodily integrity was similar to the intrusion of a breath test. *Id.* at 230. The court said, however, a urine test raised the same privacy concerns as a blood test regarding the amount of information obtained by law enforcement and the potential for abuse involved with the retention of a urine sample. *Id.* at 230–31. The court also said urine tests implicate significant privacy interests and cause considerably more embarrassment to an arrestee than breath tests. The court thus concluded the intrusion on an arrestee's privacy for a urine test was like the blood test in ***Birchfield***:

> In sum, in terms of the impact on an individual's privacy, a urine test is more like a blood test than a breath test. Specifically, although a urine test does not require a physical intrusion into the body in the same way as a blood test, urine tests have the potential to provide the government with more private information than a breath test, and there can be no question that submitting to a urine test under the watchful eye of the government is more embarrassing than blowing into a tube.
> ***Thompson***, at **232.**

The government attempted to distinguish ***Thompson*** in ***State v. Helm*, 901 N.W.2d 57 (ND. 2017)** because while ***Thompson*** involved the testing for alcohol, in ***Helm*** the Defendant was alleged to be under the influence of drugs arguing that there is no less intrusive test to be administered than a urine test. The State further argued the proposed categorical rule for this case would not implicate serious private interests of the Defendant.

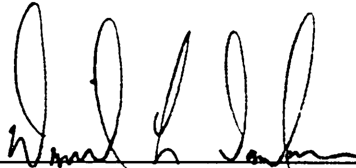
In the case at bar, Mr. Riddle initially refused to take a breath test and only gave his consent after being read implied consent. He then only gave his consent to a urine test after initially refusing and then being read implied consent inside the jail.

Mr. Riddle's consent cannot be said to have been given freely and voluntary, because he was told that he must consent or face the consequences that included the threat of being charged with a separate crime for refusing. The Supreme Court has held that drivers do not impliedly consent to a blood test. Minnesota, North Dakota and South Dakota have recently ruled that the same rule of law applies to urine testing.

The Deputy's reading of implied consent and the consequences of refusal effectively made Mr. Riddle's consent involuntary. The State has failed to demonstrate under the totality of the circumstances standard that the consent was freely and voluntarily made. ***State v. Nichols, 24 Fla. L. Weekly Supp. 935a (Fla. 7th Cir. Ct. 2017)(involves a blood test and a scenario where the arresting officer does not remember if he read implied consent before obtaining consent); State v. Wilson, Wong Sun v. United States, 371 U.S. 471, 488 (1963).***

ORDERED AND ADJUDGED that Defendant's Motion to Suppress the results of the urinalysis is hereby GRANTED.

DONE AND ORDERED in Chambers, Sarasota County, Sarasota, Florida this 23 day of April, 2018.



DAVID L. DENKIN, Sarasota County Judge

Copies to:
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