2016 IL App (1st) 150344-U

FIRST DIVISION
December 5, 2016

No. 15-0344

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the Circuit Court of
	) Cook County, Criminal Division
Plaintiff-Appellee,	)
	)
v.	) No. 12 CR 22655
	)
TYRONE STOKES,	) Honorable Arthur F. Hill, Jr.,
	) Judge Presiding
Defendant-Appellant.	)

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying defendant's motion to suppress his statements and other evidence at trial. Defendant was not in custody when he made two roadside admissions. The good-faith exception to the exclusionary rule applied to preclude suppression of defendant's test result evidence obtained from warrantless blood and urine draw.

¶ 2 Following a bench trial, defendant Tyrone Stokes was convicted of reckless homicide and sentenced to seven-and-a-half years in prison. Defendant appeals his conviction and sentence arguing that the trial court erroneously denied his motion to suppress his confession and the results of his blood, urine and breath tests following his involvement in a deadly car accident. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The State charged defendant with two counts of aggravated driving under the influence and one count of reckless homicide following a deadly car accident. Defendant filed a motion to suppress the statements and the physical evidence that the Illinois State Police (ISP) collected while investigating the accident that took place on November 10, 2012.

¶ 5 At the suppression hearing, ISP Trooper Mike White testified that on November 10, 2012, he responded to an accident on I-94 south around 95th Street. He saw the victim in a black truck, unresponsive. A red GMC truck had also been involved. White identified defendant in-court as the driver of the red GMC. White testified that he administrated three field sobriety tests to defendant. White asked defendant to blow into a portable Breathalyzer test (PBT), which he refused to do. An audiovisual recording of these events was made, but due to technical problems with the recording device, a portion of the audio recording was not made. White testified that defendant asked him, "Should I get a lawyer?" and that he replied "you know that's your right." On the dash camera video, when White asked defendant if he would submit to PBT, defendant replied "I'd rather get a lawyer." Immediately after that response, the audio cut out on the dashboard camera, but the video continued filming. White testified that he did not do anything to make the recorder stop, and that it was technical error possibly because of the batteries.

¶ 6 White further testified that he handcuffed defendant and placed him in the squad car. He stated that he arrested defendant after he had completed his investigation at the scene and due to "all the evidence I had gathered, the smell of alcohol on his breath, the signs of intoxication." White stated that he then took defendant to the Blue Island police station which was about 10 minutes away.

¶ 7 White testified that, at the station, prior to administering the Breathalyzer test to defendant, he read the Warnings to Motorists which laid out what would happen if defendant did not take the test. White then took defendant to the MetroSouth Medical Center to get samples of his blood and urine, and subsequently brought defendant back to the police station. The parties stipulated that defendant gave several recorded statements after signing a *Miranda* waiver. Following the parties' arguments, the trial court denied defendant's motion to suppress his statements and the other evidence.

¶ 8 At trial, Jaclyn Garcia testified that she and the victim, Philip Briner, were co-workers at the Peninsula Hotel in Chicago, Illinois. On November 9, 2012, she and Briner made plans to go out after work. They both left in separate vehicles and drove southbound on the Dan Ryan. Briner who drove a small black pick-up, was to follow Garcia to her home. Garcia eventually lost sight of Briner's truck. When Briner failed to respond to telephone calls and texts, Garcia went back and saw police lights and Briner's truck.

¶ 9 Mario Duncan testified that he was a bus driver for the Chicago Transit Authority (CTA). Duncan stated that on November 12, 2012, he worked from 4:00 p.m. to 1:00 a.m. Duncan stated that he got off work at 1:00 a.m. and entered the Dan Ryan at 79th street to head southbound to his home in Matteson, Illinois. As he drove southbound on the Dan Ryan, traffic was light and he checked his rearview mirror, as he was trained to do. Duncan stated he saw a red truck enter the Dan Ryan at 87th street and move from the far right lane "cross the expressway and struck another vehicle." Duncan said that, upon the impact, the red truck pushed the other truck across the left side of the expressway and both came to a rest at around 93rd Street. Duncan exited the expressway at 99th street to go back and report what he had seen.

When he arrived, he spoke to an ISP investigator. Duncan stated that he did not see any car in front of the red vehicle.

¶ 10 Trooper White testified at trial to the following facts. On November 10, 2012, around 1:20, he arrived at the scene of the accident at I-94 and approximately 95th street. He observed two Illinois Department of Transportation ("IDOT") units blocking the far right lanes, a red pick-up truck and a black smaller pick-up truck containing an unresponsive male with severe head wounds. White called for help and approached the IDOT trucks. He observed defendant standing by them. As he was talking to defendant, a witness, Mario Duncan, approached him. He did not speak at that time with Duncan.

¶ 11 White asked defendant what happened and defendant stated that he was driving southbound, swerved to avoid another vehicle and then struck the black truck. White stated that he noticed a strong odor of alcohol emanating from defendant and that his eyes were red and glassy. White then asked defendant if he had anything to drink, and defendant responded that he had two Heineken beers and a few shots of vodka. White placed defendant into his squad car, so that he could go speak to witnesses and secure the scene. Shortly thereafter, White returned and asked defendant to take several field sobriety tests. White asked defendant when the last time he had consumed alcohol was, and defendant replied that it had been two hours before. White described the field sobriety tests to defendant and then administered the horizontal gaze nystgamus test, the walk-and-turn test, and one-leg-stand test. White testified that defendant failed all of them.

¶ 12 White stated he then took defendant into custody after he concluded that defendant was over the alcohol limit because of several factors: defendant's failed field sobriety tests, the strong smell of alcohol, defendant's admission to drinking within two hours of the accident, and the way

the vehicles collided. White testified that he concluded defendant was intoxicated before conducting any chemical testing and then transported him to the Blue Island police station. White testified that the first thing he did upon arriving at the police station, at around 2:30 a.m., was to read defendant the Warnings to Motorists, verbatim, from a pre-printed form. White described the warnings as a "civil requirement regarding the possible suspension of his license depending upon what transpires during the [rest] of the investigation." He also explained to defendant what a breath alcohol test entailed and that the Warnings to Motorists informed defendant of "all of that."

¶ 13 White stated that defendant agreed to take the breath alcohol test. White observed defendant for twenty minutes before the test, and he did not see defendant ingest anything, smoke, or otherwise do anything to skew the results. Defendant took the test from an EC/IR Breathalyzer Machine. White identified the State's exhibit 6 containing the results of the test, showing defendant's blood alcohol at .106.

¶ 14 White spoke to ISP Special Agent Wilson who indicated that she needed defendant's blood and urine samples. White transported defendant to MetroSouth hospital emergency room where he interacted with Nurse Laura Maida. White gave Maida a sealed DUI kit for the purposes of having those tests performed. White witnessed Maida administer the tests to defendant, seal and initial them. Maida returned the kit to him. White then delivered the sealed kit containing the blood and urine samples to Wilson back at the police station. On cross-examination, White stated that he believed he was required to get blood and urine draw from defendant because defendant was involved in an accident that caused the victim's death.

¶ 15 Illinois State Police agent Starlena Wilson testified that on November 10, 2012, she was called to handle an aggravated DUI. After speaking to several troopers at the scene, Wilson went

to the Blue Island police station at about 6:00 a.m., and entered an interview room with special agent Jonathan Parker, which was equipped with enabled audio and video devices. Wilson stated that she first read defendant his *Miranda* rights. Defendant indicated that he was willing to speak to her. Defendant told Wilson he was at a bar called the Filling Station, had a few drinks, started to drive on the interstate, and that someone hit him causing him to hit another vehicle.

¶ 16 Wilson testified that defendant gave 3 taped statements in all, the first at 6:17 a.m. with Wilson and Parker, the second around 10:59 a.m. with Wilson and Detective Nevid, and the third at about noon to Wilson and assistant state's attorney Mary Innes. Wilson stated that she was informed of the victim's death before 3:00 a.m., around 2:20 a.m. Wilson stated that she conducted three separate interviews because the assistant state's attorney asked her to pose another question to defendant. Defendant did not slur his words or had difficulty understanding the questions. Although Wilson did not recall directing Trooper White to have defendant's blood and urine drawn, she testified that those draws are mandatory "where you learn that there is an accident [involving] death or great bodily harm."

¶ 17 A forensic chemist with the ISP testified that defendant's blood test result indicated his blood alcohol level was .0845 grams per deciliter of defendant's blood. The parties stipulated to the testimony of Dr. Ponni Arunkumar, a medical examiner for the Cook County Medical Examiner's Office, that the victim died because he sustained multiple injuries in a pick-up truck collision.

¶ 18 The court found defendant guilty of all counts. The court merged the two aggravated DUI counts into the reckless homicide and sentenced defendant to seven-and-a-half years in prison. On appeal, defendant argues that the trial court erred in denying his motion to suppress his admissions and the results of the blood, urine and breath tests.

¶ 19 ANALYSIS

¶ 20 In reviewing an order denying defendant's motion to suppress evidence mixed questions of law and fact are presented. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). Factual findings made by the trial court will be upheld unless they are against the manifest weight of the evidence while the trial court's application of the facts to the issues presented and the ultimate question of whether the evidence should be suppressed is subject to *de novo* review. *Id.* We may affirm the trial court on any basis that appears in the record. *People v. Jones*, 2015 IL App (1st) 133123, ¶ 33; *People v. Olsson*, 2015 IL App (2d) 140955, ¶ 17 ("We review the trial court's judgment rather than its reasoning, and we may affirm on any basis supported by the record.").

¶ 21 Defendant's Roadside Admissions

¶ 22 Defendant claims that the trial court erred when it denied his motion to suppress two separate roadside admissions: 1) to drinking two Heineken beers and two shots of vodka, and 2) to having those drinks two hours before the accident. Defendant contends that Trooper White subjected him to "custodial interrogation," and failed to first give his *Miranda* rights. In turn, the State argues that defendant was not in "custody" or "under interrogation" when White questioned defendant at the scene of the accident.

¶ 23 In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that an individual subject to a custodial interrogation must be notified of certain, now well-known rights. See *id.* at 478–79 (enumerating the required *Miranda* warnings). If police officers fail to both provide the requisite *Miranda* warnings and obtain a voluntary, knowing, and intelligent waiver of those rights, an individual's statements during a custodial interrogation are generally inadmissible. *Id.* at 444; *Dickerson v. United States*, 530 U.S. 428, 435, 443-44 (2000). Before *Miranda* warnings are required, however, an individual first must be "in custody." "The finding

of custody is essential, as the preinterrogation warnings required by *Miranda* are intended to assure that any inculpatory statement made by a defendant is not simply the product of 'the compulsion inherent in custodial surroundings.' " *People v. Slater*, 228 Ill. 2d 137, 149-50 (2008) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 661 (2004)). But "Miranda warnings are not, of course, necessary where the police conduct a general on-the-scene questioning as to facts surrounding a crime." *People v. Parks*, 48 Ill. 2d 232, 237 (1971); *People v. Acebo*, 182 Ill. App. 3d 403, 405 (1989); *People v. Clark*, 84 Ill. App. 3d 637, 640 (1980).

¶ 24 Here, defendant was not "in custody" when he made both roadside admissions. The "in custody" determination for purposes of *Miranda* requires two inquiries: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Slater*, 228 Ill. 2d at 150. The following factors are relevant for assessing whether a defendant's statement was made while in custody: "the location, time, length, mood, and mode of the questioning; the number of police officers present during the interrogation; the presence or absence of family and friends of the individual; any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; the manner by which the individual arrived at the place of questioning; and the age, intelligence, and mental makeup of the accused." *Id.*

¶ 25 The U.S. Supreme Court's *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) decision is instructive. In *Berkemer*, an officer stopped the respondent after witnessing his car "weaving in and out of a lane" on the highway. *Id*. at 423. The officer asked the respondent to perform the "balancing test"—a field sobriety test—which the respondent failed to do without falling. *Id.* The officer proceeded to question the respondent as to "whether he had been using intoxicants." *Id.*

The respondent admitted that "he had consumed two beers and had smoked several joints of marijuana a short time before." *Id.* The officer then formally placed him under arrest. *Id.*

¶ 26 The Court in *Berkemer* concluded that respondent's statements were admissible because he was not in custody. Specifically, after holding that the temporary detention attendant to an ordinary traffic stop does not require the administration of *Miranda* warnings prior to questioning, the Court concluded that the circumstances in *Berkemer* were not "the functional equivalent to a formal arrest." *Id*. at 440. Accordingly, the officer's on-scene questioning did not violate *Miranda,* and the respondent's statements were admissible. *Id.*

¶ 27 Similarly here, in light of the relevant factors identified above, defendant was not in custody when he made the inculpatory statements. With respect to the "location, time, length, mood, and mode of the questioning," White's questioning occurred on the scene of the accident on the Dan Ryan shoulder—as opposed to, for example, a police station—and was in public with other civilians present. Defendant's second admission that he had the drinks two hours prior to the accident was again made in public, after emerging from the police car to take the field sobriety tests.

¶ 28 The evidence also shows that White's inquiry to defendant was brief in duration and related to the officer's investigation into the accident. Specifically, White arrived at the accident scene on the Dan Ryan's shoulder where IDOT personnel were already present. White asked defendant questions about the accident and how the accident happened. Defendant told White that he swerved to avoid some car and got hit from behind by another. From that reply, White noticed a "strong odor of alcohol on his breath and that his eyes were red and glassy." Shortly thereafter, he asked defendant when he consumed the alcohol. Defendant replied two hours prior to the accident. Based on this record, Trooper White was merely conducting a "general on-the-

scene questioning as to the facts surrounding a crime" and was not interrogating defendant under *Miranda*. See *Berkemer*, 468 U.S. at 437–38 (emphasizing temporary and brief nature of traffic stop in holding that such stops ordinarily do not require *Miranda* warnings; explaining that *Terry* stops generally allow officers to "ask the detainee a moderate number of questions . . . to try to obtain information confirming or dispelling the officer's suspicions" without triggering *Miranda*).

¶ 29 As to the "number of police officers present during the interrogation," Trooper White was the only law enforcement officer who questioned defendant at the scene. See *Berkemer*, 468 U.S. at 438 (noting "[t]he fact that the detained motorist typically is confronted by only one or at most two policemen" in concluding that an ordinary traffic stop did not implicate *Miranda*).

¶ 30 There also was no "indicia of formal arrest procedure" when defendant made his roadside admissions. Before defendant's first admission to drinking two Heineken beers and two shots of vodka, White simply asked defendant what happened. Defendant replied that he was involved in the car accident. Noticing a strong odor of alcohol on defendant's breath, White asked him how much alcohol he consumed and defendant replied. White placed defendant in a squad car to secure the area and talk to another witness.

¶ 31 Although defendant was unable to leave for a short period of time while in the squad car, he was merely subject to a *Terry* seizure, and not "in custody" for purposes of *Miranda*. See *People v. Jeffers*, 365 Ill. App. 3d 422, 429 (2006); see also *People v. Briseno*, 343 Ill. App. 3d 953, 959 (2003) ("conclude[ing] that the point in time when defendant made incriminating admission his freedom of action was temporarily restrained. However, defendant was not in custody for the purpose of *Miranda* warnings, due to the brief and public nature of the stop"). The determinative question is "whether at any time between the initial stop and the arrest,

defendant was subjected to restraints comparable to formal arrest." *People v. Jeffers*, 365 Ill. App. 3d at 429.

¶ 32 Here, the evidence does not indicate such restraints when defendant made the roadside admissions. Defendant was placed in the squad car for a very brief period of time. He then emerged from the squad car and stated that he had the drinks two hours before the accident and agreed to perform the sobriety tests. At the time he made the statements he was still in public, on the Dan Ryan's shoulder and Trooper White did not brandish his weapon, nor was defendant placed in handcuffs, booked, fingerprinted, or told that he was under arrest. See *Berkemer*, 468 U.S. at 440 ("The noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for purposes of *Miranda*.").

¶ 33 Finally, nothing in the record indicates that defendant's "age, intelligence and mental makeup" impacted his perception of White's questioning about the accident. Considering the totality of the circumstances surrounding defendant's encounter with the police, we conclude that a reasonable person in defendant's situation would not have believed that he was in custody during White's questioning about the circumstances of the accident. Accordingly, the trial court did not err in denying defendant's motion to suppress the roadside admissions.

¶ 34 Videotaped Confessions

¶ 35 Defendant argues next that the trial court should have suppressed defendant's videotaped confessions made at the police station because they were obtained in violation of *Missouri v. Seibert*, 542 U.S. 600 (2004). In *Seibert*, the Supreme Court held that a statement given during custodial questioning after *Miranda* warnings is inadmissible when defendant was initially interrogated and made inculpatory statements without the benefit of *Miranda* warnings. *Id*. at 617. In *Seibert*, the defendant was arrested for murder and interrogated by police without

receiving *Miranda* warnings. *Id*. at 605. After the defendant made an incriminating statement, the police gave her a 20–minute break, turned on a tape recorder, gave her *Miranda* warnings, and obtained a signed waiver of her *Miranda* rights. *Id*. The interrogating police officer then went on to question the defendant using information the defendant had supplied prior to receiving *Miranda* warnings. *Id*.

¶ 36 The defendant in *Seibert* filed motions to suppress both her pre-warning and post-warning statements. At the suppression hearing, the interrogating police officer testified that "he made a 'conscious decision' to withhold *Miranda* warnings, thus resorting to an interrogation technique he had been taught: question first, then give the warnings, and then repeat the question 'until I get the answer that she's already provided once.' " *Id*. at 605-06. The Supreme Court held that the question first, warn later technique utilized by the officer rendered the resulting statement inadmissible. *Id*. See also *People v. Lopez*, 229 Ill. 2d 322, 357 (2008). In adopting *Seibert*, our supreme court noted that *Seibert* applies in cases where a defendant made the first, unwarned statements while in custody. *Lopez*, 229 Ill. 2d at 363. The holding in *Seibert* applies to a two-step interrogation process, which is an interrogation process when the defendant is in police custody during all questioning. *People v. Calhoun*, 382 Ill. App. 3d 1140, 1146 (2008).

¶ 37 Here, as established above, defendant was not subject to a "custodial interrogation" on the Dan Ryan shoulder when he first admitted to have been drinking for two hours before the accident. Because defendant's custodial interrogation did not begin until after he had made the roadside admissions, when Trooper White formally arrested him, a *Seibert* violation could not have occurred. Accordingly, the police here did not follow the deliberate custodial two-step interrogation strategy employed in *Seibert* and the trial court did not err in denying defendant's motion to suppress his videotaped confessions. See *People v. Calhoun*, 382 Ill. App. 3d at 1147

¶ 38 The Blood and Urine Test Results

¶ 39 Defendant argues next that the trial court erred when it did not suppress the results of his blood and urine tests at trial. Defendant contends that each test was a fourth amendment "search," which required a warrant under *Missouri v. McNeely*, 133 S. Ct. 1552 (2013). In *McNeely*, the U.S. Supreme Court held that the natural dissipation of alcohol in the bloodstream is not a *per se* exigent circumstance justifying a warrantless, nonconsensual draw of a DUI suspect's blood and that the reasonableness of such a draw must be decided on a case-by-case basis by considering the totality of the circumstances. *Id.* at 1556.

¶ 40 The fourth amendment of the United States Constitution guarantees to all citizens the right to be free from unreasonable searches and seizures." *In re Lakisha M.*, 227 Ill. 2d 259, 264 (2008). A blood test to determine a defendant's blood alcohol content is a search subject to the warrant requirement. *McNeely*, 133 S. Ct. at 1558. Evidence obtained in violation of fourth amendment principles is susceptible to suppression under the judicially created "exclusionary rule." *Davis v. United States*, 131 S. Ct. 2419, 2426 (2011). Because the "sole purpose" of the exclusionary rule is to deter future violations of the fourth amendment, however, its applicability requires some degree of police culpability, and "the deterrence benefits of suppression must outweigh its heavy costs." *Id.* at 2426-29. As a result, there is a well-recognized "good-faith exception" to the rule. *Id.* In *Davis*, the U.S. Supreme Court applied these principles when holding that "[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule." *Id.* at 2429. In *People v. LeFlore*, 2015 IL 116799, our supreme court adopted the reasoning in *Davis* and held the same.

¶ 41 Here, the good-faith exception to the warrant applies because prior to *McNeely*, which was decided in 2013, five months after defendant's arrest, a warrantless, nonconsensual draw of a

DUI suspect's blood was authorized by binding precedent, *People v. Jones*, 214 Ill. 2d 187, 194 (2005), interpreting section 11–501.2(c)(2) of the Illinois Vehicle Code (625 ILCS 5/11–501.2(c)(2) (West 2010)). Section 11–501.2(c)(2) of the Illinois Vehicle Code provides:

> "Notwithstanding any ability to refuse under this Code to submit to these tests or any ability to revoke the implied consent to these tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the alcohol content thereof or the presence of any other drug or combination of both." 625 ILCS 5/11–501.2(c)(2) (West 2010).

¶ 42 In *People v. Jones*, our supreme court held that subsection c(2) "clearly allows nonconsensual chemical testing where a police officer has probable cause to believe that a vehicle driven by an individual under the influence has caused the death or personal injury of another." *People v. Jones*, 214 Ill. 2d 187, 194 (2005). In *Jones*, the defendant was arrested for DUI after his involvement in an automobile accident that had not resulted in a death or personal injury to another person. *Jones*, 214 Ill. 2d at 189-90. After the accident, the defendant was transported to a hospital where "hospital personnel administered blood and urine tests at the request of the arresting officer, but without [the] defendant's consent." *Id.* Defendant filed a motion to suppress the test results which the trial court granted. *Id*.

¶ 43 The appellate court subsequently affirmed the trial court's suppression of the test results, reasoning that " because section 11–501.2(c)(2) explicitly authorizes nonconsensual chemical

tests in situations involving the death or personal injury of another, it does not authorize them in situations not involving the death or personal injury of another." *Id.* at 192. The supreme court reversed the appellate court's judgment, holding that because prior to the enactment of section 11–501.2(c)(2) "nonconsensual chemical testing of a DUI arrestee was permissible in all DUI situations," interpreting section 11–501.2(c)(2) as "creating a right to refuse chemical testing" would "alter [ ] the settled law of this state." *Id*. at 195, 199-200.

¶ 44 Recently, in *People v. Harrison*, 2016 IL App (5th) 150048, we held that a warrantless blood test was admissible when an officer relied in good faith on binding precedent interpreting subsection (c)(2). *People v. Harrison*, 2016 IL App (5th) 150048, ¶ 27. In *Harrison*, an accident occurred on March 3, 2011. *Id*. at ¶ 4. When the officer arrived at the scene and began speaking with the defendant, he "noticed that the defendant had red, glossy eyes and an odor of alcohol emanating from his person." *Id*. at ¶ 5. The defendant refused to submit to a breath test, so the officer had his blood drawn at a nearby hospital. *Id*. at ¶ 6. The officer testified that he did so "[d]ue to the severity of [the victim's] injuries" and because there were "special laws" that allowed him to do so. *Id*.

¶ 45 We noted that *McNeely* was decided on April 17, 2013, and that only after that date *McNeely* "effectively abrogated *Jones* to the extent that *Jones* held that the natural dissipation of alcohol in the bloodstream is a *per se* exigency justifying the warrantless, nonconsensual taking of a DUI suspect's blood." We held that when the officer "arrested defendant in 2011, *McNeely* had yet to be decided, and *Jones* was binding precedent authorizing the taking of the defendant's blood pursuant to section 11–501.2(c)(2), even in the absence of [a victim's] injuries. *Id*. at ¶ 28. Therefore, we concluded that the officer could have reasonably relied on *Jones* as binding precedent authorizing the taking of the defendant's blood pursuant to section 11-501.2(c)(2). *Id*.

at ¶ 28.

¶ 46 Similarly here, Trooper White reasonably relied on *Jones* as binding precedent authorizing the taking of defendant's blood pursuant to section 11-501.2(c)(2). White had defendant's blood and urine drawn on November 12, 2012, five months before *McNeely* was decided on April 17, 2013. White testified that Special Agent Wilson told him to have defendant's blood drawn and that those draws were "normal operating procedures for the Illinois State Police in these types of incidents." Just as in *Harrison*, White specified that the policy required the draws "based on the fact that . . . great bodily injury or death" occurred in the accident.

¶ 47 Moreover, Special Agent Wilson testified that the draws were mandatory "where you learned that there is an accident [implicating] death or great bodily harm." Accordingly, based on the testimony of the two police officers, when defendant was arrested both officers believed binding precedent authorized the taking of defendant's blood pursuant to section 11-501.2(c)(2). Therefore, the good-faith exception to the exclusionary rule applies to the blood and urine test results. Accordingly, the trial court properly denied defendant's motion to suppress those tests.

¶ 48 The Breath Test Results

¶ 49 Defendant argues next that the trial court should have suppressed his breath test results because Trooper White had no warrant for that test and defendant did not voluntarily consent to it. The State maintains that defendant's consent was voluntary when defendant agreed and performed the Breathalyzer test after Trooper White read him the Warnings to Motorists.

¶ 50 A breath test is a search under the fourth amendment. *People v. Gaede*, 2014 IL App (4th) 130346, ¶ 21 citing *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 616-17 (1989). A warrantless search of the person is reasonable only if it falls within a recognized exception.

McNeely, 133 S. Ct. at 1558. Exceptions to the warrant requirement include, *inter alia*, exigent circumstances and consent. *Id*. at 1559; *People v. Hasselbring,* 2014 IL App (4th) 131128, ¶ 42 ("'A well-settled, specific exception to the fourth amendment's warrant requirement is a search conducted pursuant to consent").

¶ 51 Consent need only be voluntary in order to provide a valid basis for an exception to the warrant requirement. See *People v. Alvarado*, 268 Ill. App. 3d 459, 464 (1994). A defendant's consent is involuntary if "his will has been overborne and his capacity for self-determination critically impaired." *People v. Harris*, 2015 IL App (4th) 140696, ¶ 49 quoting *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961). "[C]ustody alone does not render consent involuntary." *Alvarado*, 268 Ill. App. 3d at 467. Factors surrounding the circumstances of the custody inform the voluntariness inquiry, including the time of the arrest, the use of force, whether "the police used the custody to make repeated requests for consent, and . . . [whether] the custody was used as leverage, in the sense that the arrestee was told he would be released if he gave consent." *Alvarado*, 268 Ill. App. 3d at 467.

¶ 52 In this case, the record gives no indication the police used undue influence to obtain defendant's consent for the breath test. While defendant initially refused to take the breath test on the side of the road, he agreed to take the test at the police station after receiving the Warnings to Motorists. Trooper White testified that, prior to administrating the breath test at the station, he read defendant the Warnings to Motorists, verbatim, from a pre-printed form. The warnings to motorist "clearly indicate a choice between consenting to testing and withdrawing consent to testing." *People v. Harris*, 2015 IL App (4th) 140696, ¶ 51 (2015).

¶ 53 White explained to defendant what a breath alcohol test entailed and informed defendant of the various civil consequences attendant to a refusal to submit to testing. White then offered

defendant a breath alcohol test, and defendant agreed to take it. Based on this record, defendant voluntarily consented to the breath test. See *People v. Harris*, 2015 IL App (4th) 140696, ¶¶ 50-52 (holding that by providing defendant with the Warnings to Motorists, police did not coerce or force defendant to agree to the test, and that a defendant's implied consent to testing qualifies as an exception to the warrant requirements). We hold the breath test conducted in this instance did not violate defendant's fourth amendment rights and affirm the trial court's denial of defendant's motion to suppress.

¶ 54 CONCLUSION

¶ 55 Based on the foregoing, we affirm.

¶ 56 Affirmed.