People v. Vannesse

(2018) 23 Cal.App.5th 440

Issue

If an officer reasonably believes that a DUI arrestee was under the influence of drugs or a combination of drugs and alcohol, is it a violation of California law to inform him that he must provide a blood sample? Or must the officer inform him that he can choose between a blood or breath test?

Facts

An officer with the Ventura Police Department was investigating a collision in which the defendant, Alexander Vannesse, was one of the drivers. After speaking with Vannesse, the officer concluded that he was under the influence of alcohol and/or drugs. And because of the possibility that Vannesse was impaired due to drugs or a combination of drugs and alcohol, and because the only way to test for drugs is by means of a blood test, the officer did not notify him that he could comply with the implied consent law by submitting either a blood or breath sample. Instead, he informed him of the following: "A sample of your blood will be taken by nursing staff at the hospital. If you fail to adequately provide a sample, it will result in the suspension of your driving privilege for a period of one year." As the result, Vannesse submitted a blood sample and the test results confirmed the officer's conclusion.

Vannesse filed a motion to suppress the test results on grounds that the officer violated California law by not informing him that he could choose between a blood or breath test. The motion was denied. Vannesse appealed.

Discussion

Under California law, officers who have arrested a driver for DUI must notify him that he "has the choice of whether the [chemical] test shall be of his or her blood or breath."[1] As noted, the officer in this case did not give Vannesse a choice but, instead, told him that he must submit a sample of his blood. Consequently, the issue was whether a DUI arrestee's blood test results may be suppressed if the officer does not notify him that he could comply with the implied consent law by providing only a breath sample.

The court ruled that an officer's failure to provide such a warning cannot result in the suppression of the blood test results. There are two reasons for this. First, it is the law in California that evidence obtained by means of a search or seizure may be suppressed only if was obtained in violation of the Fourth Amendment. And the Fourth Amendment does not require that DUI arrestees be given such a choice.

Second, pursuant to the so-called Inevitable Discovery Rule, evidence may not be suppressed if it would have been acquired inevitably by lawful means.[2] Applying this rule to DUI cases, the court concluded that a blood draw is inevitable if officers have probable

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[1] Veh. Code § 23612(a)(2)(B).

[2] See *Murray v. United States* (1988) 487 U.S. 533, 539 ["Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered."]; *Nix v. Williams* (1984) 467 U.S. 431, 444, 447 ["[I]f the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury"].

cause to believe that a driver is under the influence of drugs and/or alcohol. This is because Vehicle Code § 23612(a)(2)(C) states that a DUI arrestee is *required* to submit a blood sample under those circumstances. As the court pointed out, "If the officer had complied with the letter of the implied consent law by giving the statutory advisement and [Vannesse] had chosen a breath test, the officer could and would have required him to submit to a blood test."

Consequently, the court ruled that the trial court correctly ruled that Vannesse's blood test results were admissible. POV

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