# People v. Harris

(2015) __ Cal.App.4th __ [2015 WL 708606]

## Issues

(1) If a DUI arrestee consents to a blood test, is the consent necessarily involuntary if officers had previously notified him of the legal penalties for refusing? (2) Did the Supreme Court, in it's 2013 decision in *Missouri v. McNeely,* prohibit consensual blood draws in DUI cases?

## Facts

On a freeway in Riverside County, a sheriff's department motor officer made a traffic stop on the driver of a car who was traveling at approximately 90 m.p.h. and crossing all four lanes of traffic without signaling. While speaking with the driver, Harris, the deputy observed several objective indications that he was under the influence of a stimulant. So he arrested Harris and notified him that, because he had been arrested for DUI-drugs, he was required under California's implied consent law to submit a sample of his blood for testing. Harris responded "Okay" and another deputy transported him to the Moreno Valley sheriff's station where a sample of his blood was drawn by a phlebotomist. The test results were positive for methamphetamine. When the Riverside County appellate division denied Harris's motion to suppress the blood test results, the case was transferred to the Court of Appeal because the court thought it presented an "issue of statewide importance."

## Discussion

Although Harris had consented to the blood draw, he argued that the test results should have been suppressed for two reasons. The Court of Appeal rejected both of them.

**VOLUNTARINESS**: Harris's main argument was that a DUI arrestee's consent to a blood test must be deemed involuntary—and therefore the test results must be suppressed—if the officer had previously informed the arrestee of California's implied consent law.[1] This argument was based on the rule that consent is involuntary if he was motivated by an officer's threats, promises, pressure, or other form of coercion,[2] and that an implied consent warning is essentially a threat that the arrestee will suffer serious legal penalties if he refuses.

So far, Harris was making a good argument. As the Supreme Court observed in *Missouri v. McNeely*,[3] implied consent laws "impose significant consequences when a motorist withdraws consent; typically the motorist's driver's license is immediately suspended or revoked, and most States allow the motorist's refusal to take a BAC test to be used as evidence against in in a subsequent criminal prosecution."

It is also settled, however, that consent is not involuntary if officers merely informed the arrestee that certain legal penalties would flow from a refusal. For example, a felony suspect's consent to search his home is not involuntary merely because an officer

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[1] See Veh. Code § 23612(a)(1)(B).

[2] See *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 228 ["[Consent must] not be coerced, by explicit or implicit means, by implied threat or covert force."]; *Florida v. Bostick* (1991) 501 U.S. 429, 438 ["'Consent' that is the product of official intimidation or harassment is not consent at all."].

[3] (2013) __ U.S. __ [133 S.Ct 1552].

informed him that, if he refused, the officer would seek a search warrant. As the Court of Appeal observed, such a warning does not constitute a threat but is merely "a declaration of the officer's legal remedies."[4]

Applying this logic, the court in *Harris* noted that "it is difficult to see why the disclosure of accurate information about a particular penalty that may be imposed—if it is permissible for the state to impose that penalty—could be constitutionally coercive."[5] Consequently, the court ruled that forcing a motorist "to choose between submitting to the chemical test and facing serious consequences for refusing to submit, pursuant to the implied consent law, does not in itself render the motorist's submission to be coerced or otherwise invalid for purposes of the Fourth Amendment." The court then examined the other surrounding circumstances and rules that nothing else happened that might be deemed coercive. Among other things, the court noted that Harris responded "Okay" when asked if he would submit to a blood test and that "at no time did defendant appear unwilling to provide a blood sample." Accordingly, the court ruled that Harris's consent was voluntary.

**CONSENT AFTER MISSOURI V. MCNEELY**: In *McNeely,* the Supreme Court ruled that the natural elimination of alcohol from an impaired driver's bloodstream does not, in and of itself, constitute an exigent circumstance so as to dispense with the warrant requirement. Thus, the Court ruled that officers could no longer rely on exigent circumstances as justification for forcing DUI arrestees to submit to a chemical test. From this ruling, Harris jumped to the conclusion that a warrant is now required even if the arrestee freely consented to the blood draw. In other words, he argued that, unlike any other person who has been arrested, DUI arrestees are legally prohibited from consenting to searches—even if they want to. The idea was frivolous, and the court in *Harris* pointed out that, despite some language in *McNeely* that was "confusing and somewhat unhelpful," the Supreme Court said nothing that supported it. Consequently, the court ruled that, because Harris had voluntarily consented to the blood test, the test results were admissible at his trial.[6] POV

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[4] *People v. Rodriguez* (2014) 231 Cal.App.4th 288, 303.

[5] Quoting from *State v. Moore* (Or. 2013) 318 P.3d 1133, 1138.

[6] **NOTE**: The court also rejected the argument that a blood draw that occurs in a police station does not comply with the requirement that the blood be drawn in a reasonable manner.