People v. Arredondo

(2016) __ Cal.App.4th __ [2016 WL 758597]

Issue

Are unlicensed drivers exempt from California's "implied consent" law?

Facts

At about 11 P.M., an unlicensed driver named Marcus Arredondo was driving erratically in a car containing six passengers. He eventually flipped the car, and this resulted in serious injuries to one passenger and minor injuries to another. In addition, Arredondo had been knocked unconscious and remained so after he was transported to the Santa Clara Valley Medical Center's trauma room. An officer at the hospital who had been dispatched there to "keep track" of him was informed that Arredondo had been identified as the driver of the car. Although Arredondo still had not regained consciousness, the officer arrested him and instructed a phlebotomist to take a blood sample pursuant to California's Implied Consent Law.[1] The sample tested at 0.08%.

After being charged with felony drunk driving and driving without a license, Arredondo filed a motion to suppress the blood test results, arguing that he had neither expressly nor impliedly consented to a blood draw. The trial court denied the motion based on another California law that says a driver who has not signed an implied consent form is nevertheless deemed to have given his consent by driving a motor vehicle on a California roadway. Arredondo subsequently pled no contest, but appealed the denial of his motion to suppress. At about 11 P.M., an unlicensed driver named Marcus Arredondo was driving erratically in a car containing six passengers. He eventually flipped the car, and this resulted in serious injuries to one passenger and minor injuries to another. In addition, Arredondo had been knocked unconscious and remained so after he was transported to the Santa Clara Valley Medical Center's trauma room. An officer at the hospital who had been dispatched there to "keep track" of him was informed that Arredondo had been identified as the driver of the car. Although Arredondo still had not regained consciousness, the officer arrested him and instructed a phlebotomist to take a blood sample pursuant to California's so-called "implied consent" law. The sample tested at 0.08%.

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Discussion

A driver who has been arrested for a DUI-related crime will be deemed to have expressly consented to chemical testing if (1) voluntarily agreed to take the test, or (2) he signed a consent form which motorists are required to sign when they apply for or renew a driver's license.6 In addition, a driver may be deemed to have impliedly consented by

[1] Veh. Code § 23612. **NOTE**: Although the statute is not designated the "Implied Consent Law," the term is almost universally applied to it by officers, prosecutors, defense attorneys, and judges.

simply driving a motor vehicle on a California roadway. Arredondo argued that he had not expressly consented to the blood draw since he was unconscious at the time; and, since he had never applied for a driver's license, he had never signed a DMV consent form. Consequently, the issue was whether he had impliedly consented.

It is the law in California that a person who has been arrested for committing certain DUI-related crimes on a California roadway "is deemed to have [impliedly] given his or her consent to chemical testing of his or her blood or breath."[2] The law also says that a driver who is unconscious or is "otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent . . . ."[3] It would therefore appear that Arredondo had impliedly consented to chemical testing because he was, in fact, operating a motor vehicle in California, and he had been arrested for a DUI-related crime. But this panel of the Court of Appeal saw things differently.

First, it essentially ruled that courts cannot imply consent merely because the arrestee drove on a California roadway. This is because, in the court's view, driving a motor vehicle is a basic or fundamental right, not merely a privilege; and, as the result, "it is doubtful that the state has the power to flatly prohibit its citizens from driving" because such a prohibition means "foregoing a constitutional right to travel."[4] Thus, it ruled that a driver can ordinarily consent to chemical testing only if he expressly consented by either notifying an officer that he consented or by signing the DMV's consent form when he applied for or renewed a driver's license. And because Arredondo was unconscious when he was arrested, and because he was also unlicensed, he had done neither of these things.

The court did, however, acknowledge that a driver might be deemed to have consented if he engaged in certain conduct that effectively manifested such consent. But it ruled that merely driving a car on a roadway is insufficient. In the words of the court, "The mere operation of a motor vehicle is not a manifestation of actual consent to a later search of the driver's person. To declare otherwise is to adopt a construct contrary to fact."

In support of its ruling, the court noted three things. First, it said that, although a defendant may waive his Fourth Amendment rights as a condition of probation, such a waiver is effective only because the defendant was "explicitly told of, and agrees to accept, the conditions imposed upon his or her enjoyment of the privilege the state grants him by withholding the prescribed punishment for his offense." But unlike probationers, said the court, drivers who choose not to participate in California's licensing process do not effectively consent to blood or breath testing because, said the court, they "have not been asked to agree, or told that they have a choice, or apprised of the consequences that will flow from their conduct."

Second, the court said that the use of the term "implied consent" is "misleading, if not inaccurate." That is because the real purpose of law is not to imply consent, but simply to provide a mechanism by which officers can induce a DUI suspect to voluntarily provide a blood or breath sample. Said the court, the law's purpose is merely to "provide an incentive for voluntary submission to the chemical test."

The court's third point is somewhat technical in nature. It pointed out that the implied consent statute says a driver is "deemed" to have given his consent to chemical

[2] Veh. Code § 23612(a)(1)(A).
[3] Veh. Code § 23612(a)(5).
[4] Quoting from *U.S. v. Kroll* (8th Cir. 1973) 481 F.2d 884, 886.

testing under certain circumstances. But, according to the court, this is merely a "legal fiction" because "deeming" that a person has consented to do something does not mean that the person actually or even impliedly consented. Moreover, said the court, the "legislature does not have the power to 'deem' into existence 'facts' operating to negate individual rights arising under the federal constitution," adding that it fears "the Fourth Amendment could be left in tatters (emphasis added) by a rule empowering the state to predicate a search on conduct that does not in fact constitute manifestation of consent, but is merely 'deemed' to do so by legislative fiat."

Despite the court's ruling that the withdrawal of Arredondo's blood was unlawful, it ruled that, pursuant to the good faith exception to the exclusionary rule, the blood test results were admissible because the implied consent statute was sufficiently confusing and ambiguous that the officer in this case could not be faulted for failing to comprehend its many defects. But now that the court in Arredondo has supposedly cleared up all of this confusion, the good faith rule will no longer apply. (Our conclusion: Much of this overwrought decision is of questionable validity.) POV

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