Illinois Health and Hospital Association

Case Law Alert: People v. Eubanks

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In December 5, 2019, the Illinois Supreme Court issued its opinion in the case of the People v. Eubanks, 2019 IL 123525 (Ill. 2019). The Illinois Supreme Court held that Section 11-501.2(c)(2) of the Illinois Vehicle Code, which permits warrantless collection and testing of an individual's blood, breath, or urine for alcohol or drugs if police have probable cause to believe the individual was driving under the influence ("DUI") and was involved in a motor vehicle accident causing death or personal injury to another, is not facially unconstitutional, but was unconstitutional as applied to Ralph Eubanks ("Defendant").

Background

On December 21, 2009, Defendant was arrested on probable cause and charged in connection with a hit-and run accident. After being arrested and charged, police asked Defendant to take a breath test, which he refused. He was later asked at 12:05 a.m. on December 22 to submit to blood and urine testing, which he refused. Defendant was eventually taken to the hospital at 2:53 a.m. for the blood and urine draw. He again refused to comply with the testing and became combative when a nurse attempted to draw blood. Defendant was restrained so a nurse could draw blood at 4 a.m. The nurse then asked him to provide a urine sample and Defendant refused. The nurse ordered a catheter and when she approached Defendant with it, he agreed to provide a urine sample and did so at 5:20 a.m. The blood tested negative for alcohol or any illegal substance. The urine tested positive for cannabis and its metabolite, ecstasy and its metabolite, and cocaine metabolite.[1]

To conduct the testing, the police relied on Section 11-501.2(c)(2) of the Illinois Vehicle Code, which permitted the warrantless collection and testing of an individual's blood, breath, or urine for alcohol or drugs if police have probable cause to believe the individual was driving under the influence.

Procedural History

A jury convicted Defendant of first degree murder,[2] failure to report an accident involving death or injury,[3] and aggravated DUI.[4] Prior to trial, Defendant moved to suppress the results of blood and urine testing, alleging they were unconstitutional searches because he did not consent, police did not have a warrant for the testing, and there were no exigent circumstances that would have prevented the police from obtaining a warrant.[5] Defendant also moved to declare Section 11-501.2(c)(2) of the Illinois Vehicle Code as unconstitutional because it permitted police to obtain chemical testing in the absence of an exigency,[6] which he alleged was impermissible pursuant to the U.S. Supreme Court case

[1] People v. Eubanks, 2019 IL 123525, at ¶ 5–7, 19, and 15 (Ill. 2019).
[2] 720 ILCS 5/9-1(a)(2) (2008).
[3] 625 ILCS 5/11-401(b) and (d) (2008).
[4] *Id.* §§ 11-501(a)(6), (d)(1)(C), and d(1)(F) (driving with any amount of a controlled substance in a person's blood, breath, or urine).
[5] *Eubanks*, *supra* note 1, at ¶ 4.
[6] *Id*.

Missouri v. McNeely.[7] The trial court denied both motions, holding the testing was permissible pursuant to the U.S. Supreme Court case *Schmerber v. California*.[8]

Defendant appealed to the Illinois Appellate Court which reversed the aggravated DUI conviction and held that Section 11-501.2(c)(2) of the Illinois Vehicle Code was facially unconstitutional (meaning there are no set of circumstances under which the statute would be valid) under *McNeely*.[9] The State appealed to the Illinois Supreme Court.

Constitutionality of Blood and Urine Testing

Applicable Case Law

The U.S. Supreme Court explained in *Schmerber*, which was decided in 1966, that warrantless and unconsented blood testing is a reasonable search where there was probable cause to believe the defendant was intoxicated and there were exigent circumstances – namely, the delay caused by obtaining a search warrant would have resulted in loss of evidence of the defendant's intoxication given the natural dissipation of the alcohol in the defendant's blood.[10]

The U.S. Supreme Court subsequently clarified in *McNeely*, which was decided in 2013, that the natural dissipation of alcohol in the bloodstream, alone, does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.[11] Instead, exigency must be determined under a totality-of-the-circumstances approach on a case-by-case basis.[12]

Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019), harmonized these two cases. The U.S. Supreme Court held that exigent circumstances exist when a DUI suspect is unconscious, and therefore a warrantless blood draw can be administered, because there is a compelling need for a blood test of drunk-driving suspects when the driver's condition renders a breath test impossible.[13] The U.S. Supreme Court explained that the totality of circumstances approach must be used to determine exigency, but DUI cases are often typical and thus set forth "general rules" for the police to follow:

> "One of these 'general rules' is that exigency will exist when BAC is dissipating and 'some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application.' . . . Two such factors have been expressly identified: (1) when there has been a traffic accident causing personal injury (*Schmerber*) and (2) when the suspect is unconscious (*Mitchell*)."[14]

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[7] 569 U.S. 141 (2013).

[8] 384 U.S. 757 (1966) (allowing compulsory blood testing when the police have probable cause to believe that a person has been driving while intoxicated). See *Eubanks*, *supra* note 1, at ¶ 8.

[9] *Eubanks*, *supra* note 1, at ¶ 1. The Illinois Appellate Court noted that the State had not demonstrated exigent circumstances existed because Defendant was taken into custody at 9:05 p.m., told he was under arrest at 12 a.m., and taken to the hospital at 2:57 a.m. The Appellate Court found nothing in the record to indicate the police could not have obtained a warrant between 9 p.m. and 12 a.m. The Appellate Court also reversed Defendant's conviction for first degree murder and remanded for a new trial and also reduced the felony class of Defendant's conviction of failure to report an accident. *Id*.

[10] People v. Jones, 214 Ill. 2d 187, 195 (2005) (interpreting *Schmerber*).

[11] *McNeely*, 569 U.S. at 165.

[12] *Id*. at 149–50.

[13] Mitchell v. Wisconsin, 139 S. Ct. 2525, 2545 and 2537 (2019).

[14] *Eubanks*, *supra* note 1, at ¶ 55 (citing *Mitchell*, 139 S. Ct. at 2536).

Facial Unconstitutionality

Based on the applicable case law, the Illinois Supreme Court held that Section 11-501.2(c)(2) is not facially unconstitutional because it "sets forth precisely the type of general rule" that *Mitchell* found "will almost always support a warrantless blood test."[15] The statute allows "warrantless testing of blood, breath, and urine only when *only when* a 'law enforcement officer has probable cause to believe'" that the individual was driving under the influence and has caused the death or personal injury to another.[16] The Illinois Supreme Court explained that the statute was "specifically designed to operate when exigent circumstances are present."[17] Thus, in the case of a motor vehicle accident that caused death or personal injury to another, where there is probable cause to believe the driver was under the influence of alcohol or drugs, warrantless blood and urine testing can be applied constitutionally in most cases and therefore is not facially unconstitutional.

Unconstitutional Application

The Illinois Supreme Court ruled, however, that the statute was unconstitutional as applied to the Defendant.[18] The issue came down to whether exigent circumstances existed in Defendant's case.[19] To find no exigent circumstances existed, the Defendant had to show that his blood was drawn solely for law enforcement purposes and that the police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.[20]

The Illinois Supreme Court found that the first showing was easily established because the Defendant was taken to the hospital solely for the blood draw.[21] The Illinois Supreme Court also found that the record clearly demonstrated that the police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.[22] In its initial brief, the State conceded that Defendant's Fourth Amendment rights were violated and that it could not make a good-faith argument that exigent circumstances existed.[23] This concession was later withdrawn in light of *Mitchell*.[24] The Illinois Supreme Court nevertheless found the State's concession unsurprising because "[n]o evidence was introduced that the police ever attempted to secure a warrant."[25]

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[15] *Id*. at ¶ 59.

[16] *Id*. (citing 625 ILCS 5/11-501.2(c)(2) (2008)).

[17] *Id*. at ¶ 60 (explaining further that Section 11-501.2(c)(2) of the Illinois Vehicle Code is essentially a "codified exigency creating a rebuttable presumption that the warrantless BAC testing permitted by the statute is a constitutional search.").

[18] *Id*. at ¶ 68. In doing so, the Illinois Supreme Court assumed, without deciding, that *Mitchell* applies to blood and urine tests. *Id*. at ¶ 62. The State argued it should apply and the Defendant did not challenge this argument. *Id*.

[19] *Id*. at ¶ 63. The State contended, and Defendant disagreed, that exigent circumstances existed, such that the urine test was permissible under the general rules set forth in *Mitchell.*

[20] *Id*. at ¶ 64.

[21] *Eubanks*, *supra* note 1, at ¶ 64.

[22] *Id*. at ¶ 64–68.

[23] *Id*. at ¶ 65.

[24] *Id*. The Illinois Supreme Court found this perplexing, because "*Mitchell*'s discussion of exigent circumstances in DUI accident cases was a straightforward application of *Schmerber*" and "the State had all the relevant law and facts available to it when it filed its opening brief." *Id.* at ¶ 65.

[25] *Id.* at ¶ 66. The Illinois Supreme Court explain that "[t]his was to be expected, as the statute told them they did not need one. The police told defendant that the law required him to give the blood and urine samples, so they were clearly proceeding under the belief that a warrant was unnecessary." *Id*.

To that end, the Illinois Supreme Court found the police's conduct "belies any assertion that they were facing an emergency" such that Defendant's blood and urine samples could be taken without a warrant.[26] The police did not act with any urgency and the timeline of their actions did not show sufficient exigent circumstances to dispense with a warrant.[27] Therefore, the Illinois Supreme Court held that the general rule set forth in Section 11-501.2(c)(2) of the Illinois Vehicle Code does not apply in this case, the statute was unconstitutional as applied to the Defendant, and the blood and urine samples should have been suppressed.[28]

Conclusion

The general rule set forth in Section 11-501.2(c)(2) of the Illinois Vehicle Code will apply in most cases, but, as *Mitchell* explained, it will not apply in those "unusual cases" in which the collection of blood or urine for chemical testing is solely for law enforcement purposes and the police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.[29]

Illinois Health and Hospital Association recommends that hospital staff, including the legal team, review this case to determine how this holding may impact operations at their respective hospital. Hospitals may also need to consider other applicable laws, like the Medicare Conditions of Participation, and accreditation standards when determining the impact of *Eubanks*.

Note that the Illinois Vehicle Code contains certain immunity provisions,[30] which law enforcement may cite to justify why healthcare providers should comply with a law enforcement officer's request to conduct blood or urine testing. The Illinois Vehicle Code, however, does not require a healthcare provider to collect blood or urine specimens for testing against patient desires or in the absence of patient consent. The provision of medical treatments or procedures without a patient's consent or in contradiction to a patient's wishes may constitute a medical battery. Consequently, hospitals and healthcare providers may choose to always require patient consent to specimen collection and testing.

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[26] *Id*. at ¶ 67. Three hours passed between the time Defendant was arrested and asked to give blood, breath, and urine samples, and then another three hours passed between Defendant's refusal and the officers taking him to the hospital. A total of seven hours passed between the time of Defendant's arrest and the time of his blood sample, and nearly eight and a half hours passed before he gave the urine sample. The police waited so long to obtain the blood and urine samples that the Defendant's blood alcohol content was zero, even though he had admitted to drinking and smelled of alcohol when he was interviewed at 10:30 p.m. *Id*. at ¶ 68.

[27] *Id*. at ¶ 67. The Illinois Supreme Court stated that given the amount of time it took police to obtain the blood and urine samples, "[i]t simply defines belief that the police could not have attempted to gain a warrant without significantly delaying the time of the testing." *Id*.

[28] *Eubanks*, *supra* note 1, at ¶ 67.

[29] *Id.* at ¶ 69.

[30] *See* 625 ILCS 5/11-501.4-1(b).