

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

STATE OF FLORIDA,
Appellant,

v.

SEAN MICHAEL MARLIN,
Appellee.

No. 4D2025-1448

[September 2, 2026]

Appeal of a nonfinal order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas Michael Lynch, V, Judge; L.T. Case No. 062018CF014657A88810.

James Uthmeier, Attorney General, Tallahassee, and Luke R. Napodano, Senior Assistant Attorney General, West Palm Beach, for appellant.

William R. Ponall of Ponall Law, Maitland, for appellee.

MAY, J.

Blood draws and DUI charges are at the center of this State appeal from an order granting the defendant's motion to suppress. The State argues the trial court erred in granting the motion to suppress because no state action occurred in obtaining the blood draw and probable cause supported the State's request for a blood draw. We disagree with the State for the reasons explained below and affirm.

- ***The Facts***

The defendant was driving when his vehicle drifted onto the shoulder of the Turnpike and struck four motorcycles. The accident resulted in one fatality and injury to two other people. The State charged the defendant with two counts of DUI manslaughter (UBAL and impairment), two counts of DUI with serious bodily injury (UBAL and impairment), one count of DUI with injury, and five counts of DUI with property damage.

The defendant moved to suppress the blood draw results as fruits of an unreasonable search. The defendant argued law enforcement did not apply for a search warrant but instead asked the defendant to voluntarily submit to a blood draw. When the defendant refused, law enforcement had first responders compel the blood draw.

According to the motion to suppress, law enforcement contacted a state attorney approximately two hours after the accident and were directed to apply for a search warrant for the defendant's blood. Approximately thirty minutes later, the same state attorney told law enforcement they could proceed with the blood draw because exigent circumstances existed due to the elapsed time.

The defendant argued the blood draw was an unconstitutional search because law enforcement did not obtain a warrant and lacked exigent circumstances. The defendant argued that "(a) the natural dissipation of alcohol, alone, does not create a per se exigency; and (b) law enforcement cannot create its own exigency by failing to take measures to secure a search warrant for a suspect's blood." The defendant requested the trial court to suppress the blood draw results.

The State responded that law enforcement could order the blood drawn based on exigent circumstances because the alcohol would dissipate in the time needed to obtain the search warrant. Alternatively, the State argued law enforcement could properly order the blood draw, pursuant to section 316.1933, Florida Statutes (2018), based on *State v. Acevedo*, 366 So. 3d 1096 (Fla. 4th DCA 2023). In doing so, the State suggested *Acevedo* held that section 316.1933 created an exception to the warrant requirement for nonconsensual blood draws based on the existence of probable cause. Finally, the State asserted that even if exigent circumstances did not exist and section 316.1933 did not apply, the defendant's blood would have been obtained via inevitable discovery.

- *Suppression Hearing & Order*

At the hearing on the motion to suppress, the trial court heard from numerous witnesses to the accident and investigation. Consistent with his motion, the defendant argued that law enforcement lacked exigent circumstances to conduct a warrantless, nonconsensual blood draw.

During the discussion, the trial court noted that *Acevedo's* "probable cause" language appeared "very contradictory" to other Florida caselaw and possibly to the United States Supreme Court's decision in *Missouri v.*

McNeely, 569 U.S. 141 (2013).¹ The defendant characterized the *Acevedo* language as “unfortunate dicta.”

In *Acevedo*, the State charged the defendant with multiple DUI crimes arising out of a rear-end collision. At the hearing on the motion to suppress the blood draw, a law enforcement officer testified that a trooper asked the defendant for consent to draw blood and the defendant consented. The trooper also testified that he had properly advised the defendant of his rights under Florida’s implied consent law.

The trial court suppressed the blood draw, concluding the State had failed to establish the defendant’s voluntary consent. The trial court found the defendant had not been advised of his “right to refuse and was misadvised that if he did not agree, law enforcement would get a warrant and take a blood sample against his will.” *Id.* at 1099. The State appealed.

On appeal, we found the record “provided sufficient probable cause to believe” the defendant was under the influence. *Id.* at 1100. We then stated that: “even if [the defendant] had not voluntarily consented to the blood draw, the officer had probable cause to coerce the blood draw.” *Id.* We reversed the order suppressing the blood draw.

Here, the State continued to argue that law enforcement had probable cause for the blood draw, exigent circumstances existed to permit the warrantless draw, and/or the results would have been inevitably discovered.

The trial court found no consent had been given, no warrant had been issued, and no exigent circumstances existed. The trial court also concluded that inevitable discovery did not apply. Struggling with *Acevedo*, the trial court denied the motion to suppress in a written order.

The defendant moved for rehearing and argued the trial court’s decision and reliance on *Acevedo*’s “probable cause” language essentially overturned *McNeely*. The trial court noted that if the State’s interpretation of section 316.1933 was correct under *Acevedo*, the caselaw on consent

¹ In *McNeely*, the Court addressed “whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk-driving cases.” 569 U.S. at 145. The Supreme Court held natural metabolization does not present a *per se* exigency that justifies an exception to the Fourth Amendment. Exigent circumstances must be decided on a case-by-case basis based on the totality of the circumstances. *Id.* at 156.

and exigent circumstances would be irrelevant because police could “get the blood” any time probable cause existed. The State argued that *Acevedo* did not expressly find the defendant’s consent voluntary; therefore, the “probable cause” language must have been a holding rather than dicta.

The trial court then reversed itself and granted the defendant’s motion for rehearing and his motion to suppress.

From this order, the State now appeals.

- ***The Analysis***

We briefly review the law on blood draws in DUI cases.

I. *Blood Draws in DUI Cases*

DUI charges are extremely serious because of the potential harm driving under the influence can inflict on human lives and property. See *Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016).² So too are a defendant’s constitutional rights extremely serious and zealously guarded. See *McNeely*, 569 U.S. at 148. These two competing interests have been the subject of numerous opinions within and without our jurisdiction. They once again step into the legal boxing ring to compete.

So, let’s start at the beginning. “The Fourth Amendment provides in relevant part that ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.’” *Id.* A motorist ordinarily may not be compelled “to submit to the taking of a blood sample or to a breath test unless a warrant authorizing such testing is issued by a magistrate.” *Birchfield*, 579 U.S. at 454. There are, however, exceptions.

A. *Consent*

Courts have consistently held that where actual consent exists, no need exists to rely on Florida’s implied consent laws or to obtain a warrant. *Robertson v. State*, 604 So. 2d 783, 790 (Fla. 1992) (“If the defendant has consented to the test, or consent is implied on some basis independent of the DUI laws, then the blood test falls wholly outside the scope of the

² “Alcohol consumption is a leading cause of traffic fatalities and injuries. During the past decade, annual fatalities in drunk-driving accidents ranged from 13,582 deaths in 2005 to 9,865 deaths in 2011.” *Id.* at 465.

implied consent law.”); *State v. Meyers*, 261 So. 3d 573, 574 (Fla. 4th DCA 2018) (“The Florida Supreme Court has explained . . . that if a defendant expressly consents to a blood test, ‘then the blood test falls wholly outside the scope of the implied consent law.’” (quoting *Robertson*, 604 So. 2d at 790)); *State v. Liles*, 191 So. 3d 484, 487 (Fla. 5th DCA 2016) (“One of the well-established exceptions to the requirements of both a warrant and probable cause is a search conducted pursuant to consent.”).

B. Exigent Circumstances

Exigent circumstances is another such exception. But the Court made clear that “while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, . . . it does not do so categorically. Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances.” *McNeely*, 569 U.S. at 156.

C. Search Incident to Arrest

Most recently, the Court held that “a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving.” *Birchfield*, 579 U.S. at 476. The Court further held “that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense.” *Id.* at 477. In doing so, the Court disavowed that statutory “implied consent” can serve as a substitute for actual consent or a warrant.

D. Warrant Requirement

These recent decisions lead to but one conclusion. Unless a motorist gives actual consent or a court determines under the totality of the circumstances that exigent circumstances exist, a warrant must be obtained for a blood draw to satisfy the Fourth Amendment. *See Liles*, 191 So. 3d at 488. This is true regardless of a state’s implied consent laws.

Following *McNeely*, we must read section 316.1933, Florida Statutes, as a directive to law enforcement to obtain blood samples in serious and deadly crashes when probable cause exists to suggest impaired driving. To comply with *McNeely*, the statute must assume the blood draw will be obtained with a warrant, absent consent or proof of exigent circumstances.

Id. at 489.³

E. Implied Consent Laws

In *State v. Marshall*, 418 So. 3d 647, 650–51 (Fla. 4th DCA 2025), we reviewed Florida’s implied consent laws. Those laws provide statutory authority for breath, urine, and blood testing under specified circumstances and provide administrative penalties for a motorist’s refusal to comply. See §§ 316.1932–.1933, Fla. Stat. (2024). Those laws, however, are subject to the constitutional safeguards outlined above and addressed by the United States Supreme Court in *McNeely* and *Birchfield*.

II. The Present Case

Here, the State argues the trial court erred in granting the motion to suppress because section 316.1933(1), Florida Statutes (2018), provided the consent necessary to satisfy the Fourth Amendment. The State further argues that section 316.1933(1) is not contrary to *McNeely* or any other United States Supreme Court decision. The State suggests the trial court’s ruling is contrary to *Acevedo*, which the State claims held that a blood draw can be coerced when law enforcement has probable cause.⁴

The defendant responds that the trial court correctly granted the motion to suppress. We agree.

“A trial court’s ruling on a motion to suppress comes to the appellate court with a presumption of correctness and [we] must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court’s ruling.” *R.F. v. State*, 307 So. 3d 20, 22 (Fla. 4th DCA 2020) (citations omitted). We apply “a de novo standard of review to the mixed questions of law and fact that ultimately determine constitutional issues.” *Id.*

As we previously noted, the Fourth Amendment prohibits “unreasonable searches” and applies to a blood draw. *Birchfield*, 579 U.S. at 455. “To comply with the Fourth Amendment, law enforcement officers

³ We recognize that section 933.02 does not authorize search warrants for misdemeanor DUIs.

⁴ On appeal, the State has abandoned its exigent circumstances and inevitable discovery arguments made to the trial court, thus waiving those arguments. See *Hammond v. State*, 34 So. 3d 58, 59 (Fla. 4th DCA 2010).

must obtain a warrant or consent for a blood draw, or there must be some other exception to the warrant requirement.” *Liles*, 191 So. 3d at 486.

In *Liles*, the Fifth District rejected the State’s similar argument that the parties’ statutory “implied consent” satisfied the Fourth Amendment. *Id.* at 488. The Fifth District concluded that because the defendants did not consent to the blood draw, “the warrantless blood searches were not authorized by the consent exception.” *Id.*

The State acknowledges that its argument here runs afoul of *Liles* but suggests we should decline to follow *Liles*. But we have previously agreed with *Liles*. See *McGraw v. State*, 245 So. 3d 760, 769 (Fla. 4th DCA 2018). There, we stated, “that when a defendant specifically withdraws his or her consent, the state cannot compel a blood draw.” *Id.* We also advised, “the State would not be able to rely on implied consent as an exception to the warrant requirement.” *Id.*⁵

The State next argues that *Acevedo* created a “probable cause” exception to the warrant requirement for blood draws.⁶ We disagree.

First, the U.S. Supreme Court has instructed us that a warrant is required to obtain a blood draw unless exigent circumstances or actual consent exists. *Birchfield*, 579 U.S. at 474 (“Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant.”). Second, nothing in *Acevedo* articulated such an exception. One thing is apparent, however: *Acevedo*’s language has created confusion that needs clarification.

III. Clarifying *Acevedo*

In *Acevedo*, we stated that “even if [the defendant] had not voluntarily consented to the blood draw, the officer had probable cause to coerce the blood draw.” *Acevedo*, 366 So. 3d at 1100. Taking the sentence as worded,

⁵ The Florida Supreme Court subsequently vacated *McGraw* and remanded the case for further proceedings consistent with *Mitchell v. Wisconsin*, 588 U.S. 840 (2019). *McGraw v. State*, 289 So. 3d 836, 839 (Fla. 2019).

⁶ The State argued *Acevedo*’s probable cause language was a holding rather than dicta as evidenced by the defendant’s attempt to seek conflict jurisdiction in the Florida Supreme Court. The State suggests that *Acevedo* “change[d] things” concerning section 316.1933.

the first clause, by negative implication, reflects our decision that the record supported the defendant's actual consent to the blood draw.

It is the second clause, unnecessary to our decision and thus non-binding dicta, that has created confusion.⁷ The State has taken *Acevedo's* language and run with it as a new exception to the *Birchfield* warrant requirement to obtain a blood draw. We simply do not have the authority to create an exception contrary to United States Supreme Court authority. And *Acevedo* neither intended nor articulated a probable cause exception by the language employed. To the extent the clause suggests otherwise, we recede from that language.

For the foregoing reasons, we affirm the order suppressing the blood draw in this case as it occurred without a warrant and without exigent circumstances.

Affirmed.

SHEPHERD and LOTT, JJ., concur.

SHEPHERD, J., concurs specially with opinion.

SHEPHERD, J., concurring specially.

I concur with the majority opinion. I write simply to call attention to two other opinions where we have either conflated the lines between actual and statutory implied consent or misstated details of our DUI law. See, e.g., *Chu v. State*, 521 So. 2d 330 (Fla. 4th DCA 1988), and *State v. Marshall*, 418 So. 3d 647 (Fla. 4th DCA 2025).

Consent is an exception to a warrant requirement and to Florida's implied consent law. "The Florida Supreme Court has explained, however, that if a defendant expressly consents to a blood test, 'then the blood test falls wholly outside the scope of the implied consent law.'" *State v. Meyers*, 261 So. 3d 573, 574 (Fla. 4th DCA 2018) (citing *Robertson v. State*, 604 So. 2d 783, 790 (Fla. 1992) (cleaned up)).

⁷ See *Myrick v. State*, 427 So. 3d 1, 12 (Fla. 4th DCA 2025) (Harper, Assoc. J., concurring in part) ("Because that dismissal was unnecessary to the Court's holding, it constitutes **dicta** rather than **binding** precedent.") (emphasis added); *United States v. Kaley*, 579 F.3d 1246, 1253 n.10 (11th Cir. 2009) (explaining dictum is "a statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding") (quoting *United States v. Crawley*, 837 F.2d 291, 292 (7th Cir. 1988)); see also *Cohens v. Virginia*, 19 U.S. 264, 399 (1821) (stating "general expressions" not necessary to the decision "ought not to control the judgment in a subsequent suit").

Implied consent is codified in chapter 316, Florida Statutes (2024), specifically sections 316.1932, .1933, and .1934. Florida’s implied consent law, “essentially require[s] all persons accepting a license to drive in Florida to consent to a blood-alcohol test upon being arrested for driving under the influence.” *Montes-Valeton v. State*, 216 So. 3d 475, 481 n.1 (Fla. 2017) (quotation omitted).

Chu predates the more recent United States Supreme Court decisions on blood draws, *Missouri v. McNeely*, 569 U.S. 141 (2013), and *Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016). The Florida Supreme Court in *Robertson v. State*, 604 So. 2d 783, 790 (Fla. 1992), determined that “if the defendant has consented to the test, or consent is implied on some basis independent of the DUI laws, then the blood test falls wholly outside the scope of the implied consent law.” Indeed, *Robertson* explained that the implied consent law and its exclusionary rule apply only when blood is taken pursuant to the statutory implied consent framework. *Id.* at 790 n.7.

In *Chu*, we held that law enforcement’s failure to advise the suspected impaired driver of the consequences of refusing to consent to a breath or urine test under Florida’s implied consent law was irrelevant where the defendant had voluntarily consented to the blood draw. 521 So. 2d at 332. This is consistent with the existing law and the majority opinion. Consent is also an exception to the warrant requirement for a blood draw.

However, in *Chu*, we also suggested that consent meant the law enforcement officer had “fully informed [the individual] that the implied consent law required submission only to a breath or urine test and that the blood draw was an alternative.” *Id.* at 332. In doing so, we blurred consent with implied consent. It is unnecessary to advise a motorist of the implied consent law where the driver provides actual and voluntary consent. The two concepts provide distinct bases for obtaining a chemical test, and the requirements attendant to one should not be imported to the other. Law enforcement’s requirement to inform a motorist of the implied consent law only comes into play when law enforcement seeks to rely upon the statutory implied consent framework rather than a motorist’s actual consent.

And in *Marshall*, we correctly quashed an order suppressing a blood draw because we were “unable to discern the trial court’s rationale for granting the motion.” *Id.* at 652. However, in discussing the various implied consent laws, we stated that subsection 316.1932(1)(c) applied when blood was drawn at a hospital or medical facility but not when the

blood draw occurred in a fire rescue ambulance parked at the accident scene or en route to a hospital. But we failed to recognize that section 316.1932(1)(c) defines “other medical facility” to include “an ambulance or other medical emergency vehicle.” § 316.1932(1)(c), Fla. Stat. (2024). Thus, the statutory text itself identifies ambulances and medical emergency vehicles as permissible locations for a DUI blood draw.

In *Marshall*, we also stated that “[s]ection 316.1932(1)(a) applies when the *blood test* is ‘incidental’ to a lawful arrest and conducted ‘at the request of a law enforcement officer who has reasonable cause to believe [the individual] was driving or was in actual physical control of a motor vehicle while under the influence’ of alcoholic beverages.” *Marshall* 418 So. 3d at 650. However, section 316.1932(1)(a) actually states, “[t]he *chemical or physical breath test* must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages.” § 316.1932, Fla. Stat. (2024) (emphasis added).

Our subsequent cases have shifted from any broad reading of *Chu*, but we have not had the opportunity to revisit and vacate *Chu*’s language that requires an officer to read the implied consent law to obtain actual consent. In *State v. Dubiel*, 958 So. 2d 486 (Fla. 4th DCA 2007), we distinguished *Chu* and reversed an order suppressing blood test results where the defendant had consented to a blood draw performed at a hospital, even though law enforcement had not advised him of the consequences of refusal to consent. Likewise, in *State v. Meyers*, 261 So. 3d 573 (Fla. 4th DCA 2018), without discussing *Chu*, we held that a blood draw administered in a hospital was admissible when the defendant had consented to the blood draw without being advised of implied consent. And in *Department of Highway Safety & Motor Vehicles v. Davis*, 264 So. 3d 965 (Fla. 4th DCA 2019), we further distinguished *Chu* by holding that *Dubiel*, rather than *Chu*, controlled where the defendant was in the hospital and voluntarily consented to the blood draw, and by reiterating that, under those circumstances, the implied consent law did not apply and the officer therefore was not required to satisfy its statutory prerequisites.

Thus, *Dubiel*, *Meyers*, and *Davis* have progressively narrowed *Chu*’s practical reach. And our sister court has gone further still. In *State v. Murray*, 51 So. 3d 593 (Fla. 5th DCA 2011), the court expressly observed that *Chu* “likely sweeps too broadly” and stated that, to the extent *Chu* requires implied-consent warnings despite a defendant’s actual voluntary consent, *Murray* was in “direct and express conflict” with *Chu*. *Id.* at 596.

Taken together, these cases underscore two related points. First, consent and statutory implied consent are distinct concepts, and the requirements of the implied consent law should not be imported into a blood draw supported by a motorist's voluntary consent. Consent can be given by a motorist at any time, in any location, including in a setting bereft of reasonable suspicion or probable cause if it is voluntary. Second, when the implied consent statute does apply, the mere happenstance of the defendant's location is not determinative of whether breath, urine, or blood is authorized. A blood draw in a hospital without consent must still satisfy either the warrant requirement or the impractical/impossible prong to qualify as legislatively authorized, pursuant to implied consent. If consent is voluntarily given, location is irrelevant.

Alas, this case does not involve the problems raised by language in *Chu* and *Marshall*, so those cases remain outside the reach of our majority opinion. We shall have to wait another day to address these issues when properly presented to us.

* * *

Not final until disposition of timely-filed motion for rehearing