

No. 60257-8-I

8/992-1

**COURT OF APPEALS, DIVISION ONE
STATE OF WASHINGTON**

CITY OF SEATTLE,

Respondent,

v.

ROBERT ST. JOHN,

Appellant,

FILED
COURT OF APPEALS DIVISION
STATE OF WASHINGTON
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APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

	<u>Page No.</u>
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR.....	2-3
III. STATEMENT OF THE CASE.....	3-5
IV. ARGUMENT.....	5-42
1. The trial court correctly ruled RCW 46.20.308(5) prohibited the officer from seeking a search warrant to test Mr. St. John’s blood after he refused a test under the implied consent law.....	5-27
A. History of Implied Consent Law.....	5-9
B. The Implied Consent Statute Operates To Authorize Warrantless Searches Specific To DUI Arrests.....	9-12
C. The Provisions Of the Implied Consent Statute Are Unambiguous And Not Subject To Judicial Interpretation.....	12-15
D. To Harmonize Conflicting Provisions, Court Must Apply Rule That Statutory Provision Appearing Latest In Order Of Position Prevails Where It Is More Clear And Explicit Than Earlier Provision.....	15-18
E. Sub-Section Five’s Prohibition Against Testing Once The Driver Refuses Applies Because It Appears Latest In Order Within Statute, And Is a More Clear And Explicit Statement Of the Law.....	18-22

F. Applying Sub-Section Five’s Prohibition Against Subsequent Tests After A Refusal Harmonizes Statute And Permits Police To Obtain Search Warrants So Long As Officers Do Not Invoke Implied Consent Warnings.....	23-26
G. Conclusion.....	26-27
2. The trial court erred to the extent it found the implied consent warning did not violate fundamental fairness where it failed to advise drivers who refuse a test the officer may seek a warrant-based test.....	27-36
A. Implied Consent Warning Must Comply With Due Process And The “Knowing And Intelligent” Rule.....	28-29
B. Warning Is Implicitly Misleading Where It Fails To Advise Driver Officer May Obtain A Warrant To Compel Test If Driver Refuses.....	29-35
C. Warning Driver Police May Seek Warrant If they Refuse Does Not Coerce Drivers To Submit To Test, So Long As Police Have The Authority To Seek Warrant.....	35-36
D. Conclusion.....	36
3. The trial court erred to the extent it did not find that the principle of equitable estoppel prevented the State from seeking a blood alcohol test after advising the driver they had the right to refuse the test.....	36-42
V. CONCLUSION.....	42

TABLE OF AUTHORITIES

<u>Washington Cases</u>	<u>Page No.</u>
<u>Cannon v. Dept of Licensing</u> , 147 Wn.2d 41 50 P.3d 627 (2002).....	20
<u>Citizens for Clean Air v. City of Spokane</u> , 114 Wn.2d 20 785 P.2d 447 (1990).....	15
<u>City of Kent v. Beigh</u> , 145 Wn.2d 33 32 P.3d 258 (2001).....	14
<u>Davis v. Dep't of Licensing</u> , 137 Wash.2d 957 977 P.2d 554 (1999).....	13
<u>Dep't of Ecology v. Campbell & Gwinn, L.L.C.</u> , 146 Wash.2d 1 43 P.3d 4 (2002).....	13
<u>Erection Co. v. Dep't of Labor & Indus.</u> , 121 Wn.2d 513 852 P.2d 288 (1993).....	19
<u>Gibson v. Dept of Licensing</u> , 54 Wn. App. 188 773 P.2d 110 (1989).....	29
<u>Gonzales v. Dept of Licensing</u> , 112 Wn.2d 890 774 P.2d 1187 (1989).....	29
<u>Jury v. Dept of Licensing</u> , 114 Wn. App. 726 60 P.3d 615 (2002).....	27, 28
<u>Kilian v. Atkinson</u> , 147 Wn.2d 16 50 P.3d 638 (2002).....	13
<u>Kramarevcky v. DSHS</u> , 122 Wn.2d 738 863 P.2d 535 (1993).....	37, 38
<u>Landmark Dev., Inc. v. City of Roy</u> , 138 Wn.2d 561 980 P.2d 1234 (1999).....	19

<u>Lax v. Dept of Licensing</u> , 125 Wn.2d 818 888 P.2d 1190 (1995).....	7, 14
<u>Medcalf v. Dept of Licensing</u> , 133 Wn.2d 290 944 P.2d 1014 (1997).....	25
<u>Nat'l Elec. Contractors Ass'n v. Riveland</u> , 138 Wn.2d 9 978 P.2d 481 (1999).....	13
<u>Nettles v. Dept of Licensing</u> , 73 Wn. App. 730 870 P.2d 1002 (1994).....	25
<u>Nowell v. Dept. of Licensing</u> , 83 Wn.2d 121 516 P.2d 205 (1973).....	31
<u>Robinson v. Seattle</u> , 119 Wn.2d 34 830 P.2d 318 (1992).....	37
<u>Schneider v. Forcier</u> , 67 Wn.2d 161 406 P.2d 935 (1965).....	16
<u>Shafer v. State</u> , 83 Wn.2d 618 521 P.2d 736 (1974).....	37
<u>Sheeks v. Dept of Licensing</u> , 47 Wn. App. 65 734 P.2d 24 (1987).....	25
<u>State v. Apodaca</u> , 67 Wn. App. 736 839 P.2d 352 (1992).....	35
<u>State v. Autrey</u> , 136 Wn. App. 460 150 P.3d 580 (2006).....	27
<u>State v. Avery</u> , 103 Wn. App. 527 13 P.3d 226 (2000).....	9, 23
<u>State v. Bostrom</u> , 127 Wn.2d 580 902 P.2d 157 (1995).....	29, 30, 31, 32, 33
<u>State v Davidson</u> , 26 Wn. App. 623 613 P.2d 564 (1980).....	8

<u>State v. Delgado</u> , 148 Wash.2d 723 63 P.3d 792 (2003).....	13
<u>State ex rel. Graham v. San Juan County</u> , 102 Wn.2d 311 686 P.2d 1073 (1984).....	15, 16
<u>State v. J.P.</u> , 149 Wn.2d 444 69 P.3d 318 (2003).....	15, 17, 18
<u>State v. Koch</u> , 126 Wn. App. 589 103 P.3d 1280 (2005).....	29
<u>State v. Krieg</u> , 7 Wn. App. 20 497 P.2d 621 (1972).....	9, 10, 11, 14
<u>State v. Mierz</u> , 127 Wn.2d 460 901 P.2d 286 (1995).....	35
<u>State v. Rivard</u> , 131 Wn.2d 63 929 P.2d 413 (1997).....	23
<u>State v. Sandoval</u> , 123 Wn. App. 1 94 P.3d 323 (2004).....	27
<u>State v. Schultz</u> , 146 Wash.2d 540 48 P.3d 301 (2002).....	12
<u>State v. Smith</u> , 84 Wn. App. 813 929 P.2d 1191 (1997).....	10, 11
<u>State v. Smith</u> , 115 Wn.2d 775 801 P.2d 975 (1975).....	35
<u>State v. Turpin</u> , 94 Wn.2d 820 620 P.2d 990 (1980).....	24, 25
<u>State v. Wetherell</u> , 82 Wn.2d 865 514 P.2d 1069 (1973).....	23
<u>State v. Wilson</u> , 125 Wash.2d 212 883 P.2d 320 (1994).....	13

Thompson v. Dept of Licensing, 138 Wn.2d 783
982 P.2d 601 (1999).....28

Williams v. Pierce County, 13 Wn. App. 755
537 P.2d 856 (1975)..... 16

Wilson v. Westinghouse Elec. Corp., 85 Wn.2d 78
530 P.2d 298 (1975).....37

Federal Cases Page No.

Raley v. Ohio, 360 U.S. 324, 79 S.Ct. 1257
3 L.Ed.2d 1344 (1959).....40, 41, 42

Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826
16 L.Ed.2d 908 (1966).....6, 14

Schneckloth v. Bustamonte, 412 U.S. 218
93 S.Ct. 2041 (1973).....24

South Dakota v. Neville, 459 U.S. 553, 103 S.Ct. 916
74 L.Ed.2d 748 (1983).....29, 30, 31, 33

Washington Statutes Page No.

Laws of Washington 1969, Ch. 1 (Ini. 242).....5, 6

Laws of Washington 2004, Ch. 68 (SHB 3055).....7

RCW 3.50.425.....8

RCW 3.66.100.....8

RCW 10.79.015.....9, 10

RCW 13.40.020.....17, 18

RCW 13.40.190.....17, 18

RCW 19.27.040.....16

RCW 19.27.060.....	16
RCW 35.20.250.....	8
RCW 46.20.308(1).....	7, 8, 9, 12, 14, 18, 20, 22, 26, 28
RCW 46.20.308(2).....	14, 19, 24, 26, 27, 28
RCW 46.20.308(3).....	7, 14
RCW 46.20.308(4).....	7, 14
RCW 46.20.308(5).....	6, 9, 12, 18, 19, 22, 23, 24, 26
RCW 46.20.3101.....	14, 21
RCW 46.61.502.....	21
RCW 46.61.505(3)(1967).....	5
RCW 46.61.5055.....	14, 21, 33
RCW 46.61.506.....	20, 22
RCW 46.61.517.....	14, 19
<u>Washington Court Rules</u>	<u>Page No.</u>
RALJ 2.2.....	39
CrRLJ 2.3.....	8, 24
<u>Other Materials</u>	<u>Page No.</u>
3 W. LaFave, Search and Seizure §8.2(c) (2 nd Ed. 1987).....	35

I. INTRODUCTION

Robert St. John was arrested for DUI. A Seattle Police officer obtained a search warrant to perform a non-consensual blood alcohol test after Mr. St. John exercised his statutory right to refuse a blood test requested under the implied consent law.

The implied consent law contains two provisions which conflict with one another; one which permits a warrant-based test irrespective of a person's consent, and another which expressly prohibits testing after a person invokes their right to refuse. They cannot be harmonized.

Furthermore, the implied consent warning informs drivers they have the right to refuse the test. However, the warning does not advise drivers that the police may obtain a warrant for a test if the driver refuses.

Mr. St. John appeals contending the implied consent law prohibits a warrant-based test in situations where the driver refuses a test offered under the implied consent law. However, if a warrant-based test may be sought under the law, the implied consent warning violates fundamental fairness where it omits an advisement to the driver that a warrant may be obtained should the test be refused.

II. ASSIGNMENTS OF ERROR

1. The trial court correctly ruled RCW 46.20.308(5) prohibited the officer from seeking a search warrant to test Mr. St. John's blood after he refused a test under the implied consent law.

A. History of Implied Consent Law

B. The Implied Consent Statute Operates To Authorize Warrantless Searches Specific To DUI Arrests

C. The Provisions Of the Implied Consent Statute Are Unambiguous And Not Subject To Judicial Interpretation

D. To Harmonize Conflicting Provisions, Court Must Apply Rule That Statutory Provision Appearing Latest In Order Of Position Prevails Where It Is More Clear And Explicit Than Earlier Provision

E. Sub-Section Five's Prohibition Against Testing Once The Driver Refuses Applies Because It Appears Latest In Order Within Statute, And Is a More Clear And Explicit Statement Of the Law

F. Applying Sub-Section Five's Prohibition Against Subsequent Tests After A Refusal Harmonizes Statute And Permits Police To Obtain Search Warrants So Long As Officers Do Not Invoke Implied Consent Warnings

G. Conclusion

2. The trial court erred to the extent it found the implied consent warning did not violate fundamental fairness where it failed to advise drivers who refuse a test the officer may seek a warrant-based test.

A. Implied Consent Warning Must Comply With Due Process And The “Knowing And Intelligent” Rule

B. Warning Is Implicitly Misleading Where It Fails To Advise Driver Officer May Obtain A Warrant To Compel Test If Driver Refuses

C. Warning Driver Police May Seek Warrant If they Refuse Does Not Coerce Drivers To Submit To Test, So Long As Police Have The Authority To Seek Warrant

D. Conclusion

3. The trial court erred to the extent it did not find that the principle of equitable estoppel prevented the State from seeking a blood alcohol test after advising the driver they had the right to refuse the test.

III. STATEMENT OF THE CASE

Robert St. John was injured in a one motorcycle accident on the Alaska viaduct on July 24, 2005, and Seattle Police Officer Eric Michl responded to the scene. (CP 58) Later, at Harborview Hospital, the officer placed Mr. St. John under arrest for DUI. (CP 61) Because of his injuries, the officer read Mr. St. John the implied consent warning for a blood alcohol test, and asked if he would submit to the test. (CP 62; 74-75) Mr. St. John refused.

The officer drafted a search warrant affidavit to obtain a sample of Mr. St. John's blood. (CP 62; CP 26-29) Seattle Municipal Court Judge Michael Hurtado signed the warrant. (CP 26) Hospital staff withdrew Mr. St. John's blood. (CP 26) The Washington State Toxicology Lab analyzed the blood, with a result of 0.16 g/100 mL. (CP 31) After the blood was withdrawn, but before the results were known, the officer reported the initial refusal to the Department of Licensing. (CP 79) The officer was aware that reporting the refusal would result in a one year driver's license revocation. (CP 79)

Prior to Mr. St. John's arrest, Officer Michl had obtained search warrants for blood tests when drivers refused testing under the implied consent law. (CP 76-77) Officer Michl was aware, on the night of the arrest, that he could seek a warrant should Mr. St. John refuse. (CP 78) He probably intended to get a warrant if Mr. St. John refused. (CP 78) The officer did not convey this information to Mr. St. John. (CP 78-79)

The City of Seattle charged Mr. St. John with DUI. The trial court suppressed the results of the blood test, relying primarily on the language found in RCW 46.20.308(5), where if a person refuses a test under the implied consent law, "no test shall be given" (CP 33-39) The City

moved the court to dismiss the DUI charge with prejudice, so as to appeal the suppression ruling. (CP 9)

On RALJ appeal, Superior Court Judge Michael Fox reversed. (CP 107). Mr. St. John sought discretionary review under RAP 2.3. (CP 108) Commissioner Ellis granted discretionary review.

IV. ARGUMENT

1. The trial court correctly ruled RCW 46.20.308(5) prohibited the officer from seeking a search warrant to test Mr. St. John's blood after he refused a test under the implied consent law.

A. History of Implied Consent Law

Washington's implied consent statute, RCW 46.20.308, became law in November 1968 following passage of initiative 242.¹ Prior to its enactment, Washington law expressly held that a driver under arrest for DUI had the right to refuse chemical testing of their breath or blood, and their refusal could not be used as evidence in trial.² The implied consent law changed these laws dramatically, and required a six month license suspension for those drivers who refused the test.³ Since 1968 the legislature has amended the law many times leading to the current statute as it exists today, and the issues confronting the Court in this appeal.

¹ Laws of Washington, 1969, Ch.. 1.

² RCW 46.61.505(3) (1967)

³ Laws of Washington, 1969, Ch. 1, §3.

As stated above, Washington's pre-implied consent law acknowledged the unqualified right to refuse a test. In 1966, the United States Supreme Court ruled in Schmerber v. California⁴ that police may perform a warrantless blood test for alcohol concentration where there is probable cause to believe the person was driving under the influence. The Schmerber court created a two part test to determine the reasonableness of a seizure of a person's blood following a DUI arrest without a warrant: first there must be clear indication the desired evidence will be found; and second the chosen test must be reasonable and performed in a reasonable manner. Schmerber, 384 U.S. at 770-771. Despite authority under Schmerber for compulsory blood tests following DUI arrests, Washington's implied consent law stated then, and continues to state now, a driver has the right to refuse a test, and if there is a refusal, "no test shall be given."⁵ RCW 46.20.308(5)

Presently, this "no test" provision states;

RCW 46.20.308 (5): If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized

⁴ 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)

⁵ Laws of Washington 1969, Ch. 1 §3.

under subsection (3) or (4) of this section.⁶

Our Supreme Court has reviewed this provision and found the phrase “no test shall be given” clear and unambiguous. Lax v. Dept of Licensing, 125 Wn.2d 818, 822, 888 P.2d 1190 (1995). When a driver refuses a test, this phrase acts as a “bright line rule” preventing the driver from changing their decision and asking for a test. Lax, at 824. Thus, by its plain unequivocal language, where a driver refuses a test, there is no authority for a subsequent test.

In 2004, the legislature amended several portions of the implied consent statute.⁷ Relevant to this appeal, the legislature added the following sentence to RCW 46.20.308(1)⁸;

⁶ Sub-sections (3) and (4) do not apply to the facts of this case. They are provided in this footnote for reference.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

⁷ See Laws of Washington 2004, Ch. 68 (SHB 3055).

Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

The authority for a search warrant issued under RCW 46.20.308(1) is not stated in the statute, although it is presumed it derives from court rule. See CrRLJ 2.3. Pursuant to the rule, a district or municipal court judge may issue a search warrant only upon a finding of probable cause to believe evidence or persons designated in CrRLJ 2.3(b) will be found.⁹ It is not disputed a district or municipal court judge may issue search warrants under CrRLJ 2.3. District and municipal court judges have limited statutory authority to issue a search warrant. State v Davidson, 26 Wn. App. 623, 626, 613 P.2d 564 (1980); RCW 3.66.100; RCW 3.50.425; RCW 35.20.250. The question remains whether police may seek a

⁸ RCW 46.20.308(1) reads in its entirety: (1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

⁹ **CrRLJ 2.3 (b) Property or Persons Which May Be Seized With a Warrant.** A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

warrant once a driver has refused a test – invoking the prohibition against subsequent testing per 46.20.308(5).

B. The Implied Consent Statute Operates To Authorize Warrantless Searches Specific To DUI Arrests

Prior to the amendment to 46.20.308(1), Division Three of the Court of Appeals held the search warrant authority found in RCW 10.79.015¹⁰ inapplicable to breath and blood tests where the implied consent statute controlled collection of that evidence. State v. Krieg, 7 Wn. App. 20, 22-23, 497 P.2d 621 (1972). The court held the implied consent law is the codification of a warrantless search focused on the collection of evidence to prosecute DUI crimes;¹¹

The implied consent statute is a limiting statute specially enacted to govern the chemical or blood testing of a driver suspected of being intoxicated. In this narrow situation, the implied consent statute controls. The search warrant statute controls in all other situations when it is not specially limited. State v. Krieg, 7 Wn. App. 20, 23, 497 P.2d 621 (1972).

¹⁰ At the time of the decision, RCW 10.79.015 stated; Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit: ... (3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony.

¹¹ And see State v. Avery, 103 Wn. App. 527, 540, 13 P.3d 226 (2000). There, the court wrote, “Further, in authorizing a breath or blood test, the statute is authorizing a search, which also dictates a probable cause standard.”

In Krieg, police sought a breath alcohol test following defendant's arrest,¹² but did not provide him with the statutorily required warnings. The court suppressed the test results. The State appealed, arguing the requirement to give statutory warnings conflicted with statutory authority granting a magistrate the authority to issue a search warrant under RCW 10.79.015. State v. Krieg, 7 Wn. App. at 22. The court disagreed. The court harmonized the search warrant statute with the implied consent law, holding the former applied to "searches in general," whereas the latter applied specifically to blood alcohol tests. Krieg, at 23. Therefore, where the implied consent statute has been silent concerning search warrants, the courts have been able to "harmonize" the statute with the general search warrant authority of the courts.

Our courts have also held that the implied consent law is not an impediment to the collection of blood alcohol evidence obtained through otherwise lawful means. State v. Smith, 84 Wn. App. 813, 929 P.2d 1191 (1997). Smith was involved in an accident, taken to a hospital, and a sample of his blood was taken for medical purposes which also revealed

¹² Krieg was charged with negligent homicide. At the time of his arrest, the implied consent law did not authorize compulsory blood testing for persons under arrest for causing death or serious bodily injury to another. Subsections (3) and (4) were enacted to address these situations.

his blood alcohol concentration. Only later did police conclude he was the driver of the car,¹³ and sought his test results from the hospital with a search warrant. The court upheld use of the warrant in this situation, stating the fact the implied consent law was not used to obtain the tests results could not prevent the use of a warrant to obtain the evidence. Smith, 84 Wn. App. 813, 819-820. According to the court, the absence of language in the statute authorizing a search warrant to obtain the medical blood test did not turn the implied consent statute into a “rule of exclusion.” Smith, at 819. Therefore, according to the decision, the implied consent law is not the only means available to the State to obtain blood alcohol evidence, contradicting Krieg.

However, Smith did not address a situation where the driver was given warnings under the implied consent law, and when requested to submit to a test, refused. In reality, neither defendant in Krieg or Smith would have had the right to “refuse” a test under the current implied consent law. Where death or serious bodily injury to another is involved, the police may obtain blood samples without the consent of the driver and without a warrant. Therefore, while Smith implies police may use a

¹³ Smith was not under arrest at the time his blood was taken. Had he been arrested, the police would have been permitted to obtain a blood sample without his consent, as his passenger was seriously injured as a result of the accident. RCW 46.20.308(3).

warrant to obtain an already completed blood alcohol test without invoking the implied consent law, it fails to address the situation presented in Mr. St. John's case, where a warrant was obtained after the implied consent law was invoked, and evidence of a test refusal was obtained.

In granting review in this case, the commissioner stated the obvious: sub-sections (1) and (5) of the implied consent law appear to be in conflict.¹⁴ Sub-section (1) states, in general, law enforcement may obtain a warrant for testing of breath or blood.¹⁵ Sub-section (5), however, specifically prohibits any testing for breath or blood if a person refuses an officer's request for a test under the implied consent law, unless sub-sections (3) or (4) apply in which case police may perform a warrantless blood test.¹⁶

The court commissioner granted review, in part, to resolve this conflict.

C. The Provisions Of the Implied Consent Statute Are Unambiguous And Not Subject To Judicial Interpretation

The interpretation of a statute is a question of law and is reviewed de novo. State v. Schultz, 146 Wn.2d 540, 544, 48 P.3d 301 (2002). The

¹⁴ Commissioner's Ruling Granting Discretionary Review, pg. 6.

¹⁵ The warrant language in RCW 46.20.308(1) was added as part of several changes to the DUI laws in 2004. See Laws of Washington 2004, Ch. 68 (SHB 3055).

¹⁶ These sub-sections do not apply to this appeal.

courts primary duty in interpreting any statute is to discern and implement the intent of the legislature. Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). The starting point is the statute's plain language and ordinary meaning. Id. When the plain language is unambiguous-that is, when the statutory language admits of only one meaning-the legislative intent is apparent, and the court will not construe the statute otherwise. State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). The court will not add words or clauses to an unambiguous statute when the legislature has chosen not to include that language. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). A statute must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. Davis v. Dep't of Licensing, 137 Wn.2d 957, 963, 977 P.2d 554 (1999). The plain meaning of a statute may be discerned "from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 11, 43 P.3d 4 (2002). When interpreting a statute, the court should read it in its entirety, and each provision must be harmonized with other provisions, if at all possible. Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002).

The terms of the implied consent law are unambiguous, and not subject to judicial interpretation. See City of Kent v. Beigh, 145 Wn.2d 33, 38-43, 32 P.3d 258 (2001). Every driver has consented to a test of their breath or blood when a police officer has reasonable grounds to believe they have been driving under the influence of alcohol or drug. RCW 46.20.308(1); City of Kent v. Beigh, 145 Wn.2d at 37-38. The legislature's prohibition against subsequent testing once the driver refuses under sub-section (5) is clear and unambiguous. See Lax v. Dept of Licensing, 125 Wn.2d at 822.

The legislature has further clarified that a driver's refusal to all testing is not absolute. Under sub-sections (3) and (4) the driver has no right to refuse a test. Supported by Schmerber and Krieg, the legislature has specified when a driver's consent or a warrant is not required to proceed with testing. When a driver does not fall under the situations posed under sub-sections (3) and (4), the driver's decision to refuse the test carries consequences: a longer license suspension,¹⁷ stiffer criminal penalties,¹⁸ and admissibility of the refusal at trial.¹⁹

¹⁷ RCW 46.20.308(2); RCW 46.20.3101.

¹⁸ RCW 46.61.5055.

¹⁹ RCW 46.61.517.

The amended language to the implied consent statute, “Neither consent nor this section precludes a police officer from obtaining a search warrant for a person’s breath or blood” is likewise a clear and unambiguous statement. By its plain terms, an officer may seek a search warrant for breath or blood irrespective of a person’s consent to be tested or the provisions of the implied consent law. These two provisions are thus silent as to whether an officer may seek a warrant simultaneously with requesting a test under the implied consent law.

D. To Harmonize Conflicting Provisions, Court Must Apply Rule That Statutory Provision Appearing Latest In Order Of Position Prevails Where It Is More Clear And Explicit Than Earlier Provision

Where two provisions within a statute conflict and may not be harmonized, the court employs two canons of statutory construction: (1) the statutory provision that appears latest in order of position prevails unless the first provision is more clear and explicit than the last; and (2) the latest enacted provision prevails when it is more specific than its predecessor. State v. J.P., 149 Wn.2d 444, 452, 69 P.3d 318 (2003); citing State ex rel. Graham v. San Juan County, 102 Wn.2d 311, 320, 686 P.2d 1073 (1984); Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 37, 785 P.2d 447 (1990).

In State ex rel. Graham v. San Juan County, supra, the court addressed the issue where two provisions of the state building code conflicted with one another. Under RCW 19.27.040, a county could make amendments to the code if it met “minimum standards” in the state code. Graham, at 318. However, under RCW 19.27.060, a county may limit the application of any rule to exclude specified types of buildings from the state code.

San Juan County used RCW 19.27.060 to amend its code to exclude owner built residences from state building code requirements, and the State appealed. The Supreme Court agreed with San Juan County. The Court used the two above stated canons to resolve the case. RCW 19.27.060 was “more clearly worded, more specific, and latest in order.” Graham, at 320. “In such a case, the rule is that ‘as between two conflicting parts of a statute, that part latest in order of position will prevail, where the first part is not more clear and explicit than the last part’ Graham, at 320; quoting, Schneider v. Forcier, 67 Wn.2d 161, 164, 406 P.2d 935 (1965). Over-all, where conflicting provisions exist within the same statute, the more clearly expressed will control. Williams v. Pierce County, 13 Wn. App. 755, 537 P.2d 856 (1975).

In State v. J.P., 149 Wn.2d 444, 69 P.3d 318 (2003), the court addressed the issue where two provisions of the Juvenile Act conflicted regarding restitution for counseling costs for a victim. Under RCW 13.40.020, a definitions section, “restitution” was specifically defined and limited restitution to only counseling costs arising from sex offenses. However, under RCW 13.40.190, a disposition section, it stated that restitution may include counseling costs.

In State v. J.P., supra, the defendant was convicted of an assault with sexual motivation, but it was not classified as a sex offense. The trial court refused to order restitution for the victim’s counseling, and the State appealed. The court agreed with J.P.. The court first found that RCW 13.40.190, the provision coming later in position, was not more specific than the earlier provision, RCW 13.40.020. Rather, definition of restitution in 13.40.020 contained a more specific description of restitution by narrowing the grounds for counseling costs to only sex offenses. Thus, 13.40.020 was more specific than 13.40.190. State v. J.P., at 454.

The court then used the second canon; that being consideration of which provision contained the more recent legislative enactment so long as it is more specific than the older provision. The court found that the definition of restitution under 13.40.020 was enacted three years after the

most recent amendment to 13.40.190, and as previously discussed, 13.40.020 was a more specific provision than 13.40.190. Thus, the court held the trial court was correct in denying the State's claim for restitution, as the definition of 13.40.020 controlled the issue.

The court in State v. J.P. rejected the court of appeals' reasoning for not applying the two canons to the conflicting provisions. The court of appeals rejected use of the canons on the grounds that each provision, on its own, was clear and unambiguous; thus it would not be appropriate to apply rules of statutory construction. State v. J.P., at 455. The Supreme Court disagreed, stating, "the canons ... were intended to identify legislative intent in the face of two conflicting statutes that are, in isolation, clear and unambiguous." State v. J.P., at 455.

E. Sub-Section Five's Prohibition Against Testing Once The Driver Refuses Applies Because It Appears Latest In Order Within Statute, And Is a More Clear And Explicit Statement Of the Law

In the present appeal, sub-section (5) appears latest in order within the implied consent statute, is more clear and explicit than sub-section (1), and controls the construction and application of the over-all law.

First, sub-section (5) uses clear language mandating when it applies, and when it does not. Sub-section (5) applies in all cases where the driver receives warnings as contained under sub-section (2). Sub-

section (5) uses the word “shall” to express that a refusal is a bar to subsequent testing. The word “shall” imposes a mandatory duty unless a contrary legislative intent is apparent. Erection Co. v. Dep't of Labor & Indus., 121 Wn.2d 513, 518, 852 P.2d 288 (1993). The only exceptions recognized under sub-section (5) state that a person may not refuse testing where sub-sections (3) and (4) apply. Under the maxim “expressio unius est exclusio alterius” (specific inclusions exclude implication), “[w]here a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted.” Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999). Thus, by the terms of the provision, it prohibits testing after a refusal a test unless specific enumerated conditions apply.

Sub-section (5) also clearly coincides with the over-all statutory scheme for DUI offenses. Drivers are advised of the right to refuse, and that refusal evidence may be used at trial under sub-section (2). Refusal evidence is deemed admissible evidence. RCW 46.61.517.²⁰ A test refusal carries with it a longer license suspension and stiffer criminal penalties.

²⁰ RCW 46.61.517. The refusal of a person to submit to a test of the alcohol or drug concentration in the person's blood or breath under RCW 46.20.308 is admissible into

In opposition, the search warrant provision under 46.20.308(1) is a permissive provision. The provision uses language stating “nothing precludes” an officer from seeking a warrant. No officer is required to obtain a warrant. There is no criteria or standard describing when an officer should seek the warrant. The statute, through its omission, leaves that decision up to the discretion of the individual officer.

Sub-section (1) does not coincide with the over-all statutory scheme for DUI offenses. Drivers have “consented” to a test under 46.20.308(1) subject to the provisions of 46.61.506. 46.61.506 describes protocols and procedures to be followed for the collection and analysis of blood and breath tests. Compliance with these rules determine admissibility of the test results. See Cannon v. Dept of Licensing, 147 Wn.2d 41, 56, 50 P.3d 627 (2002). The search warrant provision under sub-section (1) does not state what standards must be used to determine admissibility of the test results. It is unclear whether the specific rules of the state toxicologist apply, or if general rules for scientific evidence (ER 702; 703) apply.

evidence at a subsequent criminal trial.

The warrant provision does not state whether licensing penalties apply to the results of the test, or if they still apply to the initial refusal of the test. Under RCW 46.20.3101, a person's license is suspended for 90 days if there is a test result under implied consent over 0.08. RCW 46.20.3101(2)(a). Yet, there is a license suspension for one year if the person refuses the test under implied consent. RCW 46.20.3101(1)(a). If there is a refusal under sub-section (5), and a test result under sub-section (1), it is not clear which suspension to apply.

Likewise, the warrant provision does not specify which criminal penalty to apply upon conviction for DUI. Under RCW 46.61.5055, incarceration and fines differ demonstrably whether there is a test result or a refusal. Under RCW 46.61.5055(1)(a), the minimum penalties for DUI with a test result under .15 is one day of jail and a \$350 fine. However, under RCW 46.61.5055(1)(b), the minimum penalties for a DUI with a refusal is two days of jail and a \$500 fine. The difference in penalties increases dramatically where a person has prior DUI convictions.

Last, the warrant provision does not state whether the test results apply to the two hour "per se" rule under RCW 46.61.502(1)(a).²¹ For the

²¹ RCW 46.61.502: (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

two hour rule to apply, the test must be performed according to RCW 46.61.506. However, as stated above, there is no requirement that a test performed pursuant to a warrant be performed according to state toxicologist standards. Therefore, it is not clear if a test result applies to the “per se” rule, or to the general issue of being under the influence.

By leaving these questions unanswered, and by being placed at the beginning of the statute, the warrant provision is nothing more than a general admonition to law enforcement that they have the discretion to seek a warrant. Sub-section (5), however, is a more clear and explicit statement of the law. It applies without officer discretion, and it coincides with the entirety of DUI laws in this State. Thus, this court must give deference to sub-section (5), and it must prevail.

Certainly, the amendment to sub-section (1) occurred later in time than the creation of sub-section (5). However, the rule pertaining to the timing of the enactments only applies should the first rule not apply, and if the provision latest in time is more clear and specific. See State v. J.P., 149 Wn.2d at 452; 454. Thus, despite its recent enactment, sub-section (1) should not be granted any deference.

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506

F. Applying Sub-Section Five's Prohibition Against Subsequent Tests After A Refusal Harmonizes Statute And Permits Police To Obtain Search Warrants So Long As Officers Do Not Invoke Implied Consent Warnings

Granting deference to sub-section (5) does not preclude police from seeking a warrant. To the contrary, police retain the opportunity to seek a warrant for breath and blood testing. The issue for police, however, will be to decide which manner of testing to engage in. Police must "elect" one method of obtaining this evidence in lieu of the others.

Police may still seek blood alcohol evidence by obtaining a person's voluntary consent. Where the implied consent statute does not apply, the suspect may voluntarily consent to a blood test. State v. Rivard, 131 Wn.2d 63, 76-77, 929 P.2d 413 (1997). The triggering element instigating use of the implied consent law is a lawful arrest where the officer has reasonable grounds to believe the driver is under the influence of alcohol or drugs. State v. Avery, 103 Wn. App. 527, 534, 13 P.3d 226 (2000); State v. Wetherell, 82 Wn.2d 865, 869, 514 P.2d 1069 (1973). Therefore, prior to an arrest, police may still seek this evidence, consistent with Avery and Wetherell with the consent of the accused. See Avery, at 540-541; Wetherell, at 871.

Likewise, through the statutory amendment, police may seek a breath or blood test with a warrant. By seeking a warrant rather than

consent, the officer eliminates the potential for any claims by a defendant that their consent was not freely given. See Schneckloth v. Bustamonte, 412 U.S. 218, 227-229, 93 S.Ct. 2041 (1973) (Consent determined using the totality of the circumstances test.) In general, the officer may seek a warrant for any person investigated for driving under the influence, with the exception the consequences of the implied consent will not apply.

Unlike “consent,” a warrant requires a finding of probable cause to believe the search will yield evidence or contraband associated with a crime. CrRLJ 2.3(b). A request for a warrant does not run afoul of the implied consent law (sub-section (5)), so long as the officer does not request the warrant and simultaneously invoke the implied consent law and provide warnings to the driver under sub-section (2).

The search warrant provision would apply to situations where it is impractical to invoke the implied consent law or to obtain a person’s consent. Having the ability to request a warrant eliminates the potential for suppressed test results faced by the State in State v. Turpin, 94 Wn.2d 820, 620 P.2d 990 (1980). In Turpin, the defendant was in an accident where the other driver died. A sergeant smelled alcohol on her breath and later went to the hospital to question her. While she was alert and responsive, she was also injured and in great pain. The sergeant was

uncertain of her emotional condition. Instead of reading her an implied consent warning,²² he asked a nurse to withdraw her blood. He took the sample, and it was analyzed by the State. The Supreme Court reversed the trial court and suppressed the test results, finding the sergeant violated the implied consent laws by failing to advise the driver of her statutory right to obtain her own test. Turpin, at 826-827.

With the warrant provision, an officer in a similar position as the officer in Turpin can seek a warrant for a test without having to seek consent or invoke the implied consent law with a potentially unstable defendant. Requesting a warrant may also be advisable where the officer investigates unique DUI situations. In Sheeks v. Dept of Licensing, 47 Wn. App. 65, 734 P.2d 24 (1987), the officer encountered a man suffering from hypothermia. In Medcalf v. Dept of Licensing, 133 Wn.2d 290, 944 P.2d 1014 (1997), the officer encountered an individual claiming to have obsessive-compulsive disorder. In Nettles v. Dept of Licensing, 73 Wn. App. 730, 870 P.2d 1002 (1994), the officer encountered a man at a hospital who was injured and potentially in and out of consciousness. In

²² Because of the fatality, she had no right to refuse a test, but the statute required that she be advised of her right to obtain her own test.

these situations, it would have been advisable for the officer to elect to seek a warrant for blood alcohol tests, had the warrant provision existed.

G. Conclusion

By adding the warrant provision to the implied consent law, the legislature provided another tool for law enforcement to obtain evidence of alcohol and drug use from drivers. The legislature did not, however, authorize police to obtain warrants for compulsory testing where the officer invoked the implied consent law warnings under sub-section (2), and the driver refused a test consistent with sub-section (5). In this latter situation, the legislature has kept intact the evidentiary, administrative, and criminal consequences flowing from the refusal.

Sub-sections (1) and (5) of the implied consent law may not be harmonized unless it is recognized sub-section (5) is a specific and comprehensive provision with mandatory effect, and sub-section (1) is a permissive provision providing only a general directive to law enforcement. This construction is supported by case law, and coincides with the over-all DUI laws of this State.

For these reasons, this court should 46.20.308(5) controls whether police may seek a search warrant where a driver refuses a test after being read an implied consent warning. Police may not seek a warrant, and thus

the trial court's ruling was correct, and this matter should be remanded to the trial court for dismissal of the DUI charge.

2. The trial court erred to the extent it found the implied consent warning did not violate fundamental fairness where it failed to advise drivers who refuse a test the officer may seek a warrant-based test.

Appellate courts review alleged due process violations de novo. State v. Autrey, 136 Wn. App. 460, 467, 150 P.3d 580 (2006); State v. Sandoval, 123 Wn. App. 1, 4, 94 P.3d 323 (2004). The legal sufficiency of an implied consent warning is a question of law and reviewed de novo. Jury v. Dept of Licensing, 114 Wn. App. 726, 731, 60 P.3d 615 (2002).

The implied consent statute mandates that prior to a request for a breath or blood test the arresting officer must advise the driver of the following warnings:

The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

- (a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and
- (b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and
- (c) If the driver submits to the test and the test is

administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504. RCW 46.20.308(2) [Emphasis added].

Effective 2004, the legislature added to the implied consent law the provision that;

Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood. RCW 46.20.308(1).

The warnings were not modified to notify drivers of this consequence under the law.

A. Implied Consent Warning Must Comply With Due Process And The "Knowing And Intelligent" Rule

The State has the burden to prove a driver was afforded a knowing and intelligent opportunity to decide whether to take a breath test or elect to refuse under the implied consent law. Jury v. Dept of Licensing, 114 Wn. App. 726, 60 P.3d 615 (2002). The "knowing and intelligent decision" rule is anchored in fundamental fairness and due process. Thompson v. Dept of Licensing, 138 Wn.2d 783, 792, 982 P.2d 601 (1999). These standards are met, at least in part, if the warning permits a person of normal intelligence

to understand the consequences of his actions. State v. Koch, 126 Wn. App. 589, 595, 103 P.3d 1280 (2005); and see Gibson v. Dept of Licensing, 54 Wn. App. 188, 194, 773 P.2d 110 (1989). Generally, the State discharges its burden once it provides the statutory warnings under RCW 46.20.308(2). State v. Bostrom, 127 Wn.2d 580, 586, 902 P.2d 157 (1995); citing Gonzales v. Dept of Licensing, 112 Wn.2d 890, 897, 774 P.2d 1187 (1989).

However, the State is not free to give any warnings it wishes without fear of contravening due process. Bostrom, at 590; citing South Dakota v. Neville, 459 U.S. 553, 565, 103 S.Ct. 916, 74 L.Ed.2d 748 (1983). A warning may violate due process where it creates a situation which is “fundamentally unfair.” Bostrom, at 590. A warning is fundamentally unfair if it is “implicitly misleading” to the driver. Bostrom, at 591.

B. Warning Is Implicitly Misleading Where It Fails To Advise Driver Officer May Obtain A Warrant To Compel Test If Driver Refuses

The warning given to Mr. St. John was implicitly misleading; violating his due process rights. The warning told him he had the right to refuse the test, but never told him the State could obtain his blood without his consent with a warrant if he refused; thus rendering the right to refuse

meaningless. To explain how his due process rights were violated, one must contrast the facts of Neville and Bostrom to the situation created in Mr. St. John's case.

In Neville, the officer arrested the defendant for DUI and read him South Dakota's implied consent warning. He was advised that he could refuse a breath test, and if he did his license would be revoked for one year. He was not told that his refusal could be used as evidence against him court, although under South Dakota law the refusal was admissible evidence for trial.

The trial court suppressed the refusal, and the ruling was upheld in the South Dakota Supreme Court. The United States Supreme Court, however, reversed. Using the above due process standard, the Court held the warning was not implicitly misleading:

We hold that such a failure to warn was not the sort of evidence that would unfairly "trick" respondent if the evidence were later offered against him at trial. Neville, at 566. [Emphasis in original]

The Court reasoned nothing was stated in the warning implicitly assuring a defendant no other consequences, other than those mentioned, would occur. Neville, at 566. That is to say, the warning did not state that a refusal would not be used at trial. Because the warning stated the

defendant could lose his license if he refused, “refusing the test was not a ‘safe harbor,’ free of adverse consequences.” Neville, at 566.

In Bostrom, several individuals were arrested for DUI, and read Washington’s version of the implied consent law. The warning gave the consequences for refusing a test, but failed to mention any consequences for submitting to the test. A few weeks prior to the arrests, Washington law was changed mandating a probationary license suspension for persons whose test results were above .10, as well as enhanced penalties based on a refusal. The warning did not mention these consequences.²³

In Washington, the implied consent law implements three legislative objectives: (1) to discourage individuals from driving an automobile while under the influence of intoxicants, (2) to remove the driving privileges from those individuals disposed to driving while inebriated, and (3) to provide an efficient means of gathering reliable evidence of intoxication or non-intoxication. Bostrom, at 588; quoting Nowell v. Dept. of Licensing, 83 Wn.2d 121, 124, 516 P.2d 205 (1973). The court held that the omission of any warning concerning the consequences of taking the test furthered the statutory objectives.

²³ The legislature amended the warning in 1995 to include this information. Bostrom, at 584.

Bostrom, at 588. A warning which focuses on the consequences of a refusal encourages defendants to submit to the test and provide reliable evidence of their intoxication. Bostrom, at 588.

In regards to due process, the Court held the warning was not fundamentally unfair for those who refused the test because the warning left open the possibility consequences may accrue based upon a decision to refuse the test; such as with sentencing. Bostrom, at 591. For those who submitted to the test, the Court found they were not implicitly misled by the warning, which failed to advise of consequences for a result exceeding .10, because;

Most, if not all, drivers are well aware that if they agreed to the test and the results reveal a breath alcohol concentration higher than the legal limit, there would be adverse consequences both criminal and administrative. Bostrom, at 591.

The Court refused to accept the contention that the warning could mislead a person to believe there was no administrative consequence to their license for submitting to a breath test. This contention was based solely on the Court's belief there had been widespread media coverage of the consequences of drinking and driving including public service announcements that advised the public of the harsh penalties for drinking and driving. Bostrom, 592.

It should go without saying there have been no public service announcements advising the public the State can seek a warrant to compel a blood test if you refuse a test under the implied consent law. Unlike Bostrom, this Court cannot make the assumption the media has educated the general public of this significant change in law.

The critical question is whether it should be deemed reasonable for a driver to assume that asserting the right to refuse means the State can obtain a sample of your blood without your consent. Neville and Bostrom dealt with consequences that reasonably flow from a refusal. In Neville, it was reasonable to assume that a consequence of refusing the test would be that the refusal could be used as evidence at trial. In Bostrom, it was reasonable to assume that a refusal could lead to consequences for sentencing if convicted for DUI. In Mr. St. John's case, it is unreasonable, and implausible, to believe that a decision to refuse the test could reasonably lead to compulsory submission to a blood test.²⁴ The issue is not omitting a consequence stemming from a refusal, but rather omitting

²⁴ This omission is not without consequence to the driver. As the warning makes clear, a "refusal" results in a one year license revocation, whereas submission to a test, with a result over .08, results in only a 90 day suspension. Additionally, if convicted of DUI with a "refusal" the minimum license revocation is for two years. RCW 46.61.5055. Therefore, when a driver "refuses" and the State obtains a warrant, the driver is subject to the penalties of both submitting to a test and "refusing."

to tell the driver the decision to refuse will lead to submission to a compulsory test.

The opportunity to refuse is presented to the driver as a “right.” The driver has the “right” to withhold evidence of their intoxication by refusing the test. Assertion of this “right” carries consequences, which are described to the driver in the warning. It is essential to uphold the integrity of the “knowing and intelligent decision” rule by advising drivers that the decision to refuse the test does not foreclose the State from obtaining evidence the driver seeks to withhold. Otherwise, the “right” to refuse is a hollow promise, leading to a needle being stuck into a person’s arm simply because they did what the officer told them they could do; refuse.

The implied consent law is a sham if it fails to tell drivers about the potential for a compulsory test if they refuse. The implied consent law was never meant to be a “trick” statute.²⁵ However, this is exactly what the law becomes when the State is allowed to tell a driver they can refuse a test, and then use that refusal as the basis to compel submission to the test that was just refused. Such a result undermines any legitimacy of the implied consent law.

²⁵ See South Dakota v. Neville, 459 U.S. at 566.

C. Warning Driver Police May Seek Warrant If they Refuse Does Not Coerce Drivers To Submit To Test, So Long As Police Have The Authority To Seek Warrant

The trial court noted in its written decision that it would, arguably, amount to coercion for an officer to tell a person the officer had the right to get a warrant in the event the person refused the blood test. (CP 35) Should the opportunity to obtain a warrant exist, an advisement concerning this right would not amount to an act of coercion.

Valid consent (for a search) can be obtained even where there is a threat to obtain a warrant. State v. Apodaca²⁶, 67 Wn. App. 736, 739-740, 839 P.2d 352 (1992); State v. Smith, 115 Wn.2d 775, 789, 801 P.2d 975 (1975). Threats to obtain a search warrant may, however, invalidate consent subsequently given if grounds for obtaining the warrant did not exist. Apodaca, at 739-740; citing to 3 W. LaFave, Search and Seizure §8.2(c) (2nd Ed. 1987). Police officers may not misrepresent the scope or extent of their authority to obtain a search warrant. Apodaca, supra.

In this case, a representation by police they could get a warrant would not amount to an act of coercion. Just the opposite, it would be an accurate statement of the law. The notice requirements under the implied

²⁶ Apodaca was overturned in State v. Mierz, 127 Wn.2d 460, 475, 901 P.2d 286 (1995), but on other grounds.

consent law operate to provide the driver with the opportunity to make a knowing and intelligent decision whether to submit to the test or refuse. An advisement concerning the ability to get a warrant would not coerce a person into submitting to a test. Rather, it would accurately describe the officer's authority to compel a test in the face of a driver's refusal, and thus would further the State's interest in providing notice under the statute which complies with the "knowing and intelligent" standard.

D. Conclusion

A valid implied consent warning is one which is fundamentally fair, and void of misleading statements and false assurances. In order to comply with existing due process protections, this Court must hold that the warning given to Mr. St. John was fundamentally unfair, and misled him into believing a refusal would result in no test being given.

3. The trial court erred to the extent it did not find that the principle of equitable estoppel prevented the State from seeking a blood alcohol test after advising the driver they had the right to refuse the test.

Equitable estoppel is based on the principle that a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon. Kramarevcky v. DSHS, 122 Wn.2d 738, 743, 863 P.2s 535 (1993); Wilson v. Westinghouse Elec. Corp., 85 Wn.2d

78, 81, 530 P.2d 298 (1975). The elements of equitable estoppel are: (1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission. Kramarevcky, 122 Wn.2d at 743; Robinson v. Seattle, 119 Wn.2d 34, 82, 830 P.2d 318 (1992). Injury in this context means a party justifiably relied upon the words or conduct of another to his detriment. Kramarevcky, at 747.

When asserting equitable estoppel against the government, one must also establish; (1) equitable estoppel must be necessary to prevent a manifest injustice; and (2) the exercise of governmental functions must not be impaired as a result of the estoppel. Kramarevcky, at 743; Shafer v. State, 83 Wn.2d 618, 622, 521 P.2d 736 (1974). These elements must be proven with clear, cogent, and convincing evidence. Kramarevcky, at 744. The court must be convinced the fact in issue is "highly probable." Kramarevcky, at 744.

In Kramarevcky, the petitioners sought government aid upon emigration from the Soviet Union. They complied with all requirements for the aid, and no allegations were ever made that they filed any false

claims. The State provided Kramarevcky with aid for a period of time. Within that time, Kramarevcky found a job and notified DSHS. However, DSHS never altered or ceased aid payments. When DSHS finally realized its error, it sought recoupment from Kramarevcky in the amount it had overpaid.

The State conceded the first two issues of equitable estoppel, and instead argued Kramarevcky could not establish the third element. The Court held that Kramarevcky established injury where the State sought to force him to re-pay funds the State had erroneously provided him.

In Mr. St. John's appeal clear, cogent, and convincing evidence establishes that the State must be equitably estopped from using the compelled blood test as evidence at trial. First, the officer read Mr. St. John a warning telling him he had the "right" to refuse the blood test. He stated the consequences for a refusal, but never mentioned the potential for a compulsory test even though he said he probably would have sought the warrant if Mr. St. John refused. Second, upon the State's admission, Mr. St. John exercised his right to refuse the blood test. Third, the officer repudiated the original admission and took a sample of Mr. St. John's blood without his consent. Mr. St. John thus faced a criminal DUI prosecution wherein the City of Seattle sought to use evidence of both a

refusal and a blood test as evidence to show his guilt, and Mr. St. John faced sentencing consequences for both the test and refusal.

As stated above, it is manifestly unjust to permit the State to characterize the ability to refuse a blood test as a “right,” when the State intends to disregard the driver’s assertion and compel the evidence with a warrant. Further, it is manifestly unjust to subject Mr. St. John to criminal and civil penalties for refusing a test when ultimately his blood alcohol level was revealed through the compulsory test. Additionally, the government’s ability to prosecute DUI cases is not impaired by the suppression of blood test evidence because it retained evidence that he had consumed alcohol, had been involved in an accident, and refused a blood test.²⁷ In general, the State may still secure DUI convictions using breath or blood test refusals, and in addition, may still obtain warrants to collect blood alcohol evidence in the future by simply advising drivers that if they refuse a test, the officer may obtain the warrant.

The United States Supreme Court addressed a similar situation in Raley v. Ohio, 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344 (1959). In Raley, the defendants were brought before a state commission

²⁷ The City sought dismissal in Mr. St. John’s case per RALJ 2.2 in order to pursue the appeal. The trial court’s suppression order did not require dismissal of the DUI charge.

investigating “Un-American” activities such as membership in the Communist Party. Each defendant was told in advance of answering the commission’s questions they had the right to remain silent. Unbeknownst to the defendants, an Ohio law excluded the privilege against self incrimination from applicability before the commission. The defendants refused to answer certain questions, and were subsequently charged and convicted for various crimes associated with the failure to answer questions before the commission.

The Supreme Court reversed the convictions, stating;

We repeat that to sustain the judgment of the Ohio Supreme Court on such a basis after the Commission had acted as it did would be to sanction **an indefensible sort of entrapment by the State-convicting a citizen for exercising a privilege which the State clearly had told him was available to him.** ... We cannot hold that the Due process clause permits convictions to be obtained under such circumstances. Raley v. Ohio, 360 U.S. at 438-439. [Emphasis added]

In making this ruling, the Supreme Court rejected an argument by the State that the defendants would have refused to answer questions even if properly informed:

We think it impermissible in a criminal case to excuse fatal defects by assuming that a person summoned to an inquiry, simply because he expresses defiance beforehand, will continue to be defiant even if a proper

explanation is made of what the inquiry wants of him and the basis on which it is wanted. Raley, at 439.

Compelling to the Court was the fact the person giving the defendants the advisement on the right to remain silent was the chairman of the commission. Raley, at 437-438. The Court found the actions of the commission as a whole gave the impression Ohio “had no immunity statute at all.” Raley, at 438. The Court was obviously swayed by the fact it was inherently unfair to penalize the defendants for their reliance on statements made by the commission itself, just moments before the defendants elected to assert the rights they were told they had.

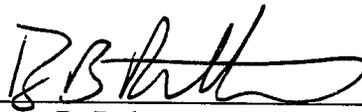
By analogy, the officer in Mr. St. John’s case was the state agent in the position of authority to tell Mr. St. John what “rights” he did and did not have following his arrest. The Raley Court rejected the argument that the defendants should have known Ohio law required them to answer the commission’s questions because it was the commission who gave them notice of the rights they had. Likewise, it is irrelevant whether Mr. St. John should have known about the State’s ability to get a warrant; he was told by the officer he had the right to refuse the test. Consistent with Raley, the State should not punish citizens for exercising a privilege the State clearly had told him was available to him. Raley, at 438.

V. CONCLUSION

For the reasons stated above, Mr. St. John requests this court to reverse the Superior Court RALJ decision and affirm the trial court ruling. Mr. St. John further requests this court to remand this case to the trial court for dismissal of the DUI charge.

RESPECTFULLY SUBMITTED this 12th day of March, 2008.

RYAN B. ROBERTSON
ATTORNEY AT LAW

A handwritten signature in black ink, appearing to read 'RBR', written over a horizontal line.

Ryan B. Robertson, WSBA #28245
Attorney for Appellant

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COURT OF APPEALS, DIVISION ONE
STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

vs.

ROBERT ST. JOHN,

Petitioner.

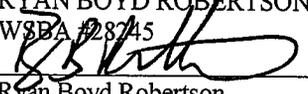
NO. 60257-8-I

DECLARATION OF SERVICE

I declare under the penalty of perjury under the laws of the State of Washington that on March 12, 2008, I served a true and correct copy of Appellant's OPENING BRIEF, by serving said document, on the Respondent, at the below designated address --

Mr. Richard Green
City of Seattle Prosecutor's Office
700 Fifth Avenue, Suite 5350
P.O. Box 94667
Seattle, WA 98124-4667

Dated the 12 day of March, 2008.

RYAN BOYD ROBERTSON
WSBA #28745

Ryan Boyd Robertson
Attorney for Appellant

Original filed with:
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One Union Square, 600 University Street
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DECLARATION OF SERVICE - 1

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