

**FILED**  
**Jul 25, 2014**  
Court of Appeals  
Division III  
State of Washington

31776-5-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ELOY GARZA, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

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APPELLANT'S REPLY BRIEF

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## A. FACTS

Prior to trial, Eloy Garza moved to suppress the blood draw taken without his consent. (CP 30-34). Mr. Garza argued the blood draw was unconstitutional, and Washington's implied consent statute did not provide otherwise. *See* CP 33 (“[i]t is the defendant's position that there is no ‘statutory’ exception to the warrant requirement.”); RP 6 (“some people are saying that [*Missouri v. McNeely*] stands for the proposition that, that a blood warrant is required in all cases for blood draws if there's no consent, regardless of any statutory requirements”); RP 311 (“a warrant must be secured in all blood draw cases, regardless of this -- any statute, you know, that even allows for a blood draw to be taken without the consent of the party.”). The trial court denied Mr. Garza's suppression motion based upon Washington's implied consent statute. (CP 103; RP 312-314, 608-609).

## B. ARGUMENT

### 1. THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE DOES NOT APPLY IN THIS CASE.

The State argues that if this Court finds the blood draw was unconstitutional, then the good faith exception to the exclusionary rule applies. (Resp. Br. at 16-21); *see also United States v. Leon*, 468 U.S. 897, 919-23, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984) (adopting

a good faith exception to the Fourth Amendment exclusionary rule). The good faith exception only applies to Fourth Amendment challenges; it does not apply to violations of Article I, § 7 of the Washington State Constitution. *See State v. Afana*, 169 Wn.2d 169, 184, 233 P.3d 879 (2010) (holding that the good faith exception to the Fourth Amendment exclusionary rule “is incompatible with the nearly categorical exclusionary rule under article I, section 7.”); *see also State v. Tamblyn*, 167 Wn. App. 332, 338, 273 P.3d 459 (2012) (recognizing the good faith exception is inapplicable under the State constitution).

Mr. Garza argues the warrantless blood draw violated both the Fourth Amendment and Article I, § 7 of the Washington State Constitution. (Appellant’s Br. at 13-15). Because Mr. Garza argues the blood draw violated Article I, § 7 of the Washington State Constitution, the good faith exception to the exclusionary rule does not apply. *See Afana*, 169 Wn.2d at 184; *Tamblyn*, 167 Wn. App. at 338.

2. MR. GARZA'S CHALLENGE TO THE WASHINGTON IMPLIED CONSENT STATUTE WAS RAISED BELOW AND THEREFORE IS PROPERLY BEFORE THIS COURT.

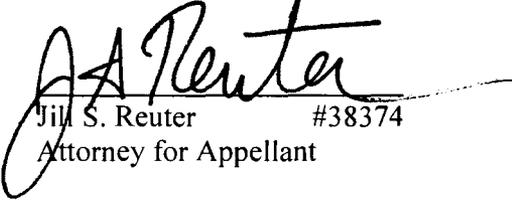
The State argues Mr. Garza did not raise his challenge to the Washington implied consent statute below and therefore this Court should not consider the challenge. (Resp. Br. at 23-27); RCW 46.20.308 (implied consent statute). In his motion to suppress and in his arguments made on the motion, Mr. Garza argued constitutional grounds for suppression, and that the implied consent statute did not provide otherwise. (CP 33; RP 6, 311). In denying the motion to suppress, the trial court upheld the search based upon the Washington implied consent statute. (CP 103; RP 312-314, 608-609). Mr. Garza's challenge to the Washington implied consent statute was raised below and considered by the trial court. (CP 33, 103; RP 6, 311-314, 608-609). Therefore, the issue of whether Mr. Garza's blood draw was authorized by the Washington implied consent statute is properly before this Court.

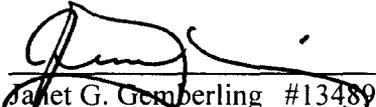
C. CONCLUSION

The trial court should have suppressed the fruits of the warrantless search of Mr. Garza, the blood samples and related testimony, because it violated the Fourth Amendment and Article I, § 7 of the Washington State Constitution. The blood draw was not authorized under Washington's implied consent statute. Mr. Garza's conviction for vehicular assault should be dismissed.

Dated this 25th day of July, 2014.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 31776-5-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
ELOY GARZA,	)	
	)	
Appellant.	)	

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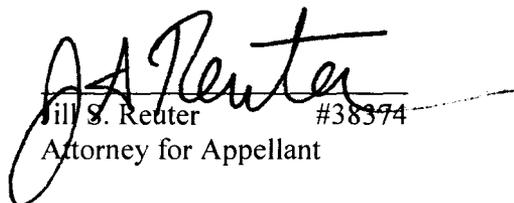
I certify under penalty of perjury under the laws of the State of Washington that on July 25, 2014, I mailed a copies of the Appellant's Reply Brief in this matter to:

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Signed at Spokane, Washington on July 25, 2014.

  
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