No.

IN THE
Supreme Court of the United States

EVELYN-NATASHA LA ANYANE,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. This Court has repeatedly held that the government may not confer a benefit conditioned on the waiver of a constitutional right. A blood draw is a highly intrusive invasion of bodily integrity for which a warrant is generally required. Under Georgia's implied consent statute, a driver arrested for driving under the influence who refuses to consent to a blood draw has his driver's license suspended for at least a year and the refusal may be used as evidence of guilt at a criminal trial. Does the Georgia statute violate the unconstitutional conditions doctrine?

2. Consent is one of the exceptions to the Fourth Amendment's warrant requirement. This Court has repeatedly held that, to be valid, consent must be given voluntarily and not as a result of duress or coercion. Under the Georgia implied consent statute, a driver who refuses to consent to a blood draw faces an automatic suspension of his driver's license of at least one year and having his refusal admitted as evidence of guilt at a criminal trial. Are these substantial adverse consequences of refusal to consent impermissibly coercive so as to render consent involuntary?

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *La Anyane v. State of Georgia*, No. S24A1112, Supreme Court of Georgia. Judgment entered March 4, 2025.

- *State of Georgia v. La Anyane*, No. 22-007178D, State Court for the County of Fulton, State of Georgia. Judgment entered November 3, 2023.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

OPINIONS BELOW

The opinion of the Georgia Supreme Court below is reported at 913 S.E.2d 635. Pet. App. 1a–18a. The order of the State Court of Fulton County—Criminal Division is unreported. Pet. App. 19a.

JURISDICTION

The Supreme Court of Georgia entered judgment on March 4, 2025, Pet. App. 1a, 18a, and denied a timely petition for rehearing on March 27, 2025. Pet. App. 28a. On June 3, 2025, Justice Thomas granted an application to extend the time to file a petition for a writ of certiorari to July 25, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The statutory provisions at issue, OCGA § 40-5-55(a), OCGA § 40-6-392(a), (d), and OCGA § 40-5-67.1(b)(2), are reprinted in the appendix. Pet. App. 29a–36a. The constitutional provision at issue is reproduced below.

United States Constitution, Amendment IV:

> The 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, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

This Court held in *Birchfield v. North Dakota*, 579 U.S. 438 (2016), that an implied consent statute imposing a criminal penalty on a driver arrested for driving under the influence who refuses to consent to a blood draw for a blood alcohol level test violates the Fourth Amendment. The Court noted in dicta that civil and evidentiary consequences for failing to consent are generally permissible.

Under the Georgia implied consent statute, a driver arrested for driving under the influence who refuses to consent to a warrantless blood draw is subject to an automatic license suspension of at least one year, and the driver's refusal may be introduced as evidence of guilt at a criminal trial arising from the arrest. Citing the *Birchfield* dicta, the Georgia Supreme Court rejected Petitioner's Fourth Amendment challenge to the statute.

Like the Georgia Supreme Court in this case, state courts nationwide have treated the *Birchfield* dicta as though it were binding precedent, upholding implied consent statutes with little or no analysis, regardless of how severe the consequences for refusing to consent. So long as the consequences are labeled as "civil" or are evidentiary, state courts have continued to uphold them. On the merits, however, implied consent statutes like the Georgia statute violate the unconstitutional conditions doctrine because they condition a critical government benefit (the right to drive) on waiver of a driver's Fourth Amendment rights. Moreover, consent obtained under threat of such severe adverse consequences is not voluntary.

The issue presented is important and recurring; implied consent statutes are used every day across the country to obtain consent to searches that otherwise would violate the Fourth Amendment. This Court should grant review to correct the almost universal misunderstanding in the state courts that *Birchfield* holds that *any* consequence for refusal to consent to a search is valid so long as it is called "civil" or is evidentiary. Regardless of the Court's ultimate decision, however, review should be granted because an important constitutional right should not be determined by dicta. Instead, the Court should decide the issue after careful consideration, including the briefing and argument absent in *Birchfield*.

I. Legal Background

A. Georgia's implied consent statute provides that any person driving in the state is deemed to have consented "to a chemical test . . . of [the driver's] blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug" when the driver is arrested for driving under the influence of a substance or is involved in an accident causing serious injury or death. OCGA § 40-5-55(a). If the arresting officer has "reasonable grounds to believe" that the driver is under the influence of alcohol or another substance, then she may administer the chemical tests, informing the suspect precisely what form of test is to be used—blood, breath, or urine. *Id.* The result of the chemical test is admissible against the driver as evidence of guilt in a criminal trial arising from the stop. *Id.* § 40-6-392(a).

A chemical test showing a blood alcohol concentration of .08 *may* lead to the suspension of a driver's license for a minimum period of one year. *Id.* § 40-5-67.1(b)(2). If the driver refuses to consent, his license *automatically* will be suspended for a minimum of one year. *Id.* A refusal to consent to testing is also admissible against the driver at a criminal trial arising from the arrest. *Id.* § 40-6-392(d). Thus, the consequences of refusing to consent may be more severe than those of testing above the legal limit.

The Georgia statute requires the arresting officer to give a verbal warning before administering a test, explaining the requirements of the statute and the consequences for drivers who refuse to consent. *Id.* § 40-5-67.1(b)(2).[1] The warning explains the substance of Georgia's implied consent scheme,

[1] The implied-consent warning reads in full:

The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which test)?

including the condition placed on the use of Georgia highways as a driver and the consequences of refusal to consent. *Id.*

All fifty states have implemented some form of implied-consent law. *Missouri v. McNeely*, 569 U.S. 141, 160–61 (2013). These laws generally provide that, by operating a motor vehicle in the state, a driver implicitly consents to some form of testing of the driver's blood alcohol level if an officer suspects the driver of driving under the influence. *Id.* These laws impose various consequences on a driver who refuses to consent to testing. *Id.*

B. This Court has twice held that the Constitution imposes limitations on the permissible scope of implied consent statutes of this type. First, in *McNeely*, the Court held that the natural dissipation of alcohol does not automatically constitute exigent circumstances justifying a warrantless blood draw incident to an arrest for driving under the influence. *Id.* at 165.

Second, in *Birchfield*, the Court held that the Fourth Amendment prohibits imposing a criminal sanction on a driver who refuses to submit to a blood test. 579 U.S. at 475, 477. In reaching that result, the Court explained that a blood test constitutes a much more significant intrusion on a person's bodily integrity than alternative means of testing, such as breath tests. *Id.* at 476. For that reason, the Court held that a warrantless blood test could not be justified as a search incident to arrest. *Id.* at 474–76.

The Court then held that a blood test could not be justified based on consent obtained by way of the

implied consent statute because the criminal penalty for refusing consent was impermissibly coercive. *See id.* at 477 (explaining that "there must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads"). This Court concluded that imposing criminal penalties for refusing to submit to a blood test went too far. *Id.*

The *Birchfield* Court did not decide whether other penalties for refusing to consent to a blood test are sufficiently coercive as to render a driver's consent involuntary for purposes of the Fourth Amendment's warrant requirement. *Id.* at 476–77. Without analyzing the issue, the Court noted in dicta that its "prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply," and that "nothing [the Court said in *Birchfield*] should be read to cast doubt on them." *Id.*

C. Since *Birchfield*, many state courts have addressed the constitutionality of implied consent statutes imposing civil and evidentiary consequences on drivers who refuse to consent to a blood test. Most of these courts have reflexively treated the *Birchfield* dicta as though it were binding. *E.g. Commonwealth v. Bell*, 211 A.3d 761, 772, 775–76 (Pa. 2019) (upholding evidentiary consequences in implied consent laws); *State v. Rajda*, 196 A.3d 1108, 1120 (Vt. 2018) (same); *State v. Kilby*, 961 N.W. 2d 374, 379 (Iowa 2021) (collecting cases).

At least one court has reached a contrary conclusion. *See Kentucky v. McCarthy*, 628 S.W.3d 18,

34–36 (Ky. 2021) (holding that Kentucky's implied consent statute's evidentiary consequence for refusing consent to a blood test violates the Fourth Amendment's prohibition on admission of evidence of a defendant's refusal to consent to an unconstitutional search).

The inconsistency in these cases reflects uncertainty and confusion about how *Birchfield's* reasoning applies to non-criminal penalties. The many cases upholding non-criminal penalties typically do so based not on a considered analysis of constitutional principles, but rather by treating the *Birchfield* dicta as though it were a binding holding giving states carte blanche authority to impose any penalty at all so long as the penalty is not labeled as criminal.

II. Factual Background

On December 12, 2020, police stopped Evelyn-Natasha La Anyane for failure to maintain her lane and improper use of her high-beam headlights. Pet. App. at 5a, 21a. During the ensuing encounter, officers suspected that Ms. La Anyane was driving under the influence of alcohol or another drug. *Id.* at 5a. Officers had Ms. La Anyane perform a series of field-sobriety tests, including "horizontal-gaze nystagmus, walk and turn, and one-leg stand," which Ms. La Anyane did not pass. *Id.* The officers then administered a preliminary breath test, which Ms. La Anyane also did not pass, after which the officers arrested her. *Id.*

Before administering a blood test, the officers read Ms. La Anyane the implied consent statute warning,

detailing the consequences of refusing to consent. *Id.* Ms. La Anyane then consented to a warrantless blood test. *Id.* When Ms. La Anyane requested clarification on the purpose of the test, the officers responded that the test was "part of [her] DUI process." *Id.* The blood test revealed a blood alcohol content of 0.117 grams per 100 milliliters, which is above the legal limit of 0.08. *Id.*; *see* OCGA § 40-6-391(a)(5).

The State charged Ms. La Anyane with failure to maintain her lane, failure to dim lights, and Driving Under the Influence-Alcohol Less Safe ("DUI-Alcohol"), all of which are criminal misdemeanors. Pet. App. at 5a–6a. Ms. La Anyane pleaded not guilty on all counts. *Id.*

Before trial, Ms. La Anyane moved to suppress the blood test results, arguing, among other things, that the police officers had not obtained her voluntary consent because the implied consent warning is "inherently coercive, inaccurate, [and] misleading . . . ." *Id.* at 6a (alteration in original); *see id.* at 39a. Ms. La Anyane also argued that Georgia is not permitted to suspend her right to drive because she exercised a constitutional right under the United States and Georgia Constitutions. *Id.* at 43a. Relying on *Birchfield*, she argued that exercising her constitutional right to refrain from participating in a warrantless blood draw cannot be admitted at trial. *Id.* at 39a–41a, 43a.

The trial court denied the motion and admitted the results of Ms. La Anyane's chemical blood test into evidence at trial. *Id.* at 6a, 27a. A jury found Ms. La Anyane guilty of DUI-Alcohol and other related misdemeanors. *Id.* at 19a.

The Georgia Supreme Court affirmed. *Id.* at 18a. It reasoned that Georgia's implied consent law does not "require" drivers to submit to a blood test but rather gives them a choice of submitting to the test or suffering the specified consequences of refusing to consent. *Id.* at 8a–9a. Under *Birchfield*, the court reasoned, the specified consequences were permissible because they were not criminal. *Id.* at 9a–10a. According to the court, the statute also did not "falsely" tell drivers that their refusal can be used against them as evidence because such admission is constitutionally permissible. *Id.* at 10a–11a. Relying on the *Birchfield* dicta, the court held that the consequences for refusing to consent to a blood test—a mandatory license suspension and the admission of the driver's refusal as evidence of guilt at a criminal trial—are not unconstitutionally coercive. *Id.* at 9a–11a.

Ms. La Anyane made a timely motion for reconsideration, which the Georgia court denied on March 27, 2025. *Id.* at 28a.

REASONS FOR GRANTING THE PETITION

The Georgia implied consent statute violates the unconstitutional conditions doctrine because it withholds the ability to drive in Georgia from a person who exercises her established Fourth Amendment right not to be subjected to a warrantless blood draw. In addition, blood draws taken pursuant to a driver's consent under the Georgia statute violate the Fourth Amendment because the severe consequences imposed for refusing to consent render that consent involuntary.

All fifty states have enacted similar implied consent statutes. A deep split regarding the constitutionality of these statutes is unlikely to develop because state courts have treated dicta in *Birchfield* to the effect that "civil" penalties and evidentiary consequences are generally permissible as though it were a holding of the Court.

The issue of whether the threat of "civil" or evidentiary consequences for refusing to consent to a warrantless blood draw may be sufficiently coercive as to render such consent invalid was not briefed, argued or decided in *Birchfield*, and the Court's dicta did not reflect careful analysis or consideration. This Court should grant review to decide the critically important constitutional issue presented on the merits rather than allow dicta to continue to be treated as though it were the law of the land.

I. The Court should grant review to correct the Georgia Supreme Court's erroneous decision.

This Court's review is warranted because the Georgia Supreme Court erred in holding that the Constitution permits a state to threaten a driver with sanctions for refusing to consent to a blood test by way of a license suspension and permitting the refusal to consent to be admitted as evidence of guilt in a criminal trial arising from the incident.

A. The Georgia statute violates the unconstitutional conditions doctrine.

1. The unconstitutional conditions doctrine prohibits the government from conditioning a benefit

on a person's agreement to relinquish a constitutionally protected right. *Perry v. Sindermann,* 408 U.S. 593, 597 (1972). In other words, as a general matter, the government cannot offer or withhold a benefit on the condition that the recipient waive a constitutional right. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013) ("[W]e have repeatedly rejected the argument that if the government need not confer a benefit at all, it can withhold the benefit because someone refuses to give up [a] constitutional right[.]").

This rule recognizes that to deny a benefit because a person exercised a constitutional right is *ipso facto* to penalize that person for the exercise of the right. *Speiser v. Randall*, 357 U.S. 513, 518 (1958). Even if the government could choose not to offer the benefit at all, it cannot condition offering it on a waiver of a constitutional right. *Id.* The unconstitutional conditions doctrine thus precludes the government from accomplishing indirectly what it could not do directly by "coercively withholding benefits from those who exercise" constitutional rights. *Koontz*, 570 U.S. at 606.

This Court has invoked the unconstitutional conditions doctrine in a variety of circumstances to preclude the government from demanding the waiver of a right as a condition for the receipt of a benefit.

For example, the Court has recognized that the government cannot demand the waiver of rights in exchange for tax exemptions, *Speiser*, 357 U.S. at 519; the benefit of second-class mailing rates, *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 156–157, (1946); the renewal of government contracts, *Bd. of Cnty.*

Comm'rs v. Umbehr, 518 U.S. 668, 668 (1996); the renewal of employment contracts, *Perry*, 408 U.S. at 597; the receipt of land-use permits, *Koontz*, 570 U.S. at 606; the granting of building permits, *Sheetz v. Cnty. of El Dorado,* 601 U.S. 267, 279 (2024) (holding that the unconstitutional conditions doctrine "prohibits legislatures and agencies alike from imposing unconstitutional conditions . . . ."); or the right to participate in the market for a product, *Horne v. USDA,* 576 U.S. 350, 365 (2015).

Although the Court has not yet applied the unconstitutional conditions doctrine to the Fourth Amendment, s*ee McNeely*, 569 U.S. at 161, the doctrine's logic does not depend on the nature of the right the government demands be waived. *Frost v. R.R. Comm'n of Cal.*, 271 U.S. 583, 594 (1926) ("[O]ne of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights."). There is no principled basis on which the unconstitutional conditions doctrine could be held not applicable when Fourth Amendment rights are at stake.

2. Applying these controlling principles here, Georgia's implied consent law violates the unconstitutional conditions doctrine. As an initial matter, it is, of course, fundamental that the Fourth Amendment prohibits the government from conducting warrantless blood draws. *Birchfield*, 579 U.S. at 455.

The Georgia implied consent statute seeks to avoid this constitutional limitation by conditioning the benefit of the right to drive on the state's highways on a waiver of that established constitutional right.

Refusal to consent to a blood draw automatically results in the driver's license being suspended for at least a year and permitting the refusal to be used as evidence of guilt. OCGA § 40-5-67.1(b)(2). The statute thus violates the unconstitutional conditions doctrine by explicitly withdrawing an important benefit—the right to drive in the state—from anyone who refuses to waive his Fourth Amendment right not to be subjected to a warrantless blood draw. *See* Kay L. Levine, Jonathan Remy Nash & Robert Schapiro, *The Unconstitutional Conditions Vacuum in Criminal Procedure*, 133 Yale L.J. 1401, 1436 (2024) ("Under [the unconstitutional conditions] doctrine, and notwithstanding that driving an automobile is a privilege or a 'gratuitous government benefit,' the government cannot condition the exercise of this privilege upon motorists' relinquishment of their Fourth Amendment rights." (quoting *Bell*, 211 A.3d at 784–85 (Wecht, J., dissenting))).

B. Consent to a blood draw under Georgia's implied consent statute is involuntary because of the threat of civil and evidentiary consequences for refusing to consent.

A search conducted without a warrant is "per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Consent is one of those exceptions, but the consent must be voluntarily given and not the result of duress or coercion through threats or force. *See id.* at 233. This Court has repeatedly stressed that

"[w]here there is coercion there cannot be consent." *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968).

1. Georgia's implied consent statute unduly coerces drivers to consent to warrantless blood draws. The consequences of refusing to consent—an automatic license suspension of at least one year and admissibility of the refusal as evidence of guilt in a subsequent criminal trial—place enormous pressure on drivers to forfeit a right and provide consent. The ability to drive is a necessity for many people in modern society, as a license is often needed to get to work, visit a doctor, or engage in many other daily activities. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) ("Once [driver's] licenses are issued, . . . their continued possession may become essential in the pursuit of a livelihood."). The threat of suspending such a privilege for such a significant period of time is too strong to render consent voluntary.[2]

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[2] Refusal to consent can result in more severe consequences than consenting and having the test show that the driver was under the influence. Refusals to consent result in an *automatic* license suspension for at least one year, but consenting to the warrantless blood draw may not, even if the results show that the driver was over the legal blood alcohol limit. *See* OCGA § 40-5-67.1(b)(2) (quoting the implied consent warning providing that a test result demonstrating a blood alcohol content over the legal limit does not automatically trigger a minimum one year license suspension, although it *may* require one). A driver who consents to a warrantless blood test showing the driver was over the legal limit is eligible for early reinstatement of his license after just thirty days for a first administrative DUI suspension and after 120 days for a first DUI conviction. *Id*. §§ 40-5-63(a)(1), 67.2(a)(1). There is no early reinstatement for a first DUI administrative suspension for refusing a blood test. *Id*. §§ 40-5-67.1(d), 67.2. Under such a statutory scheme, an

The evidentiary consequence of refusing to consent is also significant. Consider a driver who believes she is not over the legal blood alcohol limit. If she exercises her Fourth Amendment right not to consent to a warrantless blood draw, in addition to her license suspension, she may face a criminal trial at which her refusal to consent will be introduced into evidence and may be viewed by a judge or jury as powerful evidence of guilt. The pressure on the driver to consent to the search to avoid those consequences is tremendous.

Indeed, the Georgia Supreme Court has recognized that the very purpose of the implied consent statute is to force drivers to consent to testing. *Olevik v. State*, 806 S.E.2d 505, 509–10 (Ga. 2017) (recognizing that Georgia enacted its implied consent statute to elicit cooperation with blood alcohol testing). The Georgia court has candidly observed that "the [Georgia] General Assembly has determined that drivers should be made aware of the potentially most serious *consequence of refusal* of testing, i.e., that such evidence can be used against the driver at a subsequent criminal prosecution in which the driver's liberty may be at stake," and that the driver's privilege to drive on the State's roads could be revoked for a year or more. *Sauls v. State*, 744 S.E.2d 735, 737 (Ga. 2013) (emphasis added); *see also State v. Oyeniyi*, 728 S.E.2d 476, 478–79 (Ga. Ct. App. 2016). Those sanctions are impermissibly coercive in all events, but

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intoxicated driver would be better off forfeiting his constitutional rights (and taking a chance at a license reinstatement) than refusing to consent (*guaranteeing* a license suspension of at least one year).

especially considering the reasonable alternatives available, including breath tests and the ability to obtain an electronic warrant for a blood test if appropriate.

2. Contrary to the *Birchfield* dicta, it should not be dispositive whether the adverse consequences resulting from a refusal to consent are labeled as "civil" or "criminal." The threat of civil sanctions may be equally as coercive as the threat of criminal punishments. The label the state affixes to a sanction—be it a criminal punishment or a civil penalty—is not dispositive. *See Hudson v. United States*, 522 U.S. 93, 110 (1997) (Scalia, J., concurring) (recognizing that the Court has left undisturbed the principle that "the Government cannot use the 'civil' [as opposed to criminal] label to escape" constitutional requirements).

What should matter to the determination of whether a particular sanction is unduly coercive is the real-world impact of a refusal to consent on the person choosing to exercise a constitutional right. The loss of the right to drive is no less devastating because it is called a "civil" penalty. *See id.*; *Dortch v. Arkansas*, 544 S.W.3d 518, 527–28 (Ark. 2018) (holding a similar license suspension penalty in a criminal statute was unconstitutional under *Birchfield*). And permitting a refusal to consent to be introduced into evidence at a criminal trial puts a driver in the position of facing a much higher likelihood of being convicted if he chooses to exercise his Fourth Amendment right not to consent to a warrantless blood draw.

Under *Schneckloth* and this Court's other Fourth Amendment cases, careful analysis is required to

determine whether the particular consequences imposed for refusing to consent to a search are so coercive as to render the consent involuntary. Those cases establish that the dispositive inquiry is whether the consequences of refusing consent are so significant that they effectively force consent; it is not, as the *Birchfield* dicta suggests, whether the threatened sanctions are labeled "civil." *Cf. State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 428 (2003) ("Great care must be taken to avoid use of the civil process to assess criminal penalties that can be imposed only after the heightened protections of a criminal trial have been observed . . . .").

Birchfield recognized that a blood draw is a highly intrusive interference with a person's bodily integrity. 579 U.S. at 476. The Court did *not* decide whether civil consequences for a refusal to consent to a blood draw may be so severe as to render the consent involuntary. That issue was neither briefed nor argued. On the merits, the Georgia statute violates the Fourth Amendment by permitting warrantless searches based on "consent" that is gained by imposing severe consequences on a driver who refuses it, thus rendering the driver's consent involuntary.

II. The decision below reflects a fundamental misunderstanding among the state courts of the weight to be given to the *Birchfield* dicta.

Review is also warranted because the decision below reflects a common practice among state courts of treating the *Birchfield* dicta regarding "civil" penalties and evidentiary consequences as controlling statements of law. The result is a near-universal practice among state courts of treating any sanction

imposed by an implied-consent statute as permissible so long as it is not labeled as a "criminal" penalty, without careful analysis of the merits.

A. The *Birchfield* dicta do not settle the issue of whether implied consent statutes imposing civil or evidentiary penalties for refusal to consent to a blood draw are constitutional.

Relying on this Court's comments about civil penalties in *Birchfield*, the Georgia Supreme Court held that civil and evidentiary penalties for refusing to consent to a blood test necessarily are permissible. Pet. App. at 8a–13a. However, that issue was not presented in *Birchfield*; the Court did not purport to decide the issue, nor did it discuss it in any significant detail. *See* 579 U.S. at 476–77.

Instead, the Court mentioned in passing that "prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply," and acknowledged that "[the] Petitioners do not question the constitutionality of those laws, and nothing [the Court] say[s] here should be read to cast doubt on them." *Id.* (citing *McNeely*, 569 U.S. at 160–161 (plurality opinion)); *South Dakota v. Neville*, 459 U.S. 553, 560 (1983)). These statements are not binding precedent, nor do they reflect a full or careful analysis by this Court that warrants deference.

The common law has long recognized that "dicta" —aspects of a legal opinion that are unnecessary to the determination of the actual issues before the

court—should be viewed skeptically. *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 399 (1821) (Marshall, C.J.) ("If [statements] go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit . . . ."); *see also Dictum, Black's Law Dictionary* (1st ed. 1891) (defining dictum as "an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination").

Dicta often overlook the full implications of the words spoken precisely because they are not necessary to decide the case before the court. The "possible bearing" of these extraneous statements "on all other cases is seldom completely investigated." *Cohens*, 19 U.S. at 399–400.

Accordingly, dictum is widely understood as non-binding in subsequent suits. *Id.* ("[Dicta] ought not to control the judgment in a subsequent suit when the very point is presented for decision."); *Van Buren v. United States*, 593 U.S. 374, 392 ("[W]e . . . 'are not bound to follow' any dicta[.]" (quoting *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363, (2006))). "Dictum settles nothing, even in the court that utters it." *Jama v. Immigr. and Customs Enf't*, 543 U.S. 335, 351 n.12 (2005) (prior Supreme Court language did not support an argument that Congress ratified a settled judicial construction because the cited language was nonbinding dicta).

Although no dictum is binding, this Court has recognized that some dicta are more persuasive than

others. On the one hand, considered dicta—dicta that are the product of sustained analysis—are more worthy of deference. *See Hawks v. Hamill*, 288 U.S. 52, 58–59 (1933); *see also* Charles Alan Wright & Mary Kay Kane, Law of Federal Courts § 58, at 394–95 (7th ed. 2011) ("Much depends on the character of the dictum. Mere obiter may be entitled to little weight, while a carefully considered statement . . . , though technically dictum, must carry great weight, and may even . . . be regarded as conclusive."). Considered dicta occur when "the opinion of the court shows that" the issue "was fully considered." *W. Union Tel. Co. v. Pa. R.R. Co.*, 195 U.S. 540, 593 (1904) (Brewer, J., concurring). Although not binding on any court, such dicta warrant some deference because the issue was treated carefully. *Id.*

By contrast, little or no deference is due to obiter dictum—a side "judicial comment . . . that is unnecessary to the decision in the case[.]" *Obiter Dictum, Black's Law Dictionary* (12th ed. 2024). Because such statements are not the result of sustained or careful consideration, they should not be treated as establishing precedent. *Hawks*, 288 U.S. at 59 (distinguishing "considered" dicta from "comment merely obiter").

By this standard, the *Birchfield* dicta regarding civil and evidentiary penalties for refusing to consent to a blood draw are mere obiter dicta. As noted above, the parties in *Birchfield* did not dispute whether civil and evidentiary penalties for refusal to consent to a test were constitutional. As a result, the Court did not have the benefit of the adversarial process, in which full briefing and argument results in each side making

its best and most persuasive arguments. Moreover, the *Birchfield* Court did not provide any analysis to explain its passing suggestion that civil or evidentiary penalties for refusing to consent to a blood draw are generally permissible. The *Birchfield* dicta appear to have been included only to clarify that the Court did not intend to cast doubt on its prior decisions "refer[ring] approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply." *Birchfield*, 579 U.S. at 476–77.

The Court's prior decisions cited in *Birchfield*—*McNeely* and *Neville*—do not decide the issue presented in this case. First, *McNeely* did not address the constitutionality of implied consent statutes imposing civil penalties and evidentiary consequences on motorists who refuse to consent to a blood draw. Rather, the issue in *McNeely* was "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." *McNeely*, 569 U.S. at 145. The Court held that it did not, concluding "that exigency in this context must be determined case by case based on the totality of the circumstances." *Id.*

There was no majority opinion in *McNeely*. A plurality of the Court explained that applying a per se exigency exception was unnecessary to protect state interests in part because of the state's ability to conduct searches pursuant to implied consent laws. *Id.* at 160–61. But the plurality did not address the constitutionality of implied-consent laws; rather it

assumed such laws are constitutional to decide the different issue at hand. *Id.* at 161. Indeed, one of the concurrences noted that the constitutionality of implied consent statutes was an "*issue [to be] explored in later cases*" if this Court determined that it was "appropriate and necessary . . . to provide more guidance than it undertakes to give today." *Id.* at 165–66 (Kennedy, J., concurring) (emphasis added).

Second, the issue presented in *Neville* was whether using a driver's refusal to consent to a blood draw as evidence against him in a subsequent criminal proceeding violates the driver's *Fifth* Amendment right against self-incrimination. 459 U.S. at 554, 563–64. The Court did not address whether implied consent laws such as Georgia's are permissible under the *Fourth* Amendment. The only mention of such laws was a sentence stating that they are "unquestionably legitimate" *under the due process clause* if appropriate procedures are followed. *Id.* at 560 (citing *Mackey v. Montrym,* 443 U.S. 1 (1979) (upholding implied consent laws against due process challenge)).

In short, nothing in the *Birchfield* dicta indicates that the statements were more than an observation about prior holdings by this Court. Any "general approval" of implied consent laws in *Birchfield* was made without careful analysis. None of *Birchfield*, *McNeely*, or *Neville* decided whether searches pursuant to implied consent statutes that impose civil or evidentiary penalties on those who refuse consent are consistent with the Fourth Amendment. The constitutionality of implied consent statutes like the

Georgia law at issue here therefore remains unsettled.

B. The questions presented are important ones that are not receiving appropriate consideration in state courts—and as to which a clear split is unlikely to develop—because state courts are treating the *Birchfield* dicta as though it were binding precedent.

Because state courts regularly treat *Birchfield*'s dicta as a binding holding, a deep split about the issue in this case—the constitutionality of searches pursuant to implied consent laws that impose severe civil and evidentiary sanctions on drivers who refuse consent—is unlikely to develop. The Court should grant review because this case presents important constitutional questions on which the state courts have been led astray by the *Birchfield* dicta.

This Court accepts cases lacking a "true split" of authority where they present (1) an "important" issue or (2) an issue that is unlikely to be resolved without this Court's review. *See, e.g.*, *Massachusetts v. EPA*, 549 U.S. 497, 505–06 (2007) (acknowledging the "absence of any conflicting decisions construing [the relevant statute]," but nonetheless explaining the decision to grant certiorari as based on "the unusual importance of the underlying issue"); *United States v. Windsor*, 570 U.S. 744 (2013) (granting certiorari based on the importance of the issue alone); *Students for Fair Admissions v. President and Fellows of Harv. Coll.*, 600 U.S. 181 (2023) (same). This case falls into both categories.

The issue presented here is important both constitutionally and because it arises frequently all over the country. Fourth Amendment protections are among the most valuable rights embedded in this country's constitutional framework and should be closely guarded and vigorously defended. *See Mapp v. Ohio*, 367 U.S. 643, 647 (1961) ("[C]onstitutional provisions for the security of person and property should be liberally construed. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." (quoting *Boyd v. U.S.*, 116 U.S. 616, 630 (1886))); *Underwood v. State*, 78 S.E. 1103, 1106 (Ga. Ct. App. 1913) (recognizing that the Fourth Amendment is among the "sacred civil jewels . . . stored away [in the Constitution] for safe-keeping").

All fifty states have adopted some form of implied consent statute in an attempt to address the important safety concern of driving under the influence of alcohol or other drugs. *McNeely*, 569 U.S. at 160–61. To set the right balance, states need guidance on the "limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads." *Birchfield*, 579 U.S. at 476–77.

As things stand now, however, state courts are not giving the issue the careful attention and analysis that it deserves because they are treating the *Birchfield* dicta as though it were controlling precedent. The Pennsylvania Supreme Court's decision last month in *Commonwealth v. Hunte* provides a clear illustration. There, in a decision exhaustively discussing this Court's jurisprudence

regarding the constitutionality of blood draws in the driving under the influence context, the Pennsylvania Supreme Court considered a Pennsylvania statute authorizing a warrantless blood draw of a person who requires treatment at an emergency room for injuries sustained in an automobile accident where there is probable cause to believe the person unlawfully drove while under the influence of alcohol or drugs. *Commonwealth v. Hunte*, No. 16 MAP 2023, 2025 WL 1703981, at *1 (Pa. June 17, 2025). The court noted that implied consent statutes "plainly involve[] coercion" and are "the antithesis of actual consent." *Id*. at *18. Yet, the court stated that "unless and until instructed otherwise by [this Court]" state courts "must regard [the *Birchfield* dicta's] treatment of implied consent regimes as *sui generis*, approving a limited exception to the general rule that consent to a search much be given free from the threat of penalty for refusal, so long as those consequences do not extend to criminal punishment . . . ." *Id.*

Other state supreme courts have treated *Birchfield* as binding. *See, e.g.*, *Rajda*, 196 A.3d at 1120 ("[T]he Court in *Birchfield* concluded that the nature of the choice offered to defendant under implied consent laws is fundamentally altered—to the point where it infringes impermissibly on the Fourth Amendment—*only* when the alternative to submitting to a warrantless blood draw is to commit a crime—the crime of refusal." (emphasis added)); *Kilby*, 961 N.W. 2d at 379 (collecting cases); *State v. Dalton*, 914 N.W.2d 120, 132 (Wis. 2018) (relying on *Birchfield* to strike down an implied consent statute imposing a lengthier jail sentence on those who refuse

to cooperate because the sanction is a criminal penalty).

In short, state courts regularly treat the *Birchfield* dicta as though it were a binding holding by this Court. As a result, state courts do not conduct the appropriate analysis, based on general constitutional principles as articulated by this Court, of whether implied consent statutes like the Georgia statutes violate the unconstitutional conditions doctrine by conditioning a critical government benefit on waiver of an important constitutional right.

The same is true of the issue of whether consent obtained by virtue of threats of severe adverse consequences like those in the Georgia statutes render the consent involuntary. A full split in the state courts is unlikely to develop precisely because most courts erroneously treat the issue as decided and thus do not consider it on the merits. *See Hunte*, 2025 WL 1703981, at *18 (stating that the state courts are bound to *Birchfield*'s interpretation of implied consent statutes, including the dicta, "unless and until instructed otherwise by the Supreme Court of the United States.").

Notwithstanding this widespread consensus that the *Birchfield* dicta is controlling, at least one state court has recognized the deep constitutional problems inherent in searches conducted pursuant to "consent" given under threat of the kinds of sanctions for refusing consent imposed by implied consent laws like the one at issue in this case. *See id.* Specifically, the Supreme Court of Kentucky held unconstitutional a search pursuant to a statute permitting a driver's refusal to consent to a blood draw to be introduced into

evidence at a criminal trial.[3] *McCarthy*, 628 S.W.3d at 40.

In that case, the Kentucky court cited *Birchfield* for the proposition that "a criminal defendant has the constitutional right to refuse consent to a blood test." *Id.* at 34–36. It then held that the evidentiary consequence of refusing to consent to a blood test impermissibly penalized the driver for exercising a constitutional right. *Id.* In so holding, the Kentucky court declined to treat *Birchfield*'s dicta addressing civil and evidentiary consequences as binding, noting that Kentucky's evidentiary consequence for refusal to consent was inconsistent with the general rule that if the Fourth Amendment prohibits a search, it likewise prohibits the government from introducing into evidence the suspect's refusal to consent to that search. *Id.* at 35 ("[W]hen defendant's refusal was within the context of a recognized search-warrant-required category [as *Birchfield* established], then the Fourth Amendment prohibits admission of that refusal into evidence . . . ." (citation omitted)).

Statutes authorizing the suspension of a driver's license for refusing consent to a test have also produced disagreement in the state courts. In *Dortch*, the Arkansas Supreme Court struck down part of Arkansas's implied consent regime providing for suspension or revocation of a driver's license based on

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[3] The statute also imposed an enhanced sentence for individuals convicted of a DUI if they refused to consent to blood alcohol testing. The court held that the sentence enhancement was a criminal penalty, which failed under *Birchfield*, and rejected the contention that some courts have embraced limiting *Birchfield* to statutes that make refusal an independent crime. *McCarthy*, 628 S.W.3d at 40.

refusal to consent to a blood draw. 544 S.W.3d at 528. Although the Arkansas Supreme Court held that the license suspension penalty was unconstitutional largely because it was labeled a "criminal" punishment rather than a civil penalty, the decision recognized that the threat of license revocation can be sufficiently coercive as to render consent involuntary. *Id.* at 527–28.

The *Dortch* court's distinction between criminal and civil sanctions in this context reflects the fundamental error in treating labels as controlling. A license suspension is a license suspension; it means the person is deprived of the benefit of being permitted to drive. The real-world impact and coercive effect of a license suspension on the driver creates the same immense pressure on the driver to consent to a blood draw, regardless of the label placed on the sanction.

In short, the law regarding what sanctions an implied consent statute may impose for refusal to consent to a blood draw has not fully developed because state courts are almost universally treating dicta that was not carefully considered as though it were binding precedent. Even so, decisions in the state courts reflect confusion and inconsistency. The issue presented in this case is one that arises constantly all over the country and is too important not to be resolved by this Court on the merits after full briefing and argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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July 25, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE SUPREME COURT OF GEORGIA, FILED MARCH 4, 2025

IN THE SUPREME COURT OF GEORGIA

S24A1112.

LA ANYANE v. THE STATE.

Decided March 4, 2025

PINSON, Justice.

Evelyn-Natasha La Anyane was convicted of driving under the influence (DUI) of alcohol less safe and other traffic offenses. During the traffic stop that led to her arrest, La Anyane was read the statutory implied-consent warning about submitting to a test of her blood or other bodily substance for alcohol. She consented to a blood test, and the results were used against her at trial.

On appeal, La Anyane argues that Georgia's entire implied-consent statutory scheme is unconstitutional on its face and as applied to her. She contends that the implied-consent warning unconstitutionally coerces drivers to consent to a blood test by telling them, falsely, that their consent is required, and that their refusal can be offered against them at trial. She contends that because any consent obtained through the implied-consent warning is not free and voluntary, the implied-consent statutory scheme unconstitutionally authorizes law enforcement officers to take drivers' blood without a search warrant, valid consent, or any other exception to the warrant

requirement. And she contends that the trial court made two evidentiary errors by (1) refusing to let her cross-examine an expert with a study about field sobriety tests and (2) allowing evidence about her blood alcohol content even though she was charged with DUI less safe and not DUI per se.

These claims fail. The implied-consent warning was not unconstitutionally coercive as applied to La Anyane here: it did not tell her that her consent was "required," as she contends, and its statement that a driver's refusal to consent to a blood test can be used against her at trial has never been held unconstitutional or otherwise "false." And La Anyane otherwise consented freely and voluntarily to a test of her blood, so that search was authorized under the Fourth Amendment. Because La Anyane's as-applied challenge to the implied-consent statutory scheme fails, she lacks standing to bring her facial challenge on the basis that scheme authorizes warrantless searches as a general matter. Finally, the trial court did not abuse its discretion in determining that La Anyane did not lay a proper foundation for the field study, or in determining that her blood alcohol content was relevant and not unfairly prejudicial in a prosecution for DUI less safe.

1. Background

(a) Implied-Consent Statutory Scheme

As in every state, driving under the influence of alcohol is a crime in Georgia. See OCGA § 40-6-391 (a) (1) & (5). To help enforce that prohibition, several of our

statutes authorize police officers to request to test DUI suspects for the presence of intoxicants and allow the results of those tests to be admitted as evidence at trial. These statutes, which are often referred to generally as the implied-consent statutory scheme, are what La Anyane challenges in this appeal.

The implied-consent statutory scheme declares that any driver on Georgia roads "shall be deemed to have given consent … to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug," if the driver is arrested for DUI. OCGA § 40-5-55 (a). These tests are administered "at the request of a law enforcement officer having reasonable grounds to believe" that the driver is under the influence. Id. The requesting officer is directed to "designate which of the test or tests" — of blood, breath, urine, or other bodily substances — is administered, except that a blood test is required if the driver has been involved in an accident resulting in serious injuries or fatalities. Id. The results of any tests are admissible against the driver at trial, see OCGA § 40-6-392 (a), and — subject to constitutional exceptions discussed further below — the defendant's *refusal* to consent to testing of her "blood, breath, urine, or other bodily substance" is also admissible against her, OCGA § 40-6-392 (d).

Along with these substantive provisions, the implied-consent statutory scheme prescribes a verbal warning for law enforcement officers to read to drivers whom they suspect of driving under the influence. See OCGA

§ 40-5-67.1 (b) (2). That implied-consent warning essentially tells motorists about the substantive provisions discussed above. It explains that a driver's privilege of getting a Georgia driver's license is "conditioned" on her "submitting" to "state administered chemical tests" of her blood or other bodily substances to determine if she is under the influence of alcohol or drugs. The warning further explains that, if the driver refuses to submit to a chemical test, her driver's license will be suspended for at least a year and her refusal "may be offered into evidence against [her] at trial." OCGA § 40-5-67.1 (b) (2).[1]

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1. The implied-consent warning reads in full:

> The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (*designate which test*)?

OCGA § 40-5-67.1 (b) (2).

(b) This Case

Police stopped La Anyane for, among other things, failing to maintain her lane and not using her high-beams properly. During the traffic stop, officers noticed that her eyes looked "red" and "glassy," her breath smelled of alcohol, her speech was slurred, and her shirt was stained with what appeared to be red wine. La Anyane stated that she had had one drink.

Officers began investigating whether La Anyane was driving under the influence of alcohol or another drug. They had her perform several field-sobriety exercises, including horizontal-gaze nystagmus, walk and turn, and one-leg stand. La Anyane failed the exercises. Police then administered a preliminary breath test, which La Anyane also failed. At that point, the officers placed La Anyane under arrest.

Once La Anyane was under arrest, officers read her the statutory implied-consent warning. La Anyane consented to have her blood drawn and tested. During the test, she asked, "What is this for," and an officer responded that it was "part of [her] DUI process." Apart from that question, La Anyane did not say or do anything to suggest she had changed her mind about submitting to the blood test or that she was doing so against her will.

The blood test revealed a blood alcohol content of 0.117 grams per 100 milliliters, which is above the legal limit of 0.08. See OCGA § 40-6-391 (a) (5). La Anyane was charged

with failure to maintain lane, failure to dim lights, and DUI less safe, all misdemeanors. She pleaded not guilty.

Before trial, La Anyane moved to suppress the results of the chemical blood test. She argued, among other things, that the implied-consent warning is "inherently coercive, inaccurate, [and] misleading" because it falsely implies that motorists are required to submit to testing, and because it "incorrectly state[s] that the refusal [to submit] will be admissible at trial against Defendant contrary to constitutional guarantees (both state and federal)." La Anyane argued that this meant her consent to the blood test was not truly voluntary.

The trial court denied the motion to suppress and admitted the results of La Anyane's blood test. At trial, the jury found La Anyane guilty of all counts.

2. Analysis

Although La Anyane makes constitutional arguments under multiple headings in her brief, we understand those arguments to work together as follows. La Anyane contends that Georgia's implied-consent statutory scheme violates the Fourth Amendment to the United States Constitution because it authorizes police officers to take the blood of a DUI suspect without a search warrant or a valid exception to the warrant requirement.[2] And although

2. La Anyane's argument that her blood draw was unconstitutional focuses only on the Fourth Amendment to the United States Constitution and decisions interpreting and applying it. Although she cites the Georgia Constitution's similar provision,

that scheme instead contemplates such blood draws to be authorized by the driver's consent — which makes a Fourth Amendment search valid — she contends that the implied-consent warning given to drivers is "unconstitutionally coercive," so a driver who agrees to a blood test has not given free and voluntary consent. As a result, La Anyane contends, her blood was drawn and tested — a Fourth Amendment search — without authorization that satisfies the Fourth Amendment. In short, her argument turns on whether she gave free and voluntary consent to the blood test. If so, the police conducted a valid search, and her constitutional challenge to the statute fails. So we start with La Anyane's contentions about consent and then address her remaining arguments.

(a) Under the Fourth Amendment, a search "authorized by consent" is "wholly valid" as long as consent is freely and voluntarily given. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (II) (93 SCt 2041, 36 LE2d 854) (1973). See also *Brooks v. State*, 285 Ga. 424, 425 (677 SE2d 68) (2009) ("a valid consent to a search eliminates the need for either probable cause or a search warrant"). And we ordinarily determine whether consent was free and voluntary by assessing the totality of the circumstances.

Ga. Const. of 1983, Art. I, Sec. I, Par. XIII, she makes no separate argument under that provision, so we address her argument only under the Fourth Amendment. See *Smallwood v. State*, 310 Ga. 445, 447 (2) n.2 (851 SE2d 595) (2020) (declining to analyze a due process claim under the Georgia Constitution where the defendant "cite[d] in passing" the due process clause of the Georgia Constitution but made no separate argument and cited no cases in support of the state constitutional claim).

See id. La Anyane does not dispute that she gave the police her consent to have her blood drawn and tested. But she points to one circumstance that she says made her consent not truly voluntary: the implied-consent warning the police read to her before giving her consent was, in her view, "unconstitutionally coercive." She focuses on two aspects of the implied-consent warning: the statement that Georgia "has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests," and the warning that "[y]our refusal to submit to blood or urine testing may be offered into evidence against you at trial." In La Anyane's view, these statements mislead drivers about their constitutional right not to agree to chemical testing.

La Anyane's claim fails at its premises, because neither of the two parts of the implied-consent warning that she objects to is coercive for the reasons she gives.

(i) The implied-consent warning does not tell drivers that they are "required" to submit to a blood test, as La Anyane contends. Indeed, we have already rejected that exact argument. In *Olevik v. State*, 302 Ga. 228 (806 SE2d 505) (2017), we concluded that the implied-consent warning clearly tells drivers that they can choose not to consent to chemical testing. See id. at 249 (3) (a). As we explained in *Olevik*, the implied-consent warning does that by putting before the driver at least three times the possibility of refusal. The implied-consent warning states: "If you refuse this testing, your Georgia driver's license or privilege to drive … will be suspended[.]" It then warns: "Your refusal to submit to … testing may be

offered into evidence against you at trial." And it ends by squarely presenting the choice: "Will you submit to the state administered chemical tests?" See id. (citing OCGA § 40-5-67.1 (b) (2)). We explained in *Olevik* how those phrases inform drivers that they can refuse a chemical test: "Because the notice refers to a right to refuse, advises suspects of the consequences for doing so, and concludes with a request to submit to testing, a reasonable suspect relying solely on the notice should understand that the State is asking for a suspect's cooperation, rather than demanding it, and that they have a right to refuse to cooperate." Id.[3]

In addition to including this language about the driver's right to refuse a chemical test, the implied-consent warning notably omits any reference to a criminal penalty for refusing. That is because there is none: drivers may incur civil penalties, as the implied-consent warning warns, but they will not be charged with a separate offense if they do not consent to testing. Compare *Birchfield v. North Dakota*, 579 U.S. 438, 450-451 (II) (A) & 477 (VI) (136 SCt 2160, 195 LE2d 560) (2016) (where a statute

3. The implied-consent warning was amended after *Olevik*, and the version that was read to La Anyane was slightly different than the one we considered in that case. Where the implied-consent warning in *Olevik* warned that "[y]our refusal to submit to *the required* testing may be offered into evidence against you at trial," see *Olevik*, 302 Ga. at 249 (3) (a) (emphasis added), the version read to La Anyane said that "[y]our refusal to submit to *blood or urine* testing may be offered into evidence against you at trial," OCGA § 40-5-67.1 (b) (2) (emphasis added). That change does not affect our conclusion that the implied-consent warning is clear that drivers have the option to refuse testing.

made it a misdemeanor to refuse to submit to a blood test, and drivers in DUI investigations were told of the criminal consequence if they refused to submit, the drivers "[could not] be deemed to have consented to submit to a blood test on pain of committing a criminal offense"). All of this means that a reasonable driver being read the implied-consent warning would understand that she can refuse to consent to a chemical test without being charged with a crime — and she would be right. So the implied-consent warning does not tell drivers that their consent is mandatory, as La Anyane contends.

La Anyane also seems to contend that the very notion of implied consent is improper — that the State cannot "condition[ ] your privilege to drive" on your submission to a chemical test. But again, the warning itself is clear that the driver can refuse consent. So to the extent "implied consent" is built into the statute, it is not absolute or irrevocable. The driver retains the right to refuse a chemical test without being charged with another crime. And although such a refusal may have civil consequences, neither we nor the United States Supreme Court has held that such consequences are unconstitutional. Cf. *Birchfield*, 579 U.S. at 476-477 (VI) ("Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply."). This basis for La Anyane's argument that the implied-consent statutory scheme is unconstitutionally coercive therefore fails.

(ii) La Anyane's second contention about the implied-consent warning — that it is unconstitutionally coercive

because it tells drivers, falsely, that their refusal to consent to a blood test can be used against them — also fails under the circumstances here.

La Anyane is correct that the implied-consent warning tells drivers that their refusal to consent to a blood test may be used against them at trial. But she has not shown that that statement is "false" as she claims. The warning is consistent with Georgia statutory law, which provides that the State can introduce into evidence at trial a driver's refusal to submit to a test of her "blood, breath, urine, or other bodily substance," see OCGA § 40-6-392 (d), and neither we nor the United States Supreme Court has ever held that that statute is unconstitutional. It is true that we held in *Elliott v. State*, 305 Ga. 179 (824 SE2d 265) (2019), that OCGA § 40-6-392 (d) is unconstitutional as applied to *breath* tests, because under the Georgia Constitution, providing deep lung air for a breath test is a self-incriminatory act, and a person's exercise of her right not to incriminate herself cannot be used against her. See Ga. Const. of 1983, Art. I, Sec. I, Par. XVI; *Elliott*, 305 Ga. at 209 (IV). But we have never held that drawing someone's blood implicates the right against compelled self-incrimination under the Georgia Constitution, and the United States Supreme Court has rejected the argument that the federal right against compelled self-incrimination is implicated by a blood draw. See *Olevik*, 302 Ga. at 232 (2) (a) n.2 (noting that in *Strong v. State*, 231 Ga. 514 (202 SE2d 428) (1973), "we concluded that extracting blood did not cause the defendant to be a witness against himself under the Fifth Amendment and 'similar provisions of Georgia law,' approvingly citing cases to the effect that the removal of evidence from a defendant's body does not

implicate his right against compelled self-incrimination," and that "[n]othing we say here should be understood as casting any doubt on *Strong*'s self-incrimination holding"). See also *Schmerber v. California*, 384 U.S. 757, 764-765 (II) (86 SCt 1826, 16 LE2d 908) (1966) (explaining that a suspect who submits to a blood test is not providing testimony or performing an incriminatory act but is instead becoming "the source of 'real or physical evidence' "). Nor have we otherwise held that evidence of a driver's refusal to consent to having her blood drawn for testing cannot be used against her. See *State v. Randall*, 318 Ga. 79, 81 (2) (897 SE2d 444) (2024) (describing that question as "thorny and unresolved"). And that question is not before us in this case: La Anyane does not contend that refusal evidence may not be used against her, nor could she, because she did not refuse to have her blood drawn, so no such evidence of refusal exists in this case.[4]

All of that is to say that the police officer who read La Anyane the implied-consent warning did not give her a "false" warning, at least about the consequences of refusing a blood test. In other words, La Anyane's claim fails at its premise: because she has not established that the implied-consent warning was "false," her claim that it

4. Separate from these constitutional considerations, a trial court might exclude a driver's refusal to submit to a blood test under the ordinary rules of evidence — for instance, if its probative value were substantially outweighed by the danger of unfair prejudice. See OCGA § 24-4-403. But the fact that such evidence could be excluded on a case-by-case basis does not make the implied-consent warning categorically "false" or unduly coercive.

is unconstitutionally coercive on that basis fails.[5] And she has offered no other reason to conclude that her consent was not given freely and voluntarily under the totality of the circumstances. See *Brooks*, 285 Ga. at 425-426.

(b) In light of our conclusion that La Anyane failed to establish that the implied-consent warning is unconstitutionally coercive, her Fourth Amendment claims cannot succeed.

Start with her as-applied challenge. La Anyane contends that the police drew her blood without a search warrant or a valid exception to the warrant requirement. But as explained above, a search "authorized by consent" is "wholly valid" as long as consent is freely and voluntarily given. See *Schneckloth*, 412 U.S. at 222 (II); *Brooks*, 285 Ga. at 425. And the record here shows that La Anyane gave the police express consent to draw her blood, and she has not established that her consent was coerced by the implied-consent warning or otherwise. Because La Anyane gave free and voluntary consent, the draw of her blood was a valid search under the Fourth Amendment.

Because La Anyane's as-applied challenge fails, she lacks standing to advance her broader argument that

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5. La Anyane also briefly contends the implied-consent warning is unduly coercive because it tells drivers their driver's licenses may be suspended for a year if they refuse a blood test. That is a correct statement of Georgia law, and La Anyane offers no support for the argument that such a civil penalty is unconstitutional, nor are we aware of any. So her claim about the implied-consent warning fails on that basis as well.

the law is unconstitutional on its face. That argument, as best we can tell, is that the implied-consent statutory scheme violates the Fourth Amendment rights of any and all drivers who are subjected to a blood draw because it authorizes that search without a warrant or the presence of any exception to the warrant requirement. But a litigant who has not established a violation of her own constitutional rights "cannot challenge a law on the ground that it might conceivably be applied unconstitutionally to others." *Ga. Dep't of Human Servs. v. Steiner*, 303 Ga. 890, 899 (III) (815 SE2d 883) (2018) (citation and punctuation omitted). Accord *County Ct. of Ulster County v. Allen*, 442 U.S. 140, 155 (II) (99 SCt 2213, 60 LE2d 777) (1979) ("As a general rule, if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations."). So La Anyane's facial challenge fails, too.

3. La Anyane also contends that the trial court made two evidentiary errors at her trial. We review a trial court's evidentiary rulings for abuse of discretion. See *Smith v. State*, 318 Ga. 868, 873 (3) (901 SE2d 158) (2024).

(a) La Anyane contends that the trial court abused its discretion by refusing to allow her to cross-examine a State expert witness using a 1977 study of field sobriety tests. The witness was a police officer who had been qualified as an expert on DUI investigations. La Anyane tried to impeach the expert's credibility by asking about the study. The trial court allowed some questions, but when La Anyane tried to introduce into evidence a document that she said was the study itself, and to

read from it during questioning, the court sustained the State's objection that La Anyane had not laid a proper foundation. La Anyane argued that she did not need to lay a foundation for impeachment evidence, but the court rejected that argument. La Anyane then tried to lay a foundation by asking the expert about the study, but the expert testified that, although she was generally familiar with the study, she did not recognize the document La Anyane was holding or know what was in it.

La Anyane's claim fails because she did not establish that the document she claimed was the 1977 study was admissible. The document met the statutory definition of hearsay: It was "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted," OCGA § 24-8-801 (c). Because it was hearsay, the document was not admissible unless it fell under a statutory exception to the general rule excluding hearsay evidence. See OCGA § 24-8-802. And here, the only exception that might apply is the one for "learned treatises" under OCGA § 24-8-803 (18), which provides that statements in "published treatises, periodicals, or pamphlets … on a subject of history, medicine, or other science or art" are admissible if they are called to the attention of an expert witness during cross-examination and are "established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice." OCGA § 24-8-803 (18). But La Anyane did not show that the document she had in court was a "reliable authority." The expert she was cross-examining testified that she did not recognize the document, and La Anyane did not establish its reliability either through "other expert testimony" or

by judicial notice. The trial court was therefore within its discretion to determine that La Anyane had not laid a foundation to admit the document under the hearsay exception of OCGA § 24-8-803 (18).

La Anyane contends that the document was nevertheless admissible simply because it was impeachment evidence. In support of that contention, she cites one Court of Appeals case in her reply brief, *Morris v. State Farm Mutual Automobile Insurance Company*, 203 Ga. App. 839 (418 SE2d 119) (1992), which noted that "evidence tendered for purposes of impeachment need not be of the kind or quality required for proving the facts in issue." Id. at 842 (9). But that language from *Morris* was about the weight or materiality of evidence, not its admissibility. See id. ("We are satisfied that appellant was not impeached as to wholly immaterial matters, but was attempted to be impeached as to matters at least indirectly if not directly material as to appellant's testimony and to issues in this case."). Neither *Morris* nor any other authority we are aware of supports La Anyane's contention that *inadmissible* evidence may be admitted if its purpose is for impeachment. Her claim that it was error to not admit the 1977 study therefore fails.

(b) La Anyane also contends that the trial court abused its discretion by allowing the State to introduce evidence about her blood alcohol content. She contends that that evidence was not relevant and was prejudicial given the specific offense with which she was charged.

The Georgia Code recognizes two types of DUI offenses: driving "[u]nder the influence of alcohol to the

extent that it is less safe for the person to drive," OCGA § 40-6-391 (a) (1), commonly known as DUI less safe; and driving when "[t]he person's alcohol concentration is 0.08 grams or more at any time within three hours after … driving or being in actual physical control [of any moving vehicle] from alcohol consumed before such driving or being in actual physical control ended," OCGA § 40-6-391 (a) (5), which is known as DUI per se. La Anyane was charged with DUI less safe, so the State had to prove that she was "[u]nder the influence of alcohol to the extent that it [was] less safe for [her] to drive," but it did not have to prove anything specific about her blood alcohol content. In La Anyane's view, that means that any evidence of her blood alcohol content was not relevant and was prejudicial and was therefore not admissible. She objected to the blood alcohol content evidence on these grounds at trial, but the trial court overruled her objection.

This claim fails. First, La Anyane's blood alcohol content was relevant to the charge of DUI less safe. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." OCGA § 24-4-401. In a prosecution for DUI less safe, one element of the charged offense is that the defendant was "under the influence of alcohol." See OCGA § 40-6-391 (a) (1); *State v. Jones*, 297 Ga. 156, 160 (2) (773 SE2d 170) (2015). It should go without saying that a chemical blood test showing that La Anyane had alcohol in her bloodstream while driving does make it more probable that she was driving under the influence of alcohol.

La Anyane points out that the State introduced evidence showing not only that she had alcohol in her bloodstream, but also that her blood alcohol content was above the legal limit. She contends that that evidence about her blood alcohol content was unfairly prejudicial — especially since the prosecutor emphasized it in his closing argument — and that it should have been excluded under OCGA § 24-4-403 (Rule 403) ("Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). But the exclusion of evidence under Rule 403 is an "extraordinary remedy," *Mills v. State*, 320 Ga. 457, 464 (3) (b) (910 SE2d 143) (2024) (citation and punctuation omitted), which should be used "only when *unfair* prejudice substantially outweighs probative value," *Wyatt v. State*, 319 Ga. 658, 663 (906 SE2d 380) (2024) (citation and punctuation omitted) (emphasis in original). Here, even if it was not strictly necessary for the State to show that La Anyane's blood alcohol content was above the legal limit, it was not unfairly prejudicial for it to do so. The fact that La Anyane had enough alcohol in her system to exceed the limit set by the General Assembly made it more likely that she was "under the influence" of alcohol, and it was not unfair for the State to present the two numbers side by side — the legal limit of 0.08 and La Anyane's blood alcohol content of 0.117 — to give the jury context about the amount of alcohol in her bloodstream. The trial court was thus within its discretion to admit this evidence, and so the claim fails.

Judgment affirmed. All the Justices concur.

APPENDIX B — ORDER OF THE STATE COURT OF FULTON COUNTY FOR THE STATE OF GEORGIA, FILED NOVEMBER 3, 2023

FINAL DISPOSITION ON MISDEMEANOR SENTENCE IN THE STATE COURT OF FULTON COUNTY-CRIMINAL DIVISION O.B.T.S.#

EVELYN-NATASHA LA ANYANE 22CR007178D

A. DUI-ALCOHOL-LESS SAFE

B. FAILURE TO MAINTAIN LANE/IMPROPER LANE CHANGE

C. FAILURE TO DIM LIGHTS

D. DUI-ALCOHOL-PER SE

PLEA	TRIAL	VERDICT
☐ NEGOTIATED ___	☒ JURY	☒ GUILTY ON A,B,C
☐ GUILTY ON _____	☐ NON JURY	☐ NOT GUILTY ON _____
☐ NOLO CONTENDERE ON _____		☐ DIRECTED VERDICT ON _____
☐ ALFORD VS NC _____		

OTHER DISPOSITIONS

☐ DEAD DOCKET ☒ NOLLE PROSEQUI ORDER ON D ON _____

☐ **See Separate Order** _____MERGED WITH ____

☐ **See Separate Order** CASH FORFEITURE OPTION

* * *

APPENDIX C — ORDER DENYING DEFENDANT'S MOTIONS TO SUPPRESS IN THE STATE COURT OF FULTON COUNTY FOR THE STATE OF GEORGIA, FILED SEPTEMBER 6, 2023

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

Case No. 22CR007178D

STATE OF GEORGIA,

v.

EVELYN-NATASHA LA ANYANE,

Defendant

ORDER DENYING DEFENDANT'S MOTIONS TO SUPPRESS

On September 1, 2023, the Court held a motions hearing. The Defense argued:

1. There was no reasonable articulable suspicion for the stop;
2. There was no probable cause to arrest for DUI less safe;
3. The HGN evaluation was not in substantial compliance;
4. The implied consent notice was misleading; and
5. A constitutional challenge to the blood test.

Officer Aira Davis testified and the hearing and her body camera footage was admitted into evidence.

FACTS

The Court makes the following findings of fact for purposes of the Motion:

On December 12, 2020 Sandy Springs police Officer Nelson conducted a traffic stop on a vehicle driven by the Defendant, Evelyn Natasha La Anyane. Officer Davis was backup officer for the stop and she testified that Officer Nelson stopped the vehicle because Defendant failed to maintain her lane, was driving with her high beams on and that she had her left turn signal on for almost a mile without turning.

Officer Davis was trained on DUI investigations. Prior to this stop, she had taken Standardized Field Sobriety Evaluations. She had also completed ARIDE.

Officer Davis spoke with Defendant and noticed a heavy odor of alcoholic beverage in the passenger compartment, watery and glassy eyes, slurred speech, and a red wine stain on Defendant's clothing. Defendant admitted to Officer Davis that she was driving with her high beams on because she didn't like driving with only her regular lights. Defendant initially denied drinking alcohol but eventually admitted to having one drink.

Officer Davis had Defendant exit her vehicle and noticed that Defendant balanced herself on the car. She

medically qualified Defendant for HGN and began the evaluation but had to stop because Defendant did not follow instructions and continued to turn her head.

Officer Davis then gave instructions on the walk and turn test at least three times and demonstrated the entire test taking nine steps during the instruction phase. Defendant ultimately said she understood the instructions, but demonstrated multiple clues including turning 270 degrees rather than 180 degrees, concluding the test at a right angle to her starting position. She also performed a lack of convergence test.

Based upon a totality of the circumstances, Officer Davis placed Defendant under arrest for DUI and requested a state administered test of her blood. Officer Davis requested the blood because she was concerned about possible drug use, based upon her observations and Defendant's insistence she had only one drink. Additionally, the Intox machine was not working at the time. Defendant consented to the state administered test of her blood and Officer Davis transported her to the Smyrna facility. A phlebotomist met them there. Defendant made multiple spontaneous comments including that she was never going to do this again, that she would only get Uber, and that her mom would be disappointed. At Smyrna, Defendant advised that her career was clinical research. There was no evidence of any threats or coercion. When Defendant asked what the blood draw was for Officer Davis responded that it was part of the DUI case. Defendant never withdrew her consent to the blood draw.

Appendix C

CONCLUSIONS OF LAW

There was reasonable articulable suspicion for the stop. Even though Officer Davis was not the officer who pulled over the Defendant, she was entitled to rely on Officer Nelson's reasons for stopping the vehicle. Officer Nelson was on scene and told Officer Davis why he stopped the Defendant. In addition, Defendant admitted that she drove with her high beams on. "Reasonable suspicion need not be based on an arresting officer's knowledge alone, but may exist based on the 'collective knowledge' of the police when there is reliable communication between an officer supplying the information and an officer acting on that information. In this regard, police are authorized to stop an individual based on a 'be on the look out' dispatch or even a radio transmission from another officer who observed facts raising a reasonable suspicion of criminal activity or a traffic violation. *Camp v. State*, 259 Ga. App. 228, 229, 576 S.E.2d 610, 612 (2003) (internal citations omitted).

The results of the HGN examination are admissible at trial. The officer testified as to her training and experience and testified that she performed the examination in accordance with her training. Defendant argued that Officer Davis did not comply with NHTSA standards because she did not specifically tell Defendant to follow the stimulus until the test was over; however, Officer Davis repeatedly instructed Defendant not to move her head. Any challenges go to the weight, not the admissibility. *E.g. Johnson v. State*, 323 Ga. App. 65, 744 S.E.2d 921 (2013).

As a result, the Court finds that the officer had probable cause to arrest Defendant for driving under the influence of alcohol, less safe. "The test of probable cause requires merely a probability—less than a certainty but more than a mere suspicion or possibility. To arrest a suspect for driving under the influence, an officer need only have knowledge or reasonably trustworthy information that the suspect was actually in physical control of a moving vehicle, while under the influence of alcohol to a degree which renders him incapable of driving safely." *Durrance v. State*, 319 Ga. App. 866, 870, 738 S.E.2d 692, 697 (2013). The evidence included, but was not limited to: admission of drinking, odor of alcohol, slurred speech, watery and glassy eyes, defendant's demeanor, and field sobriety evaluations. Officer Davis testified the arrest was based on a totality of the circumstances. This was sufficient to establish probable cause for the Defendant's arrest for DUI less safe.

The results of the state administered test of Defendant's blood are not suppressed. The officer read the implied consent notice properly and Defendant consented to a test of her blood. Under the totality of the circumstances, this consent was voluntary.

> A consent to search will normally be held voluntary if the totality of the circumstances fails to show that the officers used fear, intimidation, threat of physical punishment, or lengthy detention to obtain the consent. . . . The defendant's affirmative response to the implied consent notice may itself be sufficient

> evidence of actual and voluntary consent, absent reason to believe the response was involuntary. The defendant's failure to express an objection to the test or change his or her mind also is evidence of actual consent. (Citation omitted.) *Jackson v. State,* 340 Ga. App. 228, 228-29 (1) (797 SE2d 152) (2017). A court evaluating the totality of circumstances in a DUI arrest "should consider whether a reasonable person would feel free to decline the officers' request to search or otherwise terminate the encounter." (Citation and punctuation omitted.) *Kendrick v. State,* 335 Ga. App. 766, 769 (782 SE2d 842) (2016).

Blazek v. State, 2023 Ga. App. LEXIS 386) (A23A0940 August 7, 2023). Even if the implied consent notice was inaccurate, "the inclusion of misleading information in the implied consent notice does not render the notice unconstitutionally coercive on its face. Thus, although the reading of an inaccurate implied consent notice may be one factor relevant in determining the voluntariness of consent to a breath test, 'the trial court must also consider factors such as a defendant's age, education, capacity, the nature of questioning, and any threats employed.'" *Luna-Galacia v. State*, 2023 Ga. App. LEXIS 396 (A23A0768 August 16, 2023) (internal citations omitted). The Defendant appeared to understand, she is educated, and there were no threats or coercion by law enforcement.

Defense argued that implied consent should have been read again when Defendant asked what the syringe was

for and the officer replied, "it's part of your DUI case." There is nothing to support this contention in either the evidence or the law. Defendant did not ask further questions or suggest that she withdrew her consent.

The defense made numerous constitutional challenges to the implied consent warning. The appellate courts have rejected these challenges. *E.g. Olevik v. State,* 302 Ga. 228, 806 S.E.2d 505 (2017); *Elliott v. State,* 305 Ga. 179, 824 S.E.2d 265 (2019). While there may be discrepancies[1]

---

1. Judge Gobeil's concurrence in *Luna-Galacia* illustrates these disparities:

> In light of the Supreme Court of Georgia's recent jurisprudence on this topic and the deference to the trial court's factual findings, I concur fully to the Majority. But, I write separately to encourage the Supreme Court to provide clarity for law enforcement officers, lawyers, and the public alike regarding the impact of what is now a significantly inaccurate implied consent notice.
>
> Here, you have a law enforcement officer (following the implied consent procedures dictated by the State) essentially telling a suspect—under arrest and in his custody—"Georgia law says you must do this." And, "if you don't, it may be used against you." Yet, the Supreme Court of Georgia has held the opposite: "Well actually, you don't have to do this" (Olevik) and "if you don't, the fact that you didn't can't be used against you" (Elliott). In other words, as interpreted by our Supreme Court, the implied consent notice at issue is plain wrong—and on what may be the two most salient points: "Do I have to [submit to the test]?" and "What if I don't?"

between the notice and what is permissible to be admitted at trial, until there is a contrary decision from the appellate courts, these challenges are rejected.

For the aforementioned reasons, and for other good cause show, Defendant's motions are DENIED.

SO ORDERED this 6th of September, 2023.

/s/ Susan E. Edlein
Honorable Susan E. Edlein
Judge, State Court of Fulton County, GA

In Olevik, the Supreme Court acknowledged these significant inaccuracies. Yet, in analyzing the constitutionality of the implied consent statute (and the high bar for finding a statute unconstitutional), it held that the implied consent notice is not "so misleading and inaccurate that no person can validly consent to a state-administered test once the notice has been read." 302 Ga. at 247 (3) (a). And, it held that the implied consent notice "is not per se coercive on its face." Id. at 247-250 (3) (a) (i). Instead, it held that courts still must look to the totality of circumstances to determine if consent to a breath test was provided voluntarily. *Id.* at 251 (3) (b). Here, the trial court did so, and under the facts of this case, I concur to this court's affirmance of that decision. But, I still question how such a significant divergence (between what is communicated to the suspect and what the law actually requires on two critical portions of the notice) should not weigh heavily against finding voluntary consent in many—if not most—scenarios.

APPENDIX D — DENIAL OF RECONSIDERATION OF THE SUPREME COURT OF GEORGIA, FILED MARCH 27, 2025

SUPREME COURT OF GEORGIA

Case No. S24A1112

March 27, 2025

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

EVELYN-NATASHA LA ANYANE v. THE STATE.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/, Clerk

APPENDIX E — RELEVANT STATUTORY PROVISIONS INVOLVED

Ga. Code Ann. § 40-5-55. Implied consent to tests to determine presence of alcohol or other drugs

(a) The State of Georgia considers that any person who drives or is in actual physical control of any moving vehicle in violation of any provision of Code Section 40-6-391 constitutes a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a motor vehicle upon the highways or elsewhere throughout this state shall be deemed to have given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391 or if such person is involved in any traffic accident resulting in serious injuries or fatalities. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been driving or was in actual physical control of a moving motor vehicle upon the highways or elsewhere throughout this state in violation of Code Section 40-6-391. The test or tests shall be administered as soon as possible to any person who operates a motor vehicle upon the highways or elsewhere throughout this state who is involved in any traffic accident resulting in serious injuries or fatalities. Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate which of the test or tests shall be administered, provided a blood test with

drug screen may be administered to any person operating a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities.

* * *

Appendix E

Ga. Code Ann. § 40-5-67.1. Tests to determine presence of alcohol or other drugs; implied consent notice; suspension of license; refusal to submit to testing; hearing; judicial review; attendance of law enforcement officers at implied consent hearings; certification of breath-testing instruments

* * *

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent notice from the following:

* * *

(2) Implied consent notice for suspects age 21 or over:

> "The State of Georgia has conditioned your privilege to drive upon the highways of this state upon your submission to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's license or privilege to drive on the highways of this state will be suspended for a minimum period of one year. Your refusal to submit to blood or urine testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more, your

Appendix E

Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year. After first submitting to the requested state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your *(designate which test)*?"

Appendix E

Ga. Code Ann. § 40-6-392. Chemical tests

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance shall be admissible. Where such a chemical test is made, the following provisions shall apply:

> (1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation on a machine which was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation shall approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, along with requirements for properly operating and maintaining any testing instruments, and to issue certificates certifying that instruments

have met those requirements, which certificates and permits shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences.

(B) In all cases where the arrest is made on or after January 1, 1995, and the state selects breath testing, two sequential breath samples shall be requested for the testing of alcohol concentration. For either or both of these sequential samples to be admissible in the state's or plaintiff's case-in-chief, the readings shall not differ from each other by an alcohol concentration of greater than 0.020 grams and the lower of the two results shall be determinative for accusation and indictment purposes and administrative license suspension purposes. No more than two sequential series of a total of two adequate breath samples each shall be requested by the state; provided, however, that after an initial test in which the instrument indicates an adequate breath sample was given for analysis, any subsequent refusal to give additional breath samples shall not be construed as a refusal for purposes of suspension of a driver's license under Code Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal to give an adequate sample or samples on any subsequent breath, blood, urine, or other bodily substance test shall not affect the admissibility of the results of any prior samples. An adequate breath sample shall mean a breath sample sufficient to

cause the breath-testing instrument to produce a printed alcohol concentration analysis.

(2) When a person shall undergo a chemical test at the request of a law enforcement officer, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. The arresting officer at the time of arrest

shall advise the person arrested of his rights to a chemical test or tests according to this Code section.

* * *

(d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be made of his blood, breath, urine, or other bodily substance at the time of his arrest shall be admissible in evidence against him.

APPENDIX F — AMENDED MOTION TO EXCLUDE OR SUPPRESS IN THE STATE COURT OF FULTON COUNTY, STATE OF GEORGIA, FILED JUNE 23, 2023

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CASE NO: 22CR007178D

STATE OF GEORGIA

v.

NATASHA LAANYANE,

Defendant

Filed June 23, 2023

AMENDED MOTION TO EXCLUDE OR SUPPRESS

NOW COMES Defendant in the above styled action, and moves this Honorable Court for an order excluding or suppressing all evidence obtained in violation of constitutional guarantees under the Georgia Constitution, United States Constitution and O.C.G.A. §§ 17-5-30, 24-8-824, and 24-5-506 and shows the Court as follows:

a. Defendant was stopped and detained by Officer William Nelson and Officer Aria Davis of the Sandy Springs Police Department on or about December 12, 2020. The officer(s) never observed

Defendant drive in an unsafe manner or commit a traffic offense.

b. The Defendant's driving prior to the stop did not constitute "less safe driving" or recklessness and the officer did not observe the Defendant drive in an erratic manner or commit a traffic offense. Consequently, the stop and detention of the Defendant constituted a pre-textual stop and detention which did not provide the officer probable cause to arrest Defendant for the offense of Driving Under the Influence. Nor did the nature of this stop provide the stopping officer with a reasonable articulable suspicion to detain the Defendant for an extended investigatory stop involving field sobriety tests.

c. The arresting officer (Officer Aria A. Davis) did not have a warrant for the Defendant's arrest.

d. The arresting officer did not have a warrant or attempt to obtain a warrant for Defendant's blood.

e. In each instance where suppression is sought, the Court should consider Defendant's request for relief under the stated constitutional ground, or, in the alternative, under the statutory suppression provision shown therein where appropriate, the following motions may be considered to be motions in limine. ***State v. Johnston,*** 249 Ga. 413, 414 (3), 291 S.E.2d 543 (1982); ***Smith v. State,*** 185 Ga. App. 531 (2), 364 S.E.2d 907 (1988).

Appendix F

WHEREFORE, based upon foregoing allegations, the following motions are presented:

(1) Defendant seeks to suppress the results of the State's chemical blood test because Officer Davis provided Defendant misleading misinformation that unlawfully changed the substance of the implied consent warning. Specifically, when Defendant was at the jail, the blood drawer presented Defendant with the syringe for the blood draw. The Defendant asked, "what are you taking my blood for?" The blood drawer looked to Officer Davis who was in the room. Officer Davis, instead of re-reading the implied consent warning, told Defendant the blood draw was "part of your DUI case." This information was misleading, coercive and deceptive, inasmuch as Officer Davis *implied* that the Defendant was required to take the State's chemical test, when in fact the test is not required. This misinformation unlawfully changed the substance of the ICW. (§§ 40-6-392, 40-5-67.1 and 40-5-55). See ***State v. Leviner,*** 213 Ga. App. 99 (1994). The State cannot demand and compel a blood test or suspend a driver's license for refusal to submit to a blood test because of constitutional protections.

This is conduct which constitutes a violation of Defendant's rights to due process and equal protection under the Georgia Constitution, O.C.G.A. § 17-5-30 and under the Sixth and Fourteenth Amendments to the United States

Constitution. Defendant's rights to be free from these searches are supported by the Fourth Amendment of the United States Constitution and/or Georgia Constitution Article I, Section I, Paragraphs I, VII, XIII and XVI. *See* ***Elliott v. State***, 305 Ga. 179, 824 S.E.2d 265 (2019), ***State v. Peirce***, 257 Ga.App. 623, 571 S.E.2d 826 (2002), ***Williams v. State***, 296 Ga. 817, 771 S.E.2d 373 (2015), and ***Birchfield v. North Dakota***, 136 S. Ct. 2160 (2016).

(2) No manufacturer or specific type of testing device has ever been approved by the GBI Implied Consent Rules. Further, the lack of approval does not comport with ***Corner v. State,*** 223 Ga. App. 353, 477 S.E.2d 592 (1996). This lack of formal approval violates the Defendant's right of due process under both the Georgia Constitution and United States Constitution. The alleged "approval" of any blood testing machine violates the Separation of Powers guaranteed by the Georgia Constitution and the United States Constitution.

(3) Defendant seeks to suppress the results of the State administered chemical blood test because no emergency existed that prevented or made it impractical for Officer Davis to obtain a search warrant. There is no evidence that obtaining a search warrant would have substantially impaired the ability of the State to obtain a breath, blood or urine sample from the Defendant. A breath test was available as a less intrusive test. As a result,

the failure to obtain a search warrant violated Defendant's constitutional guarantees under the Georgia and United States Constitutions and O.C.G.A. §§ 17-5-30, 24-5-506, and 24-8-824. Defendant's rights to be free from these searches are supported by the Fourth Amendment of the United States Constitution and/or Georgia Constitution Article I, Section I, Paragraphs I, VII, XIII and XVI. *See* ***Williams v. State***, 296 Ga. 817, 771 S.E.2d 373 (2015), ***Birchfield v. North Dakota***, 136 S. Ct. 2160 (2016), ***Elliott v. State***, 305 Ga. 179, 824 S.E.2d 265 (2019), and ***State v. Peirce***, 257 Ga.App. 623, 571 S.E.2d 826 (2002).

(4) Defendant seeks to exclude the results of the State administered blood test because the mandatory language of O.C.G.A. § 40-6-392 is in violation of the Separation of Powers guaranteed by the Georgia Constitution and the United States Constitution. With regard to the admissibility of evidence O.C.G.A. § 40-6-392 provides:

> Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance **shall be admissible.**

This language is in conflict with the Georgia Constitution, the United States Constitution and well-settled case law. *See* ***Calhoun v. State Highway Dept.***, 223 Ga. 65, 68 (1967)([i]t is beyond the power of the General Assembly to specify what evidence can or cannot be introduced to prove just and adequate compensation. If [the Legislature] have such power they could exclude all evidence and thus destroy the Constitution and private property also. If they can by the 1966 Act exclude evidence held judicially to be relevant and admissible as was done in [an earlier opinion], they can render the judiciary impotent.); ***Mason v. Home Depot U.S.A., Inc.,*** 283 Ga. 271, 285–86 (2008) ("[w]e have recognized that our zealous protection of the courts is necessary because '[s]uch palpable usurpation of exclusive judicial functions by the legislature offends the Constitution, paralyzes the judicial function, ... and constitutes a potential destruction of the judicial process.) ***Northside Manor, Inc. v. Vann***, 219 Ga. 298, 301 (1963); ***United Hospitals Service Assn. v. Fulton County***, 216 Ga. 30, 33 (1960); ***McCutcheon v. Smith***, 199 Ga. 685 (1945): ***Calhoun***, supra; ***J.M.I.C. Life Ins. Co. v. Toole***, 280 Ga.App. 372(1)(b), 634 (2006).

(5) The procedure and/or technique used to collect, gather, transport, store, and test Defendant's blood sample has not reached a scientific stage of verifiable certainty as required by the proper standard in O.C.G.A. § 24-7-702 (***Daubert v.***

Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)). It is a Due Process violation (both federal and state constitutions) to administer a blood test without reliable and accurate results when Defendant submitted to the blood test.

(6) The Georgia Implied Consent scheme (including, but not limited to, O.C.G.A. §§ 40-5-55, 40-5-67.1 and 40-6-392) is unconstitutional (under both federal and state constitutions) on its face and as applied to the facts of this case. The unconstitutional conditions doctrine prohibits the government from requiring the relinquishment of constitutional rights in order to secure a government benefit. The government cannot negotiate away constitutional rights with the ICW. The notice as applied to the facts of this case is unconstitutional and violates due process (under both federal and state constitutions). O.C.G.A. § 40-5-67.1 that allows the officer to select the most intrusive blood test as the only option for Defendant to comply with the implied consent laws is unconstitutional on its face and as applied to the facts of this case. Defendant incorporates all arguments contained in this Motion by reference as if contained fully within this enumeration. The State cannot demand a blood test at the threat of the admissibility of the refusal to submit to the test to be used against Defendant in a criminal trial and a threat of a license suspension (or privilege to drive on the highways of this state). This is particularly true in a DUI alcohol case

where breath testing is available. The demand for blood was unreasonable and unconstitutional. Defendant's rights to be free from these searches and to require the State to obtain a warrant are supported by the Fourth Amendment of the United States Constitution, the Georgia Constitution Article I, Section I, Paragraphs I, VII, XIII and XVI, and the Due Process Clauses of both state and federal constitutions.

(7) Defendant seeks to suppress all evidence gathered after the stop and continued detention of the Defendant since the seizure of the Defendant was based on a pre-textual traffic stop and detention. The initial officer to stop and detain Defendant did not have a reasonable articulable suspicion to stop Defendant nor to continue to detain Defendant and refuse to allow Defendant to leave. Upon initial contact with the police Defendant was unlawfully detained. Defendant was unlawfully arrested. The officer did not develop sufficient probable cause to arrest Defendant for any offense. The arrest of the Defendant for each offense was illegal and all evidence obtained following this arrest must be suppressed. The officers (including, but not limited to Officer A.A. Davis and Officer Nelson) stopped and detained Defendant for an unreasonable time period. The detention by the initial officer exceeded a reasonable time frame which resulted in an unlawful arrest prior to the field sobriety exercises. All officers unlawfully prolonged the detention of Defendant and did not expeditiously and diligently address the mission of the stop

and detention. The officers informed Defendant that Defendant was not free to leave and would be going to jail prior to completion of the field sobriety testing. Defendant seeks suppression either under the United States Constitution, Fourth Amendment, Fifth Amendment, the Georgia Constitution, Ga. Const., Art I, Sec. I, Pars. I, VII, XIII, and XVI and under O.C.G.A. § 17-5-30.

(8) In each instance where suppression is sought, the Court should consider Defendant's request for relief under the stated constitutional ground, or, in the alternative, under the statutory suppression provision shown therein where appropriate. In addition, theses motions may be considered to be motions in limine. ***State v. Johnston***, 249 Ga. 413, 414 (3), 291 S.E.2d 543 (1982); ***Smith v. State***, 185 Ga. App. 531 (2), 364 S.E.2d 907 (1988). All paragraphs of this Motion to Suppress should be considered in their entirety and with all paragraphs and legal arguments adopted as part of each individual paragraph as if contained fully within each paragraph.

WHEREFORE, Defendant requests:

(A) That the Court conduct a hearing prior to trial to inquire into these matters;

(B) That the State be required to provide all requested discovery materials (filed simultaneously with this

motion) insofar as any of the requested discovery materials pertains to this motion. Defendant requests that such data be supplied to Defendant's counsel at least 10 days prior to the hearing date, so that counsel for Defendant may organize said evidence to support the motion to suppress;

(C) That all illegally obtained evidence as enumerated above be suppressed.

Dated: June 23, 2023.

/s/ Casey A. Cleaver
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