

7 Fla. L. Weekly Supp. 664a

Criminal law -- Driving under influence -- Evidence -- Blood test -- Officer who responded to accident scene was justified in requesting blood test where he smelled alcohol on defendant/driver's breath, witnessed unsteady nature of defendant's feet, and was told by fellow officer that other individuals involved in accident had been taken to hospital on stretchers and that it did not look good for small child who was in other vehicle -- Three-hour delay between accident and time blood was taken did not render samples inadmissible

GREGORY SIMONTON, Appellant, v. STATE OF FLORIDA, Appellee. Circuit Court, 17th Judicial Circuit (Appellate) in and for Broward County. Appeal Case No. 98-78AC10A (Judge Backman). Case No. 98-5316MM10A (Judge Lee). July 18, 2000. Paul L. Backman, Judge. Counsel: Charles D. Barnard, Ft. Lauderdale, for Appellant. James P. McLane, Assistant State Attorney.

OPINION

THIS CAUSE came before the Court upon Appellant's, Gregory Simonton, appeal of a Final Order Imposing Judgment of Conviction rendered on June 23, 1998, and the Final Order Imposing Sentence rendered on that same date. Having considered the Appellant's brief, the Appellee's answer, the record on appeal, the applicable case law, and being otherwise fully advised in the premises, this Court finds and decides as follows:

On November 14, 1997, the State Attorney of the Seventeenth Judicial Circuit charged Simonton with driving under the influence. On May 15, 1998, Simonton filed a motion to suppress blood test results, which was later denied by the Honorable Robert W. Lee [[5 Fla. L. Weekly Supp. 696b](#)], and the blood test results were admitted into evidence. At a bench trial conducted by the Honorable Robert W. Lee, Simonton was found guilty of driving under the influence and sentenced to twelve months of probation. During trial, Deputy Frank Sanchez testified that when he arrived at the scene, Deputy Dunbar told him that the two other individuals involved in the accident had been taken to the hospital in stretchers and that it did not look good for the smaller child in the other vehicle. As a result, Deputy Sanchez, after smelling the odor of alcohol on Simonton's breath and witnessing his unsteady feet, requested that Simonton give a blood sample, since Simonton was not willing to take a breath test. Deputy Sanchez personally escorted Simonton to the hospital, witnessed the blood test, and sealed the blood sample following the directions. According to the record, the accident occurred approximately three hours before the blood sample was taken. Simonton also introduced the testimony of an expert witness in blood testing, Rick Swope, who testified that while the samples may be less reliable when taken after the two hour period, the two hour period does not render the samples false.

Simonton contends that the trial court erred in refusing to suppress the test results of the blood samples taken from Simonton. Furthermore, Simonton appeals his conviction and sentence on the grounds that the officers on the scene lacked the grounds for demanding the blood test and that the delay in taking the blood samples was unreasonable.

Deputy Sanchez, the officer on the scene, did not lack grounds for demanding the blood test. Fla. Stat. §316.1933 provides in pertinent part,

. . . if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcoholic beverages, . . . has caused the death or serious bodily injury of a human being, such person shall submit, upon the request of a law enforcement officer, to a test of a person's blood for the purpose of determining the alcoholic content thereof . .

Courts have acknowledged that probable cause ``is a fluid concept that deals in probabilities which include common sense conclusions by law enforcement officers." *Williams v. State*, 731 So.2d 48, 51 (Fla. 2d DCA 1999). Upon arrival on the scene, Deputy Sanchez spoke with the driver of the vehicle, Simonton. When Deputy Sanchez smelled the alcohol on Simonton's breath and witnessed the unsteady nature of Simonton's feet, he had probable cause to believe that Simonton was under the influence of alcohol. Moreover, Deputy Dunbar told Deputy Sanchez, upon Deputy Sanchez's arrival on the scene, that the other individuals in the accident had been taken to the hospital on stretchers and that it did not look good for the small child. As a result, Deputy Sanchez reasonably believed that the other individuals in the accident sustained serious bodily injuries, and as such, Deputy Sanchez was justified in requesting a blood test in accordance with Fla. Stat. §316.1933. The record indicates that Deputy Sanchez reasonably believed that Simonton was the driver of the vehicle, that individuals involved in the accident had received serious bodily injury, that Simonton was under the influence of alcohol, and that Simonton caused the accident. Thus, Deputy Sanchez was justified in seeking the blood sample, which Simonton later consented to take.

Moreover, the three-hour delay between the time when the blood was taken and the occurrence of the accident did not render the samples inadmissible. According to Florida law, blood test results should be admissible provided that an unreasonable amount of time has not elapsed. *See Miller v. State*, 597 So.2d 767, 769 (Fla. 1991). In the past, courts have held that samples taken as long as four hours after the time of the accident are admissible. *See State v. Banoub*, 700 So.2d 44, 44 (Fla. 2d DCA 1997). The expert that testified for Simonton admitted that while it was his testimony that after the two-hour time period the blood test might be less reliable depending upon the variables, it was not the expert's testimony that Simonton's blood test readings were false. Thus, the samples were taken within a reasonable amount of time according to Florida law. Therefore, this Court finds that the blood samples were properly admitted into evidence.

Accordingly, it is hereby:

ORDERED and ADJUDGED that Simonton's conviction and sentence for driving under the influence is *Affirmed*.

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