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Tahnicia Phillips
Tahnicia Phillips, Clerk of State Court
Cobb County, Georgia

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA :
:
v. : CASE NO.
:
, :
Defendant

Order Denying in Part and Granting in Part Defendant's
Motion To Suppress Evidence

Background

On October 20, 2024, officers of the Cobb County Police Department arrested Defendant for Driving Under the Influence (Less Safe) (Alcohol) and Failure to Maintain Lane.

filed an omnibus motions packet of motions in limine and motions related to her arrest In addition to motions to suppress on reasonable and articulable suspicion for the traffic stop, the allegedly illegal *Terry* pat-down , and probable cause for her arrest, also sought exclusion of all evidence of her refusal to submit to State-administered chemical testing on constitutional grounds under both the Fourth Amendment to the United States Constitution and Article I, Section I, Paragraphs XIII and XVI of the Georgia Constitution of 1983 ("Par. XIII" and "Par. XVI").

On February 25, 2026, the Court held an evidentiary hearing on said motions. At the hearing, defense counsel narrowed issues to be determined at the hearing for purposes of excluding the admission of evidence to the following:

1) Whether the officers had reasonable articulable suspicion to stop the ████'s vehicle,
2) Whether there was an unlawful *Terry* pat-down ,
3) Whether probable cause existed for ████'s arrest, and
4) Whether the Georgia's Implied Consent Warning is inherently coercive.

During the hearing, the State presented the testimony of Cobb County Police Officer A. Joliet ("Joliet") and introduced into evidence the officer's body camera footage without objection.

Having considered the evidence, testimony, arguments of counsel, and the full body of applicable authority, the Court hereby DENIES ████'s motions to suppress on reasonable and articulable suspicion for the traffic stop, an allegedly unlawful *Terry* pat-down , and probable cause for her arrest. The Court, however, GRANTS ████'s Motions as to the blood test refusal evidence.

Findings of Fact

On October 20th, 2024, Joliet, a post-certified law enforcement officer with the Cobb County Police Department, received a dispatch about concerning and erratic driving which led him to locate ████'s vehicle. He then witnessed the ████'s vehicle fail to maintain lane several times. Based on this, Joliet initiated a traffic stop. Upon contact with ████, Joliet notified her that he had received some calls about her driving and had witnessed her failing to maintain lane. When ████ indicated to the officer that she was upset, Joliet noted that her speech was slurred. When asked if she had been drinking, ████ admitted to having consumed alcoholic beverages. Joliet asked ████ if she was currently taking any prescription medication. She indicated to Joliet that she was not.

Joliet testified that the ████'s eyes were glossy. Joliet called in signal 30 (possible driving under the influence) and at that time he asked ████ to step out of the vehicle. Joliet asked the ████ several times to step out of the vehicle. ████ continuously apologized and took several moments to comply with the officer's order. Joliet further

testified that once [redacted] was out of the car, he lifted her sweater because she had on a large hoodie, and he could not see her waistband to determine whether she had a concealed weapon. Joliet further testified that it was the Cobb County Police Department's policy to pat down for officer safety.

At that time, Joliet informed [redacted] that all the field sobriety testing was voluntary. Joliet asked medical clearance questions by asking about her medical conditions and physical injuries. Joliet asked [redacted] if she has a preferred leg to stand on. [redacted] mention a leg injury, but she consented to performing the One Leg Stand. Joliet asked if [redacted] would be willing to submit to a preliminary breath sample and she refused. [redacted] also performed further field sobriety evaluations including the walk and turn, the alphabet test, HGN, and VGN. Joliet noted clues were present for impairment, and, based on the totality of the circumstances, he believed [redacted] was under the influence of alcohol to the extent that it made her a less safe driver. Joliet did not seek a warrant for [redacted]'s arrest but arrested her on citation.

After placing [redacted] under arrest for DUI Alcohol (and not DUI drugs), Joliet read to [redacted] Georgia's Implied Consent Warning ("ICW") pursuant to O.C.G.A. § 40-5-67.1(b). Unlike most cases in which officers designate only one type of test, the officer requested a State-administered chemical test of [redacted]'s blood, breath, and urine. The ICW read to [redacted] informed her, among other things, that: (1) the State conditioned her driving privilege on submission to chemical testing; (2) refusal would result in a minimum one-year license suspension; and (3) her refusal to submit to blood or urine testing may be offered into evidence against her at trial.

[redacted] refused to submit to the State-administered test of her blood, breath, and urine. No warrant for [redacted]'s blood, breath, or urine was sought at any time before or after the refusal.

Principles and Conclusions of Law

1) Officer Joliet had reasonable articulable suspicion to stop the [redacted]'s vehicle.

It is well established that, "There are at least three types of police-citizen encounters: verbal communications that involve no coercion or detention and which do not fall within the purview of the Fourth Amendment; brief stops or seizures that must be supported by a reasonable suspicion; and full-scale arrests, which must be supported by probable cause."[1] "Even absent probable cause, during the second-tier counter, 'an officer is authorized stop and detain a person briefly when the officer has of particularized and objective basis for suspecting the person is involved in criminal activity.'"[2] An officer may conduct a brief investigative stop of a vehicle if the stop is justified by specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.[3] A court must consider whether, under the totality of circumstances, the police officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity.[4] However, the stop of a vehicle is also authorized if the officer observed a traffic offense.[5]

The evidence demonstrates that Joliet was justified in conducting a brief investigation detention where, under the totality of circumstances, he had a specific and articulable factual basis which, taken together with rational inferences from those facts, provided a particularized and objective basis for suspecting [redacted] of criminal activity. The evidence includes the dispatches from concerned citizens for a vehicle matching the [redacted]'s vehicle's description and Joliet witnessing of her failing to maintain lane.

Likewise, once the stop of the [redacted]'s vehicle occurred and upon contact with the [redacted], Joliet developed articulable suspicion for continued detention. Joliet noted the odor

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[1] Smith v. State, 228 Ga. App. 87, 88 (2007).
[2] State v. Holt, 334 Ga. App. 610,614-615 (2015).
[3] Steinberg v. State, 286 Ga. App. 417, 418 (2007).
[4] Id.
[5] Baynes v. State, 294 Ga.App.452 (2008).

of alcoholic beverage upon the ████'s breath, her watery eyes and her admission to consuming alcoholic beverages prior to driving.

This court finds that Joliet had a reasonable articulable suspicion to stop ████'s car on October 20, 2024.

Therefore, this Court finds that the State has met its burden, as to this issue, and DENIES the ████'s motion on this argument.

2) The *Terry* pat down was not illegal.

A *Terry* protective pat down is unreasonable absent evidence showing that the officer performing such a pat down believes the suspect to be armed or a threat to personal safety.[6] "[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger."[7] "[A] pat-down search, even a forcible one, does not amount to "custody" that would trigger the duty to read a *Miranda* warning."[8] "*Miranda* warnings are not required when a person responds to an officer's initial inquiry at an on-the-scene investigation which has not become accusatory."[9]

Here, Joliet was concerned the driver of the vehicle was impaired. Joliet could not immediately discern if ████ was concealing a weapon, and he lifted her sweater and conducted a brief pat-down for officer safety on a traffic stop and impaired driving investigation.

This Court finds that the pat-down of ████ was lawfully done for officer safety and that all standardized field sobriety testing was voluntary and not the product of officer misconduct, influence, or coercion.

Therefore, this Court finds that the State has met its burden, as to this issue, and DENIES ████'s motion on this argument.

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[6] Montgomery v. State, 279 Ga. App. 419, 420, 631 S.E.2d 717, 718 (2006)

[7] Id.

[8] Id.

[9] Id. *See also* Whatley v. State, 196 Ga. App. 73, 78(5), 395 S.E.2d 582 (1990). Thompson v. State, 234 Ga. App. 74, 75(1)(a), 506 S.E.2d 201 (1998).

3) Probable cause existed for the arrest.

Sufficient probable cause to conduct a driving under the influence arrest only requires that an officer have knowledge or reasonably trustworthy information that a 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.[10] A court should look to the totality of the circumstances to determine probable cause to arrest, all facts and circumstances known to the officer must be evaluated in connection with one another. Additionally, odor of alcohol, bloodshot or watery eyes combined with a traffic violation can give rise to probable cause to investigate and arrest.[11] "Even in the absence of the field sobriety tests, the officer's observation that a defendant had bloodshot, watery eyes and exuded an odor of alcohol was sufficient to show probable cause to arrest (her) for driving under the influence."[12] [redacted] was observed weaving out of her lane, she had an odor of alcoholic beverage coming from her person, her eyes were watery, and she admitted to drinking before driving. The officer obtained additional probable cause based on the [redacted]'s performance on the field sobriety evaluations.

This Court finds that there was probable cause to arrest [redacted] and **DENIES** [redacted]'s motion on this argument.

4) [redacted]'s refusal of the state-administered blood test is inadmissible as it violates the constitutions of the State of Georgia and the United States.

The State seeks to introduce evidence of [redacted]'s refusal of blood at trial as evidence of guilt against the driver as authorized by O.C.G.A. § 40-6-392(d). It is clear, based on precedent, that breath refusal and urine refusal are inadmissible. This Order addresses

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[10] Trotter v. State, 256 Ga. App. 330 (2002). See also Firsanov v. State, 270 Ga. 873 (1990). See also State v. Damato, 302 Ga. App.181, 182 (2010) and Blanks v. State, 334. App. 626 (2015). Hughes v. State, 296 Ga. 744 (2015).
[11] See State of Young, 334 Ga. App. 161 (2015), Baker v. State, 295 Ga. App. 162 (2008) and Oliver v. State, 208 Ga. App. 290 (2004).
[12] Cann-Hanson v. State, 233 Ga. App. 690, 691 (1996).

expressly and separately both the federal and state constitutional grounds for suppression. This Court is mindful of the Georgia Supreme Court's instruction in the transfer order of McLemore v. State, S25A0440 (Ga. June 10, 2025), that a state constitutional challenge under Paragraph XIII requires a distinct, cogent argument and a distinct ruling. This Order provides both.

a. Rule 403 Analysis Under O.C.G.A. § 24-4-403

Pursuant to State v. Randall, 318 Ga. 79, 82-83 (2024), this Court must address the Rule 403 question before reaching [redacted]'s constitutional claims. Under O.C.G.A. § 24-4-403, relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. This Court conducts that analysis now, consistent with the approach taken by Judge Allison Barnes Salter in State v. Fuller, 24-T-1758 (Cobb County State Court, Aug. 8, 2025), which this Court finds persuasive.

The blood refusal evidence has some probative value to the jury. The State may argue that evidence of [redacted]'s refusal is relevant to explain the absence of chemical test results, a gap in the evidence the jury might otherwise find difficult to understand. The Court acknowledges this limited relevance. However, there are many reasons wholly unrelated to guilt why an arrested person may refuse a blood draw: concern about needles, medical conditions, fear of infection, awareness of constitutional rights, or the advice of counsel. As the Georgia Supreme Court's concurrence in State v. Dias, 321 Ga. 261 (2025) recognized, refusal of a blood test carries substantial risk of unfair prejudice because the jury is powerfully inclined to treat it as consciousness of guilt. Moreover, a defendant under arrest is not free to leave regardless of whether she refuses, meaning the usual inference that "only a guilty person would refuse" is untethered from any logical foundation.

Nevertheless, this Court cannot conclude that the probative value of the refusal evidence, offered for the limited purpose of explaining the absence of test results, is substantially outweighed by the danger of unfair prejudice under Rule 403. The State has a legitimate interest in explaining why no chemical test result exists, and that interest has

some evidentiary weight. Accordingly, the Court does not exclude the refusal evidence under Rule 403. The probative value of the refusal is not substantially outweighed by the danger of unfair prejudice.

Because the refusal evidence survives Rule 403, this Court must proceed to [redacted]'s constitutional claims. It is to those claims that the Court now turns, and on those grounds, the Court finds that the blood test refusal must be suppressed.

b. Fourth Amendment of the United States Constitution

1. Blood draws are searches protected by the Fourth Amendment.

The Fourth Amendment guarantees the right of the people to be secure in their persons against unreasonable searches and seizures and requires a warrant supported by probable cause before such searches may be conducted. A blood draw is a search within the meaning of the Fourth Amendment. Schmerber v. California, 384 U.S. 757, 767 (1966). Blood draws implicate the most intimate expectations of bodily privacy; they require physical penetration of the skin and vascular system and yield a sample capable of revealing a vast range of private medical and DNA information beyond alcohol content. Birchfield v. North Dakota, 579 U.S. 438, 463-64 (2016).

2. The warrantless request for blood was unreasonable absent a warrant or recognized exception.

A warrantless search is *per se* unreasonable unless it falls within a recognized exception to the warrant requirement. Katz v. United States, 389 U.S. 347, 357 (1967). In Missouri v. McNeely, 569 U.S. 141 (2013), the Supreme Court categorically rejected the claim that the natural dissipation of alcohol in the blood creates a per se exigent circumstance justifying a warrantless blood draw in DUI cases. If an officer can reasonably obtain a warrant "without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Id. at 152.

Birchfield confirmed that "the Fourth Amendment allows warrantless breath tests, but as a general rule does not allow warrantless blood draws, incident to a lawful drunk-driving arrest." 579 U.S. at 476 n.8. The blood demand in the instant case was therefore unreasonable without a warrant. While Birchfield permits a warrantless breath test as a search incident to a lawful arrest, that exception does not authorize a coercive demand for an intrusive blood test with threats of both criminal evidentiary penalties and a minimum one-year license suspension. Consent obtained under those conditions is not free and voluntary consent. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). No exigent circumstances, valid consent, or other recognized exception existed for the designated blood test. No warrant was sought for state administered chemical testing.

3. had a constitutional right to refuse, and that right cannot be used against her.

Because the demand for a warrantless blood draw was unconstitutional, 's refusal to comply was not merely a statutory act, it was the exercise of a constitutional right. Williams v. State, 296 Ga. 817, 819 (2015) ("warrantless searches are presumed to be invalid"). A defendant cannot be penalized for exercising a constitutional right. Mackey v. State, 234 Ga. App. 554, 555 (1998) ("[A]n individual can invoke his Fourth Amendment rights without having his refusal used against him at trial."). This principle is firmly established. Georgia appellate courts have uniformly held that evidence of a defendant's invocation of the right to refuse a warrantless search may not be used against the defendant as probable cause for a warrant (Miley v. State, 279 Ga. 420, 422 (2005)); as probable cause for arrest (Gardner v. State, 255 Ga. App. 489, 494 (2002)); as articulable suspicion for detention (State v. Kwiatkowski, 238 Ga. App. 390 (1999)); nor as evidence of guilt at trial. The logical chain is inescapable: If refusal cannot be used to justify a warrant, an arrest, or a detention, it cannot be used as evidence of guilt to convict. The legislature's "constitutional power cannot be used by way of condition to obtain an unconstitutional

result. The state cannot use its most characteristic powers to reach unconstitutional results." McIntyre v. Harrison, 172 Ga. 65, 157 S.E. 499, 507 (1931).

Federal courts are in accord. "[C]ourts have unanimously held that a defendant's refusal to consent to a warrantless search may not be presented as evidence of guilt." United States v. Runyan, 290 F.3d 223, 249 (5th Cir. 2002). "[S]o long as there is no waiver on her part, her refusal cannot be used against her." United States v. Prescott, 581 F.2d 1343, 1352 (9th Cir. 1978). Refusing a warrantless search is "analogous to the assertion of the privilege against self-incrimination," and a prosecutor's use of such refusal "can have but one objective: to induce the jury to infer guilt." Id. at 1351-52.

The Kentucky Supreme Court's thorough analysis in Commonwealth v. McCarthy, 628 S.W.3d 18 (Ky. 2021), is particularly instructive. McCarthy held that after Birchfield recognized the constitutional right to refuse a blood draw, "use of McCarthy's now-constitutionally-recognized right to refuse a blood test as evidence of guilt of DUI was improper." Id. at 36. McCarthy further rejected the argument that refusal evidence could be admitted through the "back door" simply to explain the absence of scientific evidence: "The difficulty the Commonwealth found itself in with regard to an absence of scientific evidence was largely its own doing" because it chose not to use available breath testing or seek a warrant. Id. at 37. The same is true in this matter.

C. Article I, Section I, Paragraph XIII of the Georgia Constitution of 1983 — Independent State Constitutional Grounds

This Court addresses the Georgia constitutional question separately and independently, as required by McLemore, S25A0440, and as instructed by the framework in cases such as La Anyane v. State, 321 Ga. 312 (2025), and Smallwood v. State, 310 Ga. 445, 447 (2020). The argument below is distinct from the Fourth Amendment analysis and rests on independent Georgia constitutional grounds.

1. Paragraph XIII provides independent and, in some respects, broader protection than the Fourth Amendment.

Paragraph XIII of the Georgia Constitution provides: "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 warrant shall issue except upon probable cause supported by oath or affirmation particularly describing the place or places to be searched and the persons or things to be seized." Par. XIII. Georgia courts have recognized that Paragraph XIII may afford protections beyond those guaranteed by the Fourth Amendment in appropriate cases. See, *e.g.*, Olevik v. State, 302 Ga. 228, n.3 (2017).

In Olevik, the Georgia Supreme Court analyzed Paragraph XIII separately and held that it protects Georgia citizens from compelled warrantless blood draws. Id. at 233. The Court held that "Georgians do have a constitutional right to refuse to consent to warrantless blood tests, absent some other exception to the warrant requirement." Id. No exception existed here. The government cannot compel a warrantless blood test as a search incident to arrest under either the Fourth Amendment or Paragraph XIII. State v. Johnson, 354 Ga. 447, 454 (2020) (citing Birchfield, 579 U.S. 438).

2. The right to refuse is constitutionally protected under Paragraph XIII, and its exercise may not be chilled.

Because the right to refuse a warrantless blood draw is also secured by Paragraph XIII, "the exercise of such right may not be chilled or unduly burdened." State v. Fuller, 24-T-1758 (Cobb County State Court, Aug. 8, 2025) (Salter, J.), adopted in State v. Short, 24-T-8761 (Cobb County State Court, Oct. 13, 2025) (Manning, J.). Georgia appellate courts have consistently held that the invocation of this right cannot be considered in the context of search warrants, probable cause, or articulable suspicion. Miley, 279 Ga. at 422; Gardner, 255 Ga. App. at 494; Schmidt v. State, 188 Ga. App. 85 (1988); Kwiatkowski, 238 Ga.

App. 390. The same logic compels the conclusion that it cannot be used before a factfinder at trial to establish guilt where a jury may be unlawfully influenced far more than a judge.

To permit the State to use evidence of the invocation of this Paragraph XIII right before the jury deciding [REDACTED]'s guilt "is simply the end of the same analytical road that leads from warrant affidavits to arrest, to brief detention." Fuller, 24-T-1758. It cannot be improper to consider a defendant's invocation of the right to refuse in all those contexts, yet permissible to do so in the one context that matters most. This Court declines to draw that line.

3. The Georgia Constitution's Paragraph XIII analysis is a novel and unresolved question that this Court now addresses on the merits.

The Georgia Supreme Court noted in State v. Randall, 318 Ga. 79, 81 (2024), and confirmed in McLemore, S25A0440, that "the constitutionality of the implied consent statutes' authorization of the admission of blood-test refusal evidence as a matter of Georgia constitutional law indeed presents a novel issue." This Court now resolves that novel issue on the merits: Under Paragraph XIII, a defendant's constitutionally protected refusal to submit to a warrantless search of her person may not be offered as evidence of guilt or for any other reason in a criminal proceeding in the State's case-in-chief. Any statute purporting to authorize such use is unconstitutional as applied.

d. The Implied Consent scheme imposes unconstitutional conditions and impermissible burdens on the exercise of constitutional rights.

Georgia's implied consent intertwined statutes—O.C.G.A. §§ 40-5-55, 40-5-67.1, and 40-6-392—condition driving privileges on submission to warrantless chemical testing and threaten both criminal evidentiary consequences and a minimum one year license suspension for refusal. These statutes violate the unconstitutional conditions doctrine.

"[R]egardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids

burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 606 (2013). "A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing." Id. at 612. McNeely and Birchfield establish that Georgia cannot constitutionally compel a warrantless blood draw absent a warrant or exigent circumstances. Therefore, Georgia's implied consent statutes unlawfully condition driving privileges and criminal evidentiary consequences on a motorist's forfeiture of constitutional rights.

Moreover, a statute that has "no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them" is "patently unconstitutional." United States v. Jackson, 390 U.S. 570, 581 (1968). O.C.G.A. § 40-6-392(d), which authorizes use of refusal evidence at trial serves no purpose other than to penalize the exercise of the Fourth Amendment and Paragraph XIII rights to refuse a warrantless search. It is unconstitutional.

When the implied consent notice informs persons under arrest that refusal will be used as evidence against them at trial, it deprives them of an intelligent, free choice between claiming or surrendering her constitutional rights. Johnson v. United States, 318 U.S. 189, 196-97 (1943). [redacted] was told that her constitutional right, if exercised, would be used as evidence to convict her. Presented with that choice, surrender the right or face a criminal penalty for asserting it, the right is reduced to "a mere form of words." Id. The Constitution does not permit the State to maintain rights in name only while eliminating them in practice.

e. The State's failure to seek a warrant is not excused and cannot benefit the State at trial.

No evidence before this Court establishes that the State attempted to obtain a warrant. The State cannot argue that obtaining a warrant would have substantially impaired

the ability of the State to secure evidence of [redacted]'s blood alcohol content when it did not make an attempt. Missouri v. McNeely, 569 U.S. 141 (2013). Georgia's electronic warrant statute, O.C.G.A. § 17-5-21.1, permits officers to apply for warrants by video conference, making the warrant process available even in the middle of the night. Id. at 154. No officer sought a warrant. There was no exigency. The failure to seek a warrant was Joliet's choice.

The State cannot benefit at trial, through admission of refusal evidence, from its own deliberate decision not to obtain a warrant. "The absence of scientific evidence [is] the result of the [State's] own actions or rather inactions." McCarthy, 628 S.W.3d at 37. The exclusionary rule exists precisely to remove the incentive to abandon constitutional obligations. Elkins v. United States, 364 U.S. 206, 217 (1960). To permit the State to use blood refusal evidence to fill the evidentiary void created by its own failure to seek a warrant would wholly invert that purpose.

f. O.C.G.A. § 40-6-392(d) is unconstitutional as applied; O.C.G.A. §§ 40-5-55 and 40-5-67.1 are unconstitutional to the extent they authorize or require the admission of refusal evidence in a criminal proceeding.

For all of the foregoing reasons, O.C.G.A. § 40-6-392(d), which provides that a defendant's refusal to submit to testing "may be offered into evidence against" the defendant at trial, is unconstitutional as applied to the facts of this case under both the Fourth Amendment and Paragraph XIII of the Georgia Constitution. The statute permits the State to use the exercise of a constitutionally protected right as evidence of criminal guilt, which the Constitution forbids.

O.C.G.A. §§ 40-5-55 and 40-5-67.1 are unconstitutional as applied to the extent the statutes authorize or require the ICW to inform a defendant that refusal evidence will be used against her at trial, thereby chilling the exercise of her constitutional rights to refuse a warrantless search. See Elliott v. State, 305 Ga. 179 (2019); Williams v. State, 296 Ga. 817 (2015).

This Court further notes that the Georgia ICW statutes are mutually dependent; O.C.G.A. §§ 40-5-55, 40-5-67.1, and 40-6-392 each rely upon the entire statutory framework to effectuate the legislature's purpose of coercing submission to warrantless blood demands under threat of unconstitutional penalties. Because the constitutionally offensive provisions are not severable from the scheme's operation, removing them guts the coercive mechanism entirely, the Court finds that the ICW as administered to is void as applied. Because this statutory framework was modified and enacted by the legislature in 2019, it was void *ab initio* because the McNeely and Birchfield cases both confirmed the constitutional right to refuse a blood test prior to 2019.

g. Scope of Exclusion: Blood, Breath, and Urine

Joliet requested State-administered chemical testing of 's blood, breath, and urine. refused all three. The grounds for exclusion as to each modality are as follows:

Blood. For all the reasons set forth in Sections A through F above, evidence of 's refusal to submit to the warrantless blood draw is suppressed under the Fourth Amendment and Paragraph XIII of the Georgia Constitution.

Breath. Evidence of 's refusal to submit to a breath test is inadmissible as a matter of settled Georgia law. Elliott v. State, 305 Ga. 179 (2019); Olevik v. State, 302 Ga. 228 (2017).

Urine. Evidence of 's refusal to submit to a urine test is inadmissible as a matter of settled Georgia law. Awad v. State, 313 Ga. 99 (2022).

The State may not introduce evidence of 's refusal of blood, breath, or urine testing individually or in combination for any purpose at trial.

Order

Based upon the foregoing findings and analysis, it is hereby ORDERED as follows:

1. The Court hereby DENIES ████’s motions to suppress on reasonable and articulable suspicion for the traffic stop, an allegedly unlawful *Terry* pat-down, and probable cause for her arrest.
2. The Court, however, GRANTS ████'s Motions as to the blood test refusal evidence.
3. The Court further finds that:

   - O.C.G.A. § 40-6-392(d) is UNCONSTITUTIONAL AS APPLIED to the facts of this case, under both the Fourth Amendment and Par. XIII, insofar as it purports to authorize admission of refusal evidence as described herein. O.C.G.A. §§ 40-5-55 and 40-5-67.1 are unconstitutional as applied to the facts of this case as it allows the State to demand a warrantless blood test in a DUI alcohol case and punish motorists for refusing the intrusive test.
   - This Court separately holds, under Par. XIII, that a defendant's exercise of the state constitutional right to refuse a warrantless intrusive search of her person may not be offered against her as evidence in a criminal proceeding. This holding is made as an independent ground for suppression, distinct from the Fourth Amendment analysis, so that the record is complete.
   - The Court finds that no exigent circumstances existed at the time of ████'s arrest that would have substantially impaired the State's ability to obtain a warrant for ████'s blood, breath, or urine. The State's failure to seek a warrant was a choice when no attempt was made to secure a warrant.

SO ORDERED this 25th day of March, 2026.

Honorable Jane Manning
Judge, State Court of Cobb County