

SUPREME COURT OF GEORGIA

Fazio v. State

302 Ga. 295 (2017) · Decided October 16, 2017

SUMMARY

The Supreme Court of Georgia affirmed Stephen Fazio’s convictions for driving under the influence and driving with an unlawful blood alcohol concentration. The court rejected his challenges to the implied-consent statute under the Fourth Amendment, the Georgia Constitution, and due process, relying largely on its contemporaneous decision in Olevik v. State. The court declined to review Fazio’s compelled-self-incrimination argument because it was not preserved below, while noting that the argument would have failed on the merits.

CASE DETAILS

|                       |                                                                                                                                                                                                |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                                                       |
| WRITING FOR THE COURT | Blackwell, Justice; All other Justices                                                                                                                                                         |
| JURISDICTION          | Georgia                                                                                                                                                                                        |
| DECIDED               | October 16, 2017                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Fazio appealed his convictions after a bench trial, arguing that the trial court erred in denying his motion to suppress the results of warrantless alcohol breath tests.                      |
| STANDARD OF REVIEW    | The Supreme Court reviewed the denial of the motion to suppress and the preserved constitutional claims for legal error; an unpreserved constitutional challenge was not reviewable on appeal. |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Georgia                                                                                                                                 |
| PARTIES               | Stephen Fazio v. State                                                                                                                                                                         |

TOPICS

- suppression of evidence
- fourth amendment
- search and seizure
- due process
- appellate procedure

PRACTICE AREAS

- criminal procedure
- constitutional law
- DUI prosecution
- evidence suppression
- appellate procedure

## QUESTIONS PRESENTED

1. Whether Georgia's implied-consent notice statute violates the Fourth Amendment or the analogous provision of the Georgia Constitution because it authorizes or induces a warrantless breath test.
2. Whether the implied-consent notice statute is facially misleading and coercive in violation of due process.
3. Whether Fazio's compelled-self-incrimination challenge to the breath test could be reviewed when it was not raised in the trial court.

## HOLDINGS

1. The implied-consent statute is not unconstitutional under the Fourth Amendment or Article I, Section I, Paragraph XIII of the Georgia Constitution because a breath test may be obtained without a warrant as a search incident to arrest.
2. The facial challenge fails because the statute does not create widespread confusion about drivers' rights or the consequences of refusing or taking and failing a chemical test, and the court cannot assume that the notice standing alone coerces reasonable people.
3. The court could not review Fazio's constitutional challenge because he did not raise it in the trial court and the trial court did not rule on it.

## KEY QUOTATIONS

*"Because we cannot assume that the implied consent notice standing alone will coerce reasonable people to whom it is read, [Fazio's] facial challenge fails."* (302 Ga. at 296)

## FACTUAL BACKGROUND

Fazio was stopped at a roadblock in Gwinnett County on March 28, 2015. The officer observed slurred speech and the odor of alcohol, administered field sobriety tests that Fazio failed, arrested him, and read the Georgia implied-consent notice. Fazio agreed to a breath test and provided two samples on an Intoxilyzer 9000, both showing an alcohol concentration above the legal limit; he did not object or express unwillingness during testing.

## PROCEDURAL HISTORY

Fazio was convicted of driving under the influence of alcohol to the extent it was less safe to do so and driving with an unlawful blood alcohol concentration. The trial court denied his motion to suppress the breath-test results. The Supreme Court of Georgia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Olevik v. State, 302 Ga. 228, 806 S.E.2d 505 (2017)

- Birchfield v. North Dakota, 136 S. Ct. 2160, 2184 (2016)
- Amos v. State, 298 Ga. 804, 807, 783 S.E.2d 900 (2016)
- Bohannon v. State, 269 Ga. 130, 137, 497 S.E.2d 552 (1998)

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