

SUPREME COURT OF GEORGIA

State v. Henry

S20G1339 · No. S20G1339 · Decided October 19, 2021

SUMMARY

The Supreme Court of Georgia held that a suspect invokes the right to additional, independent chemical testing under OCGA § 40-6-392 (a) (3) when a reasonable officer would understand the suspect’s statement as a request for such testing. The Court rejected and overruled the Court of Appeals’ “reasonably could” standard, adopting a “reasonably would” standard instead. The judgment was reversed and remanded for reconsideration of the defendant’s ineffective-assistance claim under the proper standard.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Bethel, Justice
JURISDICTION	Georgia
DECIDED	October 19, 2021
DOCKET	S20G1339
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State petitioned for certiorari to review the Georgia Court of Appeals' reversal of the denial of Henry's motion for new trial based on ineffective assistance of counsel. The Supreme Court of Georgia considered the proper statutory standard for determining whether a DUI suspect invoked the right to additional independent chemical testing.
STANDARD OF REVIEW	The court reviewed the statutory interpretation question and the Court of Appeals' ineffective-assistance analysis. Ineffective assistance requires deficient performance and prejudice under Strickland v. Washington; the court emphasized that prejudice concerns whether counsel's performance rendered the trial unreliable or fundamentally unfair.
PRECEDENTIAL VALUE	Published Georgia Supreme Court opinion; binding precedent on the statutory standard for invoking additional independent chemical testing under OCGA § 40-6-392 (a) (3).

TOPICS

statutory interpretation

ineffective assistance

evidence

suppression of evidence

criminal procedure

PRACTICE AREAS

criminal procedure

DUI

evidence

ineffective assistance of counsel

statutory interpretation

QUESTIONS PRESENTED

1. What standard governs whether a DUI suspect invoked the statutory right to additional, independent chemical testing under OCGA § 40-6-392 (a) (3)?
2. Whether the Georgia Court of Appeals could reconsider and reject its prior "reasonably could" standard while evaluating Henry's ineffective-assistance claim.
3. Whether the State's failure to obtain additional independent testing is justifiable when a reasonable officer would not understand the suspect's statement as a request for such testing.

HOLDINGS

1. A DUI suspect invokes the right to additional, independent chemical testing when the suspect's words, viewed in context and under the surrounding circumstances, would reasonably be understood by a law-enforcement officer as an expression of a desire for such testing. The Court rejected the Court of Appeals' "reasonably could" standard in favor of a "reasonably would" standard.
2. The statutory phrase "justifiable failure or inability to obtain an additional test" refers to the officer's failure or inability to obtain the test, and the failure is unjustifiable when a reasonable officer would understand that the suspect requested independent testing but nevertheless ignores that request.
3. The Court of Appeals was not barred from reconsidering the validity of the "reasonably could" standard merely because that standard existed when Henry was tried. The Supreme Court could overrule Ladow and its progeny in the ineffective-assistance appeal.

KEY QUOTATIONS

"When a reasonable officer would understand that a suspect has requested an additional, independent chemical test but ignores that request, that failure is not justifiable. But when a reasonable officer would not understand that a suspect has made a request for additional, independent chemical testing, the failure to obtain such testing is justifiable." (11-12)

"An officer does not unjustifiably fail to obtain an additional, independent chemical test when a suspect makes only an unclear, ambiguous, or equivocal statement that could have been, with the benefit of hindsight, interpreted as a request for additional testing." (12)

"We therefore reject the "reasonably could" standard set forth by the Court of Appeals in Ladow, and we overrule Ladow and all other decisions of the Court of Appeals holding that a suspect's right to an additional,

independent test is invoked by a statement to a law enforcement officer that “reasonably could” – rather than “reasonably would” – be construed as an expression of a request for such a test.” (17-18)

FACTUAL BACKGROUND

A Georgia State Patrol trooper stopped Henry after observing his vehicle driving with bright headlights. The trooper observed bloodshot, watery eyes and slurred speech; Henry showed multiple clues of impairment on field-sobriety tests, and an alco-sensor registered positive for alcohol. After the implied-consent notice, Henry made statements concerning another breath test and whether his doctor could perform a blood test, but the officer testified that Henry's responses were unclear or inaudible and proceeded with a State-administered blood draw; GBI testing showed a blood-alcohol concentration of 0.085 grams per 100 milliliters, with a plus-or-minus 0.004 margin of error. Although counsel obtained an order for additional independent testing before trial, no additional testing was performed.

PROCEDURAL HISTORY

Henry was convicted of DUI per se and failure to dim headlights and acquitted of DUI to the extent he was less safe and failure to maintain lane. The trial court denied his motion for new trial after an evidentiary hearing. The Court of Appeals reversed, holding that counsel was ineffective for failing to object to the admission of the State's blood-test results under the Court of Appeals' "reasonably could" standard. The Supreme Court of Georgia granted certiorari, rejected that standard, reversed the Court of Appeals, and remanded for reconsideration under the proper standard.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Georgia Court of Appeals was directed to reconsider Henry's ineffective-assistance claim under the "reasonably would" standard and conduct further proceedings consistent with the opinion.

CASES CITED

- Ladow v. State, 256 Ga. App. 726, 728-729 (569 SE2d 572) (2002)
- Henry v. State, 355 Ga. App. 217, 219-222 (2) (843 SE2d 884) (2020)
- Strickland v. Washington, 466 U. S. 668, 687 (104 SCt 2052, 80 LE2d 674) (1984)
- Esprit v. State, 305 Ga. 429, 438 (826 SE2d 7) (2019)
- Rhoden v. State, 303 Ga. 482, 486 (813 SE2d 375) (2018)
- Lockhart v. Fretwell, 506 U. S. 364, 372 (113 SCt 838, 122 LE2d 180) (1993)
- Hillman v. Johnson, 297 Ga. 609, 614 (2) (b) (774 SE2d 615) (2015)
- Sandifer v. U.S. Steel Corp., 571 U. S. 220, 227-228 (III) (A) (134 SCt 870, 187 LE2d 729) (2014)
- Davis v. United States, 512 U. S. 452, 459-461 (II) (114 SCt 2350, 129 LE2d 362) (1994)
- Green v. State, 291 Ga. 287, 292 (4) (728 SE2d 668) (2012)

- *Miranda v. Arizona*, 384 U. S. 436 (86 SCt 1602, 16 LE2d 694) (1966)
- *Wright v. State*, 338 Ga. App. 216, 228 (789 SE2d 424) (2016)
- *Sigerfoos v. State*, 350 Ga. App. 450, 452-453 (1) (829 SE2d 666) (2019)
- *Church v. State*, 210 Ga. App. 670, 671 (1) (436 SE2d 809) (1993)
- *Magher v. State*, 199 Ga. App. 508, 508 (1) (405 SE2d 327) (1991)
- *Farmer v. State*, 335 Ga. App. 679, 680-682 (782 SE2d 786) (2016)
- *Avery v. State*, 311 Ga. App. 595, 595-599 (1) (716 SE2d 729) (2011)
- *England v. State*, 302 Ga. App. 12, 14-15 (1) (689 SE2d 833) (2009)
- *Waterman v. State*, 299 Ga. App. 630, 631-633 (683 SE2d 164) (2009)
- *Mathis v. State*, 298 Ga. App. 817, 818 (1) (681 SE2d 179) (2009)
- *Fowler v. State*, 294 Ga. App. 864, 865-866 (1) (a) (670 SE2d 448) (2008)
- *Collins v. State*, 290 Ga. App. 418, 420-421 (2) (659 SE2d 818) (2008)
- *Brooks v. State*, 285 Ga. App. 624, 626-628 (647 SE2d 328) (2007)
- *Anderton v. State*, 283 Ga. App. 493, 494-495 (1) (642 SE2d 137) (2007)
- *State v. Gillaspy*, 270 Ga. App. 111, 112-113 (605 SE2d 835) (2004)
- *Johnson v. State*, 261 Ga. App. 633, 636-637 (2) (583 SE2d 489) (2003)