

# The Local Government LIABILITY BEAT



PRESENTED BY LOCAL GOVERNMENT RISK MANAGEMENT SERVICES INC - A SERVICE ORGANIZATION OF  
THE ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA AND THE GEORGIA MUNICIPAL ASSOCIATION RISK MANAGEMENT PROGRAMS

## A STATE APPELLATE COURT HOLDS THAT THE WARRANTLESS BLOOD DRAW OF A DUI SUSPECT DID NOT VIOLATE THE FOURTH AMENDMENT’S PROTECTIONS AGAINST UNREASONABLE SEARCHES AND SEIZURES

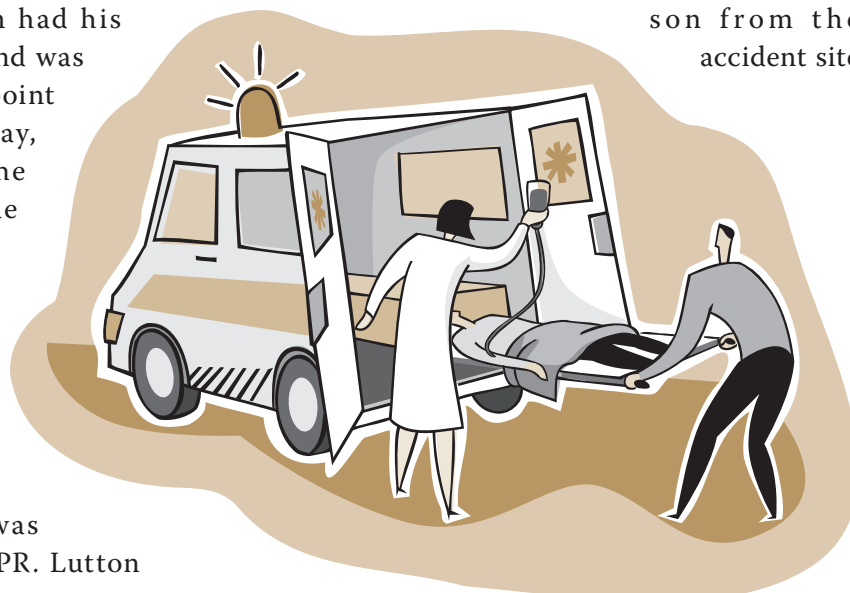
In *State v. Lutton*, \_\_\_ Idaho \_\_\_, \_\_\_ P.3d \_\_\_, 2017 WL 192846 (Ct. App. Jan. 18, 2017), the Court of Appeals of Idaho affirmed the trial court’s denial of Lawrence R. Lutton’s motion to suppress. In affirming the trial court’s decision, the Court of Appeals held that the trial court did not err in denying Lutton’s motion to suppress because the warrantless blood draw on Lutton did not violate Lutton’s Fourth Amendment right to be free from unreasonable searches and seizures. The relevant, undisputed facts are as follows.

At around 9 p.m., after enjoying a day at the reservoir with his children and some friends, Lutton began the drive back to town. Lutton had his sons (ages two and four) in his vehicle and was following his friend’s vehicle. At some point on the dirt road leading to the highway, Lutton lost control of his vehicle. The vehicle left the road and went into the reservoir.

Lutton was able to escape the submerging vehicle and was also able to rescue his four-year-old son. The boy was not breathing when Lutton pulled his son from the water. Lutton’s friend, having returned to where Lutton’s vehicle left the road, was able to revive the boy by performing CPR. Lutton

returned to the water to rescue his two-year-old son who was still strapped inside the submerged vehicle. After unbuckling and freeing him from his car seat, Lutton lost hold of the child. Lutton was unable to find his son in the water despite repeated attempts to locate him. Lutton’s friend eventually forced Lutton to exit the water out of concern for Lutton’s safety because Lutton was showing signs of hypothermia. Other people who had stopped to help continued to look for the two-year-old boy.

Believing that Lutton and the four-year-old needed immediate medical treatment, Lutton’s friend drove Lutton and his son from the accident site



toward the hospital in town. Before they were able to reach the hospital, however, police officers observed the vehicle speeding with its hazard lights flashing. The officers stopped the vehicle to investigate – one officer making contact with the driver and the other officer making contact with Lutton in the passenger’s seat.

Lutton and his friend told the officers about the crash and the need for medical attention. The officer who spoke with Lutton detected a slight odor of alcohol coming from the vehicle. Lutton was distraught and sobbing, but he admitted to having consumed three beers between one and three o’clock that afternoon. Lutton’s friend also admitted to drinking earlier in the day. The officers called for an ambulance to transport Lutton and his four-year-old son to the hospital. The officers dispatched an Idaho State Police (ISP) trooper to respond to the hospital in order to investigate Lutton for possible driving under the influence (DUI). After the ambulance arrived, the other officer spoke with Lutton while he was in the ambulance. The officer did not smell alcohol coming from Lutton’s person. After the ambulance departed, the two officers remained at the scene to interview Lutton’s friend further before traveling to the hospital themselves.

Although there are differing accounts as to what happened at the hospital, the trial court found the following facts to be true after conducting an evidentiary hearing. At the hospital, the original responding officers reconnected with Lutton in his treatment room. Lutton was seated on the bed wrapped in a blanket and was not wearing clothes. The officer that initially made contact with Lutton in the vehicle continued the investigation, asking Lutton questions about the day’s activities and details about the accident. The officer did not detect any odor of alcohol or any other signs of intoxication. The officer did not conduct any sobriety tests. At this time, Lutton was no longer sobbing, did not appear as distraught as he had been earlier, and

was able to understand and answer the officer’s questions. The officer informed Lutton that an ISP trooper had been called to assist in the investigation and that the trooper would be reading Lutton an advisory form and obtaining a blood sample. When the ISP trooper arrived, the two officers stationed themselves outside the door of Lutton’s treatment room.

The trooper read the administrative license suspension advisory form to Lutton. While the trooper spoke with Lutton, the two-year-old boy arrived in the emergency room on a gurney and was placed in an adjacent treatment room. After seeing his son, Lutton was distraught and crying. At no time did the trooper restrict Lutton from seeing his son on the condition that Lutton first complete a blood draw. Lutton, subsequently, cooperated with a hospital nurse in providing a blood sample. Lutton did not affirmatively object, refuse, or physically resist the blood draw. Lutton was advised of the consequences of refusing the blood draw and agreed to provide a sample. The blood sample showed an alcohol concentration of 0.092. The two-year-old child later died.

The State of Idaho ultimately charged Lutton with vehicular manslaughter and with driving under the influence. Lutton moved to suppress the evidence of the warrantless blood draw. The trial court denied

Lutton’s motion on the basis that Lutton impliedly consented to the draw. Pursuant to a plea agreement, Lutton pled guilty to vehicular manslaughter, and the State dismissed the driving under the influence charge. Lutton reserved his right to appeal the trial court’s denial of his motion to suppress and his motion to reconsider. The trial court entered an order withholding judgment, suspended Lutton’s driver’s license for six months, and placed Lutton on unsupervised probation for a period of four years. Lutton timely appealed the denial of his suppression motion.



On appeal, the Court of Appeals of Idaho acknowledged that requiring individuals to submit to a blood alcohol test is a search and seizure for purposes of the Fourth Amendment to the United States Constitution. The Court of Appeals further acknowledged that warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment. However, the Court of Appeals noted that exceptions exist and that searches that fall within one of the well-recognized exceptions to the warrant requirement can overcome the presumption of unreasonableness.

The issue that was before the Court of Appeals was the issue of consent because the warrant requirement does not apply if the person subjected to the search has consented. Mere acquiescence to a claim of authority by a law enforcement officer does not constitute consent. Consent must be voluntary and not the result of duress or coercion, either direct or implied. A voluntary decision is one that is the product of an essentially free and unconstrained choice by its maker. The voluntariness of an individual's consent is evaluated based upon the totality of the circumstances.

The Court of Appeals opined that the consent analysis requires consideration of subtle, coercive police tactics and questions as well as the subjective state of the party granting consent to search, noting that the State bears the burden to prove that consent was voluntary by a preponderance of the evidence. The Court of Appeals stated that the State may carry its burden of establishing the consent exception through the actual, voluntary consent of an individual or through statutorily implied consent.

The Court of Appeals sidestepped the issue of whether the trial court erred in finding that Lutton gave statutorily implied consent because it found that Lutton gave actual, voluntary consent to the blood draw. After reviewing the record, the Court of Appeals concluded that the trial court's findings, although disputed by Lutton, were supported by substantial evidence. Specifically, after hearing the various witnesses testify during the suppression hearing, the trial court made express credibility determinations. The trial court accepted the testimony of the state trooper as credible,



discounting Lutton's testimony on contradictory factual allegations as not credible. The state trooper testified that Lutton was never mandated to provide a blood sample; that Lutton never objected to having his blood drawn; that Lutton was not prohibited from seeing his son until he consented to a blood draw; that Lutton was advised of his right to refuse to provide a sample; and that Lutton said "okay" to having his blood taken. The trial court heard a recording of Lutton being questioned by police officers. This recording demonstrated, consistent with the trial court's finding, that Lutton was able to understand and respond to police questioning and was cooperative.

In sum, the Court of Appeals held that, although the evidence considered by the trial court was disputed, the findings made by the trial court were supported by substantial evidence. Accordingly, the Court of Appeals affirmed the trial court's denial of Lutton's motion to suppress and affirmed Lutton's conviction after relying upon the actual consent exception to the Fourth Amendment's warrant requirement.

*Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*



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*This Month:*

**WARRANTLESS BLOOD DRAWS**



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