

## WISCONSIN SUPREME COURT AGREES TO REVIEW PRADO CASE CHALLENGING WARRANTLESS BLOOD DRAWS ON INCAPACITATED DRIVERS UNDER WISCONSIN'S IMPLIED CONSENT LAW

Recently, the Wisconsin Supreme Court voted to accept review of *State of Wisconsin v. Dawn M. Prado*, in which the Court of Appeals struck down a portion of Wisconsin's "implied consent" law that permits police to order warrantless blood draws on incapacitated drivers.<sup>[1]</sup> As detailed in a [previous Hall Render alert](#), although the Court of Appeals concluded that the incapacitated driver provisions of the state statute are unconstitutional, the Court held that in Prado's case, her blood test results should *not* be suppressed under the "good faith" exception to the warrant requirement since the officer had relied on a good-faith belief that the blood draw was lawful.

The Wisconsin Supreme Court will review the State's petition along with Prado's cross-petition and has certified the following issues.

From the State as Plaintiff-Appellant-Petitioner:

1. Was the blood draw justified under *Mitchell v. Wisconsin*<sup>[2]</sup>, which established that a warrantless blood draw is almost always justified by exigent circumstances for the category of cases involving suspected drunk drivers who are unconscious and taken to the hospital before a breath test can be administered?
2. Was the blood draw from Prado justified by her consent under the implied consent law?
3. Was suppression of the blood test results improper because the police officer who ordered the blood draw relied in good faith on the unconscious driver provision in Wisconsin's implied consent law?

From Prado, as Defendant-Respondent-Cross-Petitioner:

1. Whether the "good faith" exception to the warrant requirement should be extended to an officer's reliance on law which is not "well established."
2. Whether the "good faith" exception to the warrant requirement should be extended to officers who are not "well trained" in the matter in which they supposedly exercised "good faith."
3. Whether a circuit court's determination that an officer did not act in good faith is a question of fact, law or both, and what standard of review ought to apply to such determinations, is an issue of first impression requiring a decision from the Wisconsin Supreme Court.

The Wisconsin Supreme Court's resolution of these issues is anticipated for some time in spring of 2021. Stay tuned for future developments.

If you have any questions or would like additional information, please contact:

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[references]

[1] See Wis. Stat. § 343.305.

[2] *Mitchell v. Wisconsin*, 139 S. Ct. 2525, 2531 (2019).

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