



MAY 8, 2019

## FYI: STATE v. TURNQUEST

*The Georgia Supreme Court holds that neither the Georgia Constitution nor OCGA § 24-5-506 (a) requires law enforcement to provide Miranda-like warnings to persons arrested for DUI before asking them to submit to a breath test.*

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In *State v. Turnquest*, Case No. S19A0157 (May 6, 2019), Turnquest was involved in a single-vehicle accident. The responding officer arrested Turnquest for DUI and after being read his implied consent warnings, Turnquest agreed and gave a breath test. Thereafter, he filed a motion to exclude the results of his breath test, arguing that the Georgia Constitution requires *Miranda* warnings prior to a request to perform a chemical breath test. The trial court agreed, relying on the Georgia constitutional right against self-incrimination, OCGA § 24-5-506 (a), and *Price v. State*, 269 Ga. 222 (1998). The State appealed and the Court reversed and vacated the trial court's ruling.

First, the Court found that *Miranda* does not apply to a request for a breath test because affirmative acts such as submitting to a breath test do not fall within the reach of the right against compelled self-incrimination protected by the Fifth Amendment. Thus, the issue turns on whether some aspect of Georgia law requires law enforcement to give a suspect in custody *Miranda*-like warnings before asking the suspect to consent to a breath test.

Second, the Court held that *Miranda*-like warnings are not required under the Georgia Constitution. As to Georgia's constitutional right against self-incrimination, Ga. Const. of 1983, Art. I, Sec. I, Par. XVI, the Court found that nothing in the language, history and context of the constitutional provision indicates that it required a suspect to be warned of his right against compelled self-incrimination or any other constitutional rights before being questioned or asked to perform an incriminating act. Similarly, the Court considered, and rejected, the possibility that Georgia's constitutional right to due process requires suspects in custody to be warned of any constitutional rights before being asked to perform incriminating acts like submitting to a breath test. See Ga. Const. of 1983, Art. I, Sec. I, Par. I.

Next, the Court considered OCGA § 24-5-506 (a), which provides: "No person who is charged in any criminal proceeding with the commission of any criminal offense shall be compellable to give evidence for or against himself or herself." Again, in looking at the text, history and context of the statute, the Court found that § 24-5-506 (a) does not require any sort of warning before a suspect in custody is asked to submit to a breath test.



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Finally, since neither the Georgia Constitution nor § 24-5-506 require *Miranda*-like warnings, the Court addressed the continued viability of *Price v. State*, supra. In *Price*, the Court held that the failure to give a suspect in custody “*Miranda* warnings” rendered evidence regarding field sobriety tests inadmissible. 269 Ga. at 225 (3). But, the Court stated, notwithstanding its reference to *Miranda*, *Price* was clearly a decision founded upon state law. And, even though *Price* concerned field sobriety tests as opposed to *Miranda*-like warnings, there is no principled basis for distinguishing *Price* from the Court’s holding in this case. Accordingly, the Court overruled *Price* and its progeny to the extent that they hold that either OCGA § 24-5-506 (a) or the Georgia Constitution requires law enforcement to warn suspects in custody of their right to refuse to perform an incriminating act. The Court also disapproved language in other decisions that is inconsistent with the holding in this case.