



FYI: AWAD v. STATE

The Georgia Supreme Court extends the holdings of Elliott and Olevik to find that a defendant has a constitutional right to refuse to give the State a urine sample in a collection container and that the refusal may not be used as evidence against the defendant.

In *Awad v. State*, S21G0370 (1/19/22), the State charged Awad with DUI (less safe), improper stopping, and failure to wear a safety belt. Before trial, Awad moved to suppress his refusal to submit to the urine test under Paragraph XVI. The trial court granted the motion and the State immediately appealed. The Court of Appeals reversed. See *State v. Awad*, 357 Ga. App. 255, 259 (2020). The Supreme Court then granted Awad's petition for certiorari to determine whether the trial court erred in concluding that the State was not permitted to introduce into evidence Awad's refusal to provide a urine sample on the ground that admitting such evidence would violate his right against compelled self-incrimination provided by Paragraph XVI of the Georgia Constitution.

The Court noted that whereas *Olevik v. State*, 302 Ga. 228 (2017) addressed when a court should suppress compelled breath-test results, *Elliott v. State*, 305 Ga. 179, (2019) considered when a defendant's refusal to submit to such a test should be suppressed. Under *Olevik*, the Georgia constitutional right against compelled self-incrimination requires a trial court to grant a motion to suppress incriminating results from a state-administered chemical test unless the State proves that (1) the defendant was not required to perform an act to generate the test sample, or (2) the defendant was not compelled to submit to the test. Under *Elliott*, whether Paragraph XVI of the Georgia Constitution requires a court to grant a motion to suppress a defendant's refusal to submit to a state-administered chemical test turns on whether the defendant would have been required to perform an act to generate the test sample. Thus, unless the State proves that submitting to the state-administered chemical test would not have required the defendant to perform an act to generate the test sample, Paragraph XVI requires a court to grant a motion to suppress evidence that the defendant refused to submit to the test.

The Court found that under *Olevik* and *Elliott*, the right against compelled self-incrimination protected by Paragraph XVI prohibits the State from admitting into evidence a defendant's refusal to submit to a urine test when doing so would require a defendant to urinate into a collection container to generate a sample for chemical testing. The Court determined that this collection method necessarily requires a defendant to cooperate with the State by performing an act that generates self-incriminating



January 21, 2022

evidence. Specifically, a defendant must urinate into a container, at the time and in the manner directed by the State, to ensure that the State can obtain a usable test sample for chemical analysis. Although urination, like breathing, is a natural bodily function, the State is not merely collecting urine expelled in a natural manner when it asks a defendant to produce an adequate amount of urine in a collection container at a specific time. Instead, the State is asking the defendant to affirmatively give the State evidence from the defendant's body in a particular manner that is neither natural nor automatic. Accordingly, the Court held, under *Olevik* and *Elliott*, Paragraph XVI affords a defendant a right to refuse to submit to such a test and a right to suppress evidence of the defendant's refusal. Accordingly, the Court concluded, because Awad had a right to refuse the State's request that he provide a urine sample in a collection container, the trial court properly granted his motion to suppress evidence of his refusal to submit to the test.

Nevertheless, the State argued, the Court's prior decision in *Green v. State*, 260 Ga. 625 (1990) — a case involving a probationer — established that the State's obtaining a urine sample does not implicate the right against compelled self-incrimination because providing a urine sample does not require an act on the part of the defendant. The Court disagreed. Instead, the Court stated, a careful reading of *Green* shows that the decision turned on whether the probationer was *compelled* to provide a urine sample, not whether he had *performed an act* in producing the urine sample. Thus, the Court found, *Green* was not inconsistent with the Court's holding in this case.

In summary, the Court held that under *Olevik*, the right against compelled self-incrimination protected by Paragraph XVI affords a defendant the right to refuse to give the State a urine sample in a collection container, as directed by the State, for purposes of chemical testing. And, under *Elliott*, the State may not admit in a criminal trial evidence that the defendant refused to submit to such a test. Therefore, the Court reversed the opinion of the Court of Appeals and remanded this case to that court for further proceedings.

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