IN THE
# ARIZONA COURT OF APPEALS
## DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

AMANDA KATHLEEN TURNER, *Appellant*.

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AMANDA KATHLEEN TURNER, *Petitioner*,

*v.*

THE HONORABLE CRANE MCCLENNEN, Judge of the
SUPERIOR COURT OF THE STATE OF ARIZONA,
in and for the County of MARICOPA, *Respondent Judge,*

STATE OF ARIZONA, *Real Party in Interest*.

Nos. 1 CA-CR 14-0841, 1 CA-SA 15-0121 (Consolidated)
FILED 6-14-2016

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Appeal from the Superior Court in Maricopa County
No. LC2014-000215-001
The Honorable Crane McClennen, Judge

**AFFIRMED; JURISDICTION ACCEPTED, RELIEF DENIED**

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COUNSEL

Phoenix City Prosecutor's Office, Phoenix
By Gary L. Shupe
*Counsel for Appellee*

Cameron A. Morgan Attorney at Law, Scottsdale
By Cameron A. Morgan
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge Samuel A. Thumma joined.

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**S W A N N**, Judge:

**¶1** Amanda Kathleen Turner ("Defendant") seeks relief from a superior court ruling reversing a city court order that suppressed the results of a blood-alcohol-concentration test to which Defendant had consented after being read a form "admin per se" admonition purportedly based on Arizona's "implied consent" statute, A.R.S. § 28-1321. On appeal, Defendant challenges the facial constitutionality of § 28-1321. She further contends, in a consolidated special action, that her consent was involuntary because the "admin per se" admonition was coercive. We reject Defendant's facial challenge for the reasons set forth in *State v. Okken*, 238 Ariz. 566 (App. 2015). Further, we affirm the superior court's decision that the test results were admissible. Though the "admin per se" admonition was coercive, the good-faith exception to the exclusionary rule applies under *State v. Valenzuela*, CR-15-0222-PR, 2016 WL 1637656 (Ariz. 2016).

**FACTS AND PROCEDURAL HISTORY**

**¶2** In December 2013, Defendant was lawfully arrested on suspicion of driving under the influence ("DUI") in Phoenix. The arresting officer placed Defendant in his patrol car and transported her to a DUI van. While still in the patrol car, Defendant was allowed to consult privately with an attorney by telephone. She did not disclose the content of that conversation to law enforcement or the court. Defendant was then

escorted into the van, where a second officer informed her of her rights consistent with *Miranda v. Arizona*, 384 U.S. 436 (1966), and read to her, verbatim, the following admonition from a form "admin per se" affidavit purportedly based on A.R.S. § 28-1321:

> Arizona law *requires* you to submit to and successfully complete tests of breath, blood or other bodily substance, as chosen by a law enforcement officer to determine the alcohol concentration or drug content. The law enforcement officer may require you to submit to two or more tests.
>
> You are *required* to successfully complete each of the tests. If the test results are not available or indicate your alcohol concentration is .08 or above, .04 or above in a commercial vehicle, or indicate any drug defined in Arizona Revised Statute 13-3401 or its metabolite without a valid prescription, your Arizona driving privilege will be suspended for not less than 90 consecutive days. If you refuse to submit or do not successfully complete the specified test, your Arizona driving privilege will be suspended for 12 months or for two years if there's a prior implied consent refusal within the last 84 months on your record.
>
> You are therefore *required* to submit to the specified test.

(Emphases added.) The officer then asked Defendant if she would submit to a blood test. Defendant responded that she would, and she signed the "admin per se" form. The officer drew a sample of Defendant's blood, which was later tested to determine her blood-alcohol-concentration level. Defendant was cooperative throughout the encounter and never indicated a desire to withdraw her consent.

**¶3** The state filed a criminal complaint against Defendant in the Phoenix City Court, alleging, among other things, two counts of DUI based on the blood-test results. Defendant moved to suppress the test results, arguing that the blood sample was obtained in violation of her Fourth Amendment rights. She challenged the constitutionality of A.R.S. § 28-1321 and argued that her consent to the blood test was involuntary based on coercion implicit in the statute.

**¶4** At an evidentiary hearing on the motion to suppress, Defendant testified that the "admin per se" admonition "[a]bsolutely" had an impact on her decision to submit to the blood test, explaining: "I was cooperating with the law. Also I was a real estate agent at the time and

could not afford to lose my license." She further testified that in her opinion, a year-long license suspension was "[a]bsolutely" worse than a 90-day suspension.

**¶5** Following the evidentiary hearing, the city court granted the motion, finding that Defendant had not given "clear and expressed consent" because "she felt coerced, she felt she had no choice." The court declined to address the constitutionality of the implied consent statute.

**¶6** The state appealed to the superior court. Defendant again challenged § 28-1321 under the Fourth Amendment. The superior court rejected the constitutional challenge, concluded that Defendant's consent was "not involuntary in the legal sense," and reversed the city court's ruling.

**¶7** Defendant filed a timely appeal challenging the facial constitutionality of § 28-1321, and filed a petition for special action challenging the superior court's determination that her consent was voluntary.

## JURISDICTION

**¶8** We have jurisdiction over the appeal under A.R.S. § 22-375(A). We accept jurisdiction over the special action because Defendant has no equally plain, speedy, and adequate remedy by appeal, and because the issue as presented in the petition is one of statewide importance that is likely to arise again. *See* Ariz. R.P. Spec. Act. 1(a); *State v. Yabe*, 114 Ariz. 89, 90 (App. 1977); *Dobson v. McLennen*, 236 Ariz. 203, 206, ¶¶ 5-6 (App. 2014).

## DISCUSSION

I. THE APPEAL (1 CA-CR 14-0841)

**¶9** Defendant contends that A.R.S. § 28-1321 is unconstitutional under the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), the doctrine of "unconstitutional conditions," and *Camara v. Municipal Court*, 387 U.S. 523 (1967). Defendant's arguments are identical to those raised by the defendant in *State v. Okken*, 238 Ariz. 566. For the reasons set forth in *Okken*, we affirm § 28-1321's constitutionality.

II. THE SPECIAL ACTION (1 CA-SA 15-0121)

**¶10** Defendant contends that her consent was involuntary because her decision to consent was based on the "admin per se" admonition's "claims of legal authority and threats of the loss of the driver's license."

**¶11** The Arizona Supreme Court recently held in *State v. Valenzuela* that "showing *only* that consent was given in response to th[e "admin per se"] admonition fails to prove that an arrestee's consent was freely and voluntarily given." CR-15-0222-PR, 2016 WL 1637656 at ¶ 2 (emphasis added). Observing that A.R.S. § 28-1321 "nowhere 'requires' a DUI arrestee to submit to testing," *id.* at ¶ 24, as the "admin per se" admonition represents, the court held that "consent given solely in acquiescence to the admonition . . . is not free and voluntary," *id.* at ¶ 33. The court left open, however, the possibility that other circumstances may render consent voluntary even when the "admin per se" admonition is given. *Id.* at ¶¶ 17-19. The court explained, "[f]or example, consent conceivably could be voluntary if, after an officer asserts lawful authority to search, the officer retracts that assertion or an attorney advises that the search is not lawfully required before the subject of the search consents." *Id.* at ¶ 18.

**¶12** We need not decide whether the Defendant's conversation with an attorney (which occurred before she heard the "admin per se" admonition, and the substance of which is unknown) mitigated the coercive effect of the admonition. *Valenzuela* held that though the "admin per se" admonition does not facilitate voluntary consent, previous "binding precedent . . . had sanctioned use of the admonition read to Valenzuela, and the good-faith exception [to the rule excluding evidence obtained in violation of the Fourth Amendment] therefore applie[d]." *Id.* at ¶ 33. That is also the case here. The superior court therefore correctly denied suppression of Defendant's test results.

**CONCLUSION**

**¶13** In 1 CA-CR 14-0841, we affirm the superior court's judgment. In 1 CA-SA 15-0121, we accept jurisdiction but deny relief.