

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2011

STATE OF FLORIDA,

Appellant,

v.

CASE NO. 5D10-3292

GREGORY G. GEISS,

Appellee.

Opinion filed July 22, 2011.

Appeal from the Circuit Court
for Brevard County,
George Maxwell, Judge.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellant.

Angela Meriah Park and Ernest L. Chang,
of Law Office of Ernest L. Chang, P.A.,
Melbourne, for Appellee.

ON MOTION FOR REHEARING AND CERTIFICATION

PER CURIAM.

We deny the State's motion for rehearing, but grant its motion to certify the following question pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v), as one of great public importance:

DOES SECTION 933.02(2)(a), FLORIDA STATUTES,
PRECLUDE LAW ENFORCEMENT OFFICERS FROM
SECURING A WARRANT FOR A BLOOD DRAW IN
MISDEMEANOR CASES INVOLVING AN ALLEGATION

THAT A SUSPECT HAS DRIVEN WITH AN UNLAWFUL
BLOOD ALCOHOL LEVEL?

REHEARING DENIED; QUESTION CERTIFIED.

LAWSON and COHEN, JJ., concur.

TORPY, J., concurs in part and dissents in part, with opinion.

TORPY, J., concurring and dissenting.

I concur that we should certify a question in this case. I do not agree with the narrow question proffered by the State and adopted by the majority. In my view, this case is controlled by *Sambrine v. State*, 386 So. 2d 546 (Fla. 1980). There, our high court suppressed blood taken by force, concluding that the implied consent law “leads to the inescapable conclusion that a person is given the right to refuse testing.” *Id.* at 548. In *Sambrine*, the search was warrantless. The threshold question here should be whether the use of a warrant to force a blood draw makes a difference. As I stated in my dissent, it doesn't. Police do not need a warrant to take blood by force if there is probable cause to believe it is evidence of a crime. *Sambrine* did not turn on the absence of a warrant; it was based entirely on the Court's conclusion that the implied consent statute established a statutory privilege to refuse a blood draw, even when police are acting within the limits of the Fourth Amendment. The presence or absence of a warrant has no bearing on the scope of this statutory privilege. The question I would certify is as follows:

Is the right to refuse a forced blood draw under the implied consent law, as recognized in *Sambrine v. State*, viable when the blood draw is authorized by warrant? If not, may a warrant issue to seize blood when the police only have probable cause that a misdemeanor has been committed?

I am appreciative of the State's motive in presenting a narrow question, any answer to which leaves it in no worse position. Nevertheless, only an answer to the broader question will put an end to judicial labor on this topic.