

**FIFTH DIVISION
MCFADDEN, C. J.,
GOBEIL and COOMER, JJ.**

**NOTICE: Motions for reconsideration must be
physically received in our clerk's office within ten
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November 18, 2019

In the Court of Appeals of Georgia

A17A1200. THE STATE v. LICATA.

MCFADDEN, Chief Judge.

In *Licata v. State*, 305 Ga. 498 (826 SE2d 94) (2019), the Supreme Court of Georgia affirmed in part and vacated in part the judgment of this court in *State v. Licata*, 343 Ga. App. 874, 806 SE2d 292 (2017), and remanded the case for further proceedings. Accordingly, we vacate our earlier opinion and adopt the opinion of the Supreme Court as our own. We affirm the state court's ruling suppressing evidence of Licata's refusal to take a breath test, given our Supreme Court's ruling in *Elliott v. State*, 305 Ga. 179 (824 SE2d 265) (2019), that a defendant's refusal to submit to a breath test may not be admitted into evidence at a criminal trial. *Id.* at 323 (IV) (E). We reverse the superior court's ruling suppressing Licata's field sobriety tests.

*Judgment affirmed in part and reversed in part. Gobeil and Coomer, JJ.,
concur.*