IN THE SUPREME COURT
OF THE STATE OF ARIZONA

ALEXIS MARIE DIAZ, Petitioner/Appellant, v. THE HONORABLE DEBORAH BERNINI, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Pima, Respondent/Appellee, THE STATE OF ARIZONA, TUCSON CITY PROSECUTOR'S OFFICE, Real Party in Interest.	Arizona Supreme Court No. CR-18-0250-PR Court of Appeals Division Two No. 2 CA-SA 17-0081 Pima County Superior Court No. CR-20173611001 Tucson City Court No. TR-16017179

BRIEF OF AMICUS CURIAE ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE FILED IN SUPPORT OF PETITIONER/APPELLANT ALEXIS DIAZ

Filed with the written consent of the parties

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INTRODUCTION

Amicus Curiae Arizona Attorneys for Criminal Justice (AACJ) offers its views on the issue presented to this Court:

The Declarative Statement of a Police Officer That a Citizen Under Arrest has Already Consented to Submit to a Warrantless Search Rendered any Submission to the Search Involuntary. By definition, consent must be voluntary to be effective. accordingly, the Division Two Court of Appeals erroneously held that consent for a warrantless search was given by a citizen in custody who was informed that she already consented to the search and was never expressly informed of her right to refuse.

The Authority in Arizona Requires the Application of the Exclusionary Rule to the Statutory Violation Committed Herein and the Absence of an Applicable Good-Faith Exception Requires Suppression of the Breath Test Results. Without such protections, the police would be given unfettered discretion to obtain evidence in violation of Arizona Revised Statutes.

INTERESTS OF AMICUS CURIAE

Amicus Curiae Arizona Attorneys for Criminal Justice (AACJ), the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those

attorneys who defend them. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

Counsel for amicus states that no counsel for a party authored this brief in whole or in part and no person, other than amicus, its members, or its counsel made a monetary contribution to the preparation of this brief.

Amicus offers this brief in support of Petitioner/Appellant Diaz because the issue presented touches the core of its mission to protect and ensure by rule of law those individual rights guaranteed to all people, rich and poor alike, by the Arizona and Federal Constitutions, and to resist all efforts made to curtail such rights. The AACJ has filed Briefs of Amicus Curiae in all other cases involving implied consent, including *Carrillo v. Houser*, *State v. Butler*, *State v. Valenzuela*, and *State v. Weakland.*

ARGUMENTS

A. Arizona Revised Statutes (A.R.S.) §28-1321 Requires Voluntary Consent for a Lawful Seizure of Breath Evidence in a Driving Under the Influence Case.

¶1 When the State elects to proceed on a theory of consent, it bears the heavy burden of proving by clear and positive evidence that any consent given was voluntarily and intelligently given, and was not the product of duress or coercion. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 248-49, 93 S.Ct. 2041, 2047, 2059 (1973); *State v. Paredes*, 167 Ariz. 609, 810 P.2d 607 (App. 1991). "Coercion is implicit in situations where consent is obtained under color of the badge, and the government must show that there was no coercion in fact." *United States v. Shaibu*, 920 F.2d 1423, 1426 (9th Cir. 1989) (*citing United States v. Page*, 302 F.2d 81, 83-84 (9th Cir. 1962)) (Footnotes omitted in original).

¶5 Through careful scrutiny of the totality of the circumstances, a reviewing court may determine that consent to search was freely and voluntarily provided:

> "The government must show that consent was given. It must show that there was no duress or coercion, express or implied. The consent must be 'unequivocal and specific' and 'freely and intelligently given.' There must be convincing evidence that defendant has waived his rights. There must be clear and positive testimony. '***Courts indulge every reasonable presumption against waiver of Constitutional rights.***' "

United States v. Shaibu, *supra*, 920 F.2d 1423, 1426 (9th Cir. 1989) (*citing United States v. Page*, 302 F.2d 81, 83-84 (9th Cir. 1962); footnotes omitted in original) (emphasis added).

1. The Custodial Setting is Inherently Coercive and the Language of the Admonitions Serves to Enhance Rather Than Dispel that Coercion.

¶6 It is well-settled that a custodial environment is inherently coercive. *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041 (1973), *citing Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966). This is not a small point. The inherent coercive pressures of a custodial environment are not limited to the confines of the police station, but rather exist in any circumstance where the defendant is in custody. Thus the custodial status of the defendant is of tantamount importance when evaluating a question of voluntary consent.

¶7 Voluntariness is an essential component to the protections provided to citizens by both the Fourth and Fifth Amendments to the United States Constitution. These Amendments do not exist in a vacuum, however.

¶8 In describing the connection between the freedoms guaranteed by the Bill of Rights, the U.S. Supreme Court wrote, "The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence--the very least that together they assure in either sphere is that no man is to be convicted on unconstitutional evidence." *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

¶9 As the law evolved, courts across the country considered the question of voluntariness. The Washington Supreme Court, just as the United States Supreme Court did, found the source of voluntariness not only in the text of the Fourth

Amendment but also in the Fifth Amendment's prohibition on compelled self-incrimination. *See, e.g., State v. Gibbons*, 203 P.390, 395 (Wash. 1922).

¶10 It is clear from the Supreme Court's analysis in *Miranda* that a higher level of scrutiny is placed on police practices when a defendant is in custody:

> The [cases under consideration] all share salient features - incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights. ... Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented ... this Court has recognized that coercion can be mental as well as physical and that the blood of the accused is not the only hallmark of an unconstitutional inquisition. ... To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to [e]nsure that the statements were truly the product of free choice.

Id. at 446 - 458.

¶11 There can be no question that courts should conduct a substantially more thorough review of police practices that occur when a defendant is in custody. The analysis in *Miranda* and in *Maryland v. Shatzer* compel this conclusion. 559 U.S. 98, 103-04, 130 S.Ct. 1213, 1219 (2010). When the police execute a warrantless search of defendant who is in custody, reviewing courts must necessarily begin with a presumption of coercion. The same pressures that caused the genesis of the *Miranda* warning exist in every arrest, as does the same potential for the police use

subtle pressures and other measures to overcome the free will of the person in custody. Given the extent to which the "psychological pressures [will] work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely," the *Miranda* court declared that "no statement obtained from the defendant can truly be the product of his free choice," unless "adequate protective devices are employed to dispel the compulsion inherent in custodial settings." *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶12 Therefore, the question necessarily becomes what mitigating effect, if any, did the admonitions as read to Diaz have against that inherently coercive environment. A review of the plain language of the admonitions indicates that the coercive pressures of the custodial environment are not dissipated or mitigated by these "warnings;" rather, they are aggravated by them. A reasonable person, who is under arrest, having been repeatedly told by an armed police officer that she has already consented as a matter of state law to the officer's demands for her breath, blood, or urine is not going to believe she has a choice to do anything but comply[1].

[1] This is exacerbated by the confluence of two additional events. First, the question is posed as to whether the driver will submit (not consent) to the test following the reading of the admonitions. This is more than a mere semantic difference. See *See State of South Dakota v. Medicine*, 865 N.W.2d 492, 496, ¶ 10 (2015). There, South Dakota Supreme Court rejected the State's argument that these two words were synonymous:

> Although the State suggests this sentence [I request that you submit to the withdrawal of your _____(blood, breath, bodily substance)] should be viewed as a second request for consent ... we are unconvinced. The word consent is defined as: "To give assent, as to the proposal of another; agree." In contrast, the word submit is defined as: "To yield or surrender (oneself) to the will or authority of another."

See *Maryland v. Shatzer*, 559 U.S. 98, 105, 130 S.Ct. 1213, 1220 (2010) ("The implicit assumption, of course, is that the subsequent requests for interrogation pose a greater risk of coercion. That increased risk level results not only from the police's persistence in trying to get the suspect to talk, but also from the continued pressure that begins when the individual is taken into custody ...").

¶13 Thus, the matter as properly framed before the Court should be whether the admonitions as they were read to Diaz serve to dispel or mitigate the inherent coercion attendant in any custodial setting sufficient to allow a citizen in police custody to make a true voluntary decision regarding the breath test. The purpose of the *Miranda* warning is to overcome those inherently coercive pressures and level the playing field between the citizen and the State. It cannot be said that a warning by the police which tells a person they have already consented to a search serves to protect the citizen's ability to expressly and voluntarily agree to that search.

¶14 In its decision, the *Diaz* Court found that the language contained in the admonitions used in this case was both legally accurate and non-coercive.

Id. (internal citations omitted).

Second, immediately following being asked to submit to the breath test, a driver must sign a form saying that they understand they are required to submit to a breath test and that no sample of their breath will be preserved. The extent to which these two events inform and influence a driver's decision to consent to the breath test has been briefed thoroughly by the parties and will not be further developed by amicus.

Whether the language contained in the admonitions is an inaccurate misconstruction of A.R.S. § 28-1321, or a scrupulous black-letter rendition of the law is a question addressed by the parties, and amicus does not develop it further here. To be certain, however, the language used in the admonitions provided to Diaz is coercive and the effect it has on the listener is the true test of its statutory viability.

¶15 Consider the decision by the South Dakota Supreme Court in *State of South Dakota v. Medicine*, 865 N.W.2d 492, 496, ¶10 (2015). In its decision, relied upon by this Court in the *State v. Valenzuela* opinion, the *Medicine* Court found that the language in the South Dakota advisory[2] was evidence of coercion. *Id.* at 497, ¶ 11. The language contained in the South Dakota advisory is substantially similar to the language at issue herein.

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[2] The advisory in South Dakota is:

1. I have arrested you for a violation of SDCL 32-23-1.
2. SDCL-32-23-10 provides that any person who operates a vehicle in this state has consented to the withdrawal of blood or other bodily substance and chemical analysis.
3. I request that you submit to the withdrawal of you _____(blood, breath, bodily substance).
4. You have the right to an additional chemical analysis by a technician of your own choosing, at you own expense.
5. Do you consent to the withdrawal of your _____ (blood, breath bodily substance)?

¶16 Comparing the two advisories, the pertinent language for the South Dakota advisory is contained in section 2, where it cites the statutory authority for the assertion that the driver has already consented to the test. As noted above, this language is substantially similar to the language at issue herein, and is derived from the following South Dakota statute, in pertinent part:

> SDLRC 32-23-10 Operation of vehicle as consent to withdrawal or bodily substances and chemical analysis – Submission to withdrawal or analysis following arrest. Any person who operates any vehicle in this state is considered to have given consent to the withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substances to determine the amount of alcohol in the person's blood and to determine the presence of marijuana or any controlled drug or substance of any substance ingested, inhaled, or otherwise taken into body as prohibited by §22-42-15 or any other substance that may render a person incapable of safely driving.

¶17 Our statute, from which the language at issue is derived, is nearly identical:

> A.R.S. §28-1321. Implied Consent. A person who operates a motor vehicle in this state gives consent … to a test or tests of the person's blood, breath, urine, or other bodily substance for the purpose of determining the alcohol concentration or drug content...

¶18 In the decision below, the Court of Appeals determined that the officer's use of the admonitions at bar could not have rendered the decision by the driver involuntary – rather, it only informed the decision to refuse. *Diaz* at ¶17. It appears that the position of the Court of Appeals is that the law mandates consent, and, as such, the consent cannot be involuntary. The Court of Appeals in making

this determination relies on *State v. Hays*, stating "an officer who accurately advises a violator, by statute, that they have already consented, only informs the decision to agree or refuse: it cannot render that decision involuntary."[3] *Diaz v. Bernini*, para. 17, citing *Hays*, 155 Ariz. At 407.

¶19 In ending its analysis there, however, the Court of Appeals created a distinction between the words "consent" and "agree" which slices the matter very thinly. The Court of Appeals doesn't use the terms synonymously, but the effect is the same: requiring the police to obtain voluntary assent from a defendant to a search to which the defendant has already consented. Pursuant to the position advanced by the Court of Appeals, an arrestee has already consented as a matter of state law. *Hays*, 155 Ariz. At 407. As such, were this to be the state of the law, no obtained consent could be voluntary. *Id*. An arrestee could only voluntarily refuse to submit to the pre-existing statutorily implied consent. *Id*.

¶20 However, the *Medicine* Court had a different analysis:

> [B]ecause consent is an exception to the warrant requirement, an officer's assertion that a defendant has already consented is functionally equivalent to an assertion that the officer possesses a warrant - both claims are assertions that the officer has authority to search.

State of South Dakota v. Medicine, 865 N.W.2d at 497, ¶11.

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[3] Hays, at its core, is a case about the admission of refusal evidence and not voluntary agreement to testing. 155 Ariz. At 406.

¶21 The Court continued:

> Thus, when a law enforcement officer acts with "presumed authority ... [a defendant's] conduct complying with official requests cannot ... be considered free and voluntary."

Id. at 498, ¶12, citing *Lo-Ji Sales, Inc. V, New York*, 442 U.S. 319, 329, 99 S.Ct. 2319, 2326 (1979).

¶22 In sum, since the environment is already coercive, the assertion of an armed and uniformed police officer that a citizen under arrest has already agreed as a matter of law to submit to the search does not serve to mitigate the coercion. Rather, the language of the admonitions as read to Diaz serves to exacerbate and aggravate the circumstances to the detriment of the defendant's ability to expressly and voluntarily agree. *See Medicine.* This is especially true where the citizen is never explicitly told of the right to refuse the search.

2. Knowledge of the Right to Refuse is an Important Component in the Totality of Circumstances

¶23 The decision below displayed, as part of its holding, the idea that a driver in Arizona is informed of his or her right to refuse the search as part of these admonitions. Having done so, the Court then declares that neither the right to refuse nor knowledge of that right are important to an analysis of voluntary consent. *Id.* at ¶ 29. Consider, alternatively, the analysis of the South Dakota Supreme Court's decision in *Medicine*:

> Although the State is not normally required to prove a defendant knew he had the right to refuse consent, the Supreme Court cases from which this rule derives are materially distinguishable from the present case: each involved officer conduct that did not disclose the subject's right to withhold consent, ***but also did nothing to actively suggest the subject had no right***[4]. (Internal citations omitted).

State of South Dakota v. Medicine, 865 N.W.2d at 495, ¶ 14.

¶24 The language used in the admonitions read to Diaz does not contain any express statement that there is a right to refuse. There is no language in the admonitions to suggest an option other than submission, a decision which was made for the driver by the state. Instead, a driver is first told that they have no choice in the matter ("Arizona law states that a person who operates a motor vehicle in this state gives consent..."). Then the driver is told, according to the decision below, that the test is somehow optional, through notification of the severe administrative penalty for refusing this mandatory test. Finally, the driver is the asked "to submit" to the test. It cannot be said that the admonitions in Arizona explicitly state that a driver has a choice whether to submit to the search. Indeed, the language, as noted above, tells the driver she has no option; the decision has been made for her.

C. Without the Protections of the Exclusionary Rule, the Police are Given Unfettered Discretion to Obtain Evidence in Violation of Arizona Revised Statutes.

[4] The same cannot be said where a driver is told that the decision to submit to a chemical test has already been made for them as a matter of law.

¶25 Should this Court determine that a statutory violation has occurred, the question then necessarily becomes what, if anything, should be done about it. Absent the protections of the exclusionary rule for a statutory violation, the police will have unfettered discretion to seize evidence unlawfully, which will then be used in court. Since due process concerns are implicated when the police act without any potential deterrent to countermand those actions should they prove to be unlawful, the exclusionary rule can and must be applied to address the statutory violation that occurred here.

¶26 In Arizona, the prevailing precedent for the application of the exclusionary rule as a remedy for a statutory violation rests in two cases: *Collins v. Superior Court*, 158 Ariz. 145, 146-47 (1988), where this Court held that the suppression of blood test results was warranted even though the sample was secured through a warrant, because the statute did not allow for seizure of blood through the use of a warrant; and *State v. Brita*, 158 Ariz. 121, 123 (1988), where this Court upheld a Court of Appeals decision suppressing test results secured prior to arrest in violation of the implied consent statute. Neither decision has been overruled, nor has the legislature amended the statute to prohibit the application of the exclusionary rule to a violation of the implied consent statute.

¶27 This Court was quite clear in those cases that it was applying the exclusionary rule to the statutory violation. *See Brita*, 158 Ariz. at 123 (expressly noting that the exclusionary rule was being applied to a violation of state statute, irrespective of any Fourth Amendment concerns); *see also Collins*, 158 Ariz. 146-47 (samples obtained in violation of the statute should be inadmissible). As these cases demonstrate, we need not distinguish here between breath and blood, as the remedy is not being applied to a Fourth Amendment violation, but rather to a statutory one.

¶28 In *Soza v. Marner*, the Arizona Court of Appeals correctly stated that federal courts have long applied the exclusionary rule to remedy violations of Fourth and Fifth Amendment constitutional rights, as well as to statutory violations in limited circumstances, especially where statutory violations implicated Fourth and Fifth Amendment Interests. Ariz. App., 2018 at 8, citing *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 348 (2006). In that case, however, the court held that "Exclusion of evidence is not a remedy for the violation of 28-1321 by the warrantless, non-consensual taking of a breath test as a search incident to a lawful arrest," relying on an unsupported assertion that the statute does not implicate Fourth Amendment protections *Id.* at 12.

¶29 The holding in *Soza* relied on a misreading of *State v. Butler* that the

legislature must provide exclusion of evidence as a remedy for a statutory violation, and that the courts will not otherwise impose exclusion. *Butler*, 232 Ariz. 84, 302 P.3d 609 at 614. In *Butler*, the Supreme Court of Arizona declined to address whether the defendant's blood must be suppressed because it violated a statute. *Id.* The court went on to say in dicta, however, that the relevant statute, the Arizona Parents' Bill of Rights, "concerns the rights of parents and does not purport to affect a juvenile's right to consent to a search," implicating that if the relevant statute did affect the arrestee's right to consent to a search, suppression may be an appropriate remedy. *Id.*

¶30 Chief Judge Eckerstrom explained in his dissent in *Butler* that the majority further founded its analysis on a case involving a violation of irrelevant regulations, *State v. Moorman*. *Soza*, page 9-10, citing *Moorman*, 154 Ariz. 578, 584 (1987). The majority had relied on *Moorman* to say federal courts have not employed the exclusionary rule for statutory violations. *Soza*, page 9. In *Moorman*, however, the law that had been violated was not a statute at all but rather a regulation, which did not carry the weight of legislative deliberation and enactment. *Soza*, page 14 (Eckerstrom's dissent).

¶31 Chief Judge Eckerstrom's dissent pointed out that the majority overlooked

both *Collins* and *Brita* as important precedent. *Soza*, page 13, citing *Collins*, 158 Ariz. 145 (1988), 146-47; *Brita*, 158 Ariz. 121, 123 (1988). While *Collins* and *Brita* are blood draw cases, the pertinent provision of the implied consent statute violated--that a test result can be secured only by voluntary submission or warrant--expressly sets forth that limitation for all types of tests. *Soza*, page 14.

¶32 This Court has previously imposed a state common-law exclusionary rule, suppressing evidence that was seized in violation of the Arizona statutory scheme specifically at issue herein. Since the authority on point in Arizona expressly directs the application of the exclusionary rule as a remedy for seizing evidence in violation of a statute, the only remaining question would be whether there was any good-faith exception that would apply.

¶33 Pursuant to this Court's decision in *State v. Bolt*, 142 Ariz. 260, 269, Arizona courts have kept the exclusionary rule in Arizona uniform with the federal rule. As such, it follows that any good-faith exception to the exclusionary rule that would be applicable under a Fourth Amendment analysis would be applicable to the statutory violation as well.

¶34 In *State v. Weakland*, 244 Ariz. 79 (App. Div. 2, 2017), the Division Two Court of Appeals addressed a similar question. There, they found that officers

acted in good-faith reliance upon established precedent when a defendant submitted to a chemical test after being read the now-prohibited *Valenzuela* admonitions subsequent to this Court's decision in *State v. Butler*, but prior to the decision in *Valenzuela*. CITE. *Weakland* was accepted for review by this Court, and oral arguments are completed, although a decision has not yet been published. Even if this Court were to find that the officers in *Weakland* acted in good faith, the exception does not apply in this case.

¶35 Good-faith reliance in prior precedence cannot be found where the law is unsettled. CITE. The arrest in *Diaz* occurred after the petition for review in *Valenzuela* was accepted by this Court and after the oral arguments occurred. The law was so unsettled on this issue that the State modified the language of the admonition prior to this Court's opinion in *Valenzuela* even being released. Perhaps it can be said that the language originally published in *Carrillo v. Houser*[5] in 2010 may not have provided sufficient notice to Arizona law enforcement that the standard language used in implied consent admonitions violated the law, but the subsequent developments certainly did. Even though it might be argued that the Division Two opinion in *Valenzuela* gave law enforcement legal cover for a

[5] "Under Arizona's Implied consent law, A.R.S. § 28-1321, a person arrested for driving under the influence is *asked to submit* to testing, such as a blood draw, to determine alcohol concentration or drug content." *Carrillo*, supra, at ¶ 1, emphasis added.

time, this argument fails in this case, since the Tucson Police Department explicitly recognized the issue when it voluntarily changed the admonition used by its officers **before the Arizona Supreme Court even ruled on *Valenzuela***.[6]

¶36 Placing *Valenzuela* into the proper context is crucial to understanding the application of the good-faith exception to the exclusionary rule. The change in the admonitions came about in January of 2016, long before Ms. Diaz was taken into custody on April 6, 2016, mere days before the *Valenzuela* decision was issued. Other than the petition for review in *Valenzuela* being accepted by this Court, and oral arguments being heard, there were no other major legal developments that could have caused the department's decision to alter the admonition in January of 2016, thereby calling into question any use of the admonitions that were provided herein. Certainly, without any judicial authority upon which the police could rely, the use of these admonitions was reckless, and outside the sanctioned protections of a reviewing court. Given that the admonitions were altered without any actual

[6] Clearly, the significant decisions in *McNeely* and *Butler* have to be read in conjunction with the Arizona Supreme Court's warning in *Carrillo* that "the statute has always provided that any arrestee may refuse to submit." 224 Ariz. at 466 ¶ 18, 232 P.3d at 1248. To "require" means: "(1) to have need of; need: He requires medical care. (2) to order or enjoin to do something: to require a witness to testify. (3) to ask for authoritatively or imperatively demand." Random House Webster's College Dictionary, 268 (2nd ed. 1997). On the other hand, to "request" means: "(1) the act of asking for something to be given or done; solicitation or petition." *Id.* The fact that the state *actually* came to this conclusion on its own, implementing a major change in policy *prior* to the publication of *Valenzuela* demonstrates this.

authority upon which the State could rely, the very change of the language demonstrates a concession by the state that the law on the matter was unsettled. As such, there is no good-faith exception upon which the state can rely.

CONCLUSION

¶37 Consent to search is not valid unless "it is the product of an essentially free and unconstrained choice by its maker." *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041 (1973). Given the inherently coercive nature of the custodial environment, the coercive language of the admonitions read herein, and the absence of any actual knowledge of the right to refuse, the breath test was not voluntarily provided in violation of Arizona Revised Statute §28-1321. The remedy for a statutory violation is suppression, and there is no good faith exception that applies.

¶38 Based upon the foregoing, the Court of Appeals decision must be reversed.

RESPECTFULLY SUBMITTED this 17th day of January, 2019.

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