ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

STATE OF ARIZONA v. ALFONSO DE ANDA, III,
CR-18-0286-PR

PARTIES:
Petitioners: Alfonso De Anda, III
Respondent: State of Arizona

FACTS:

A Tucson police officer stopped and arrested Alfonso De Anda, III for DUI because he exhibited signs of alcohol impairment while driving. Pursuant to Arizona's implied consent statute, A.R.S. § 28-1321, another officer advised De Anda with this admonition:

> Arizona law states that a person who operates a motor vehicle at any time in this state gives consent to a test or tests of blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content. The law enforcement officer is authorized to request more than one test and may choose the types of tests.
>
> If the test results are not available, or indicate an alcohol concentration of 0.08 or above (0.04 or above in a commercial vehicle,) or indicate any drug defined in ARS 13–3401 or its metabolite without a valid prescription, then your Arizona driving privilege will be suspended for not less than 90 consecutive days.
>
> If you refuse, do not expressly agree to submit to, or do not successfully complete the tests, your Arizona driving privilege will be suspended. The suspension will be requested for 12 months, or for two years if you've had a prior implied-consent refusal within the last 84 months.
>
> Will you submit to the tests?

De Anda agreed to testing. The officer drew his blood and submitted it for forensic analysis.

Charged with four counts of driving under the influence (DUI), De Anda moved to suppress the blood test results. He claimed that his consent to submit to the test was coerced and not voluntary. Specifically, he argued that the officer had to give him the option to submit to or to refuse testing before explaining the penalties a refusal could bring.

The trial court denied his motion. De Anda was convicted and filed an appeal.

On appeal, De Anda argued that the procedure required by statute and approved in *State v. Valenzuela*, 239 Ariz. 299 (2016) ("*Valenzuela II*"), required the advising officer to give him an opportunity to consent to testing before advising him of the consequences of a refusal. De

Anda also argued that the officer's failure to follow this procedure rendered his consent to the blood test involuntary.

The court of appeals reviewed the trial court's ruling. The court said that it rejected his argument in *Diaz v. Bernini*, 244 Ariz. 417 (App. 2018), and concluded that the type of advisement given to De Anda does not violate Arizona law. In addition, the court of appeals had to consider Fourth Amendment concerns associated with blood tests not presented in *Diaz*, which involved breath testing. It concluded that the advisement given did not render De Anda's consent involuntary because (1) the officer did not tell him he was *required* to submit to a chemical test, (2) the court found that the officer accurately advised him of the terms of Arizona's implied-consent statute, A.R.S. § 28-1321, and (3) the officer informed him of both the administrative consequences of refusal and–implicitly–of his power to refuse.

In conclusion, the court of appeals stated that De Anda did not identify any facts to suggest his consent was involuntary under the totality of the circumstances surrounding his encounter with law enforcement. It did not consider De Anda's argument that the good-faith exception to the warrant requirement did not apply because the court concluded De Anda's consent was voluntary.

ISSUE:

> "Alfonso De Anda III petitions this Court to accept review of the Court of Appeals (COA) Opinion [citation omitted], in which the court of appeals erroneously found that the admin per se warning telling the driver that Arizona Law 'states that a driver gives consent,' did not violate this Court's holding in *State v. Valenzuela*, 239 Ariz. 299, 306 ¶ 22, 371 P.3d 627, 636 (2016) ['*Valenzuela II*']."