



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 366

May 6, 2013

**EXIGENCY DOES NOT EXIST IN EVERY CASE TO JUSTIFY
CONDUCTING WARRANTLESS BLOOD TEST IN
DRUNK-DRIVING INVESTIGATIONS**

Reference:

Missouri v. Tyler G. McNeely
United States Supreme Court
569 U.S. ____ (2013)
April 17, 2013

FACTS:

Police stopped McNEELY's truck for several traffic violations. The officer observed signs that indicated McNEELY was intoxicated. McNEELY acknowledged that he had consumed alcohol at a local bar. McNEELY performed poorly on a battery of field sobriety tests and declined to use a portable breath test device to measure his blood alcohol concentration (BAC) and the officer placed him under arrest.

On the way to the police station McNEELY told the officer he refused to provide a breath sample so the officer took McNEELY to a nearby hospital for blood testing. When asked for his consent to draw blood McNEELY refused. The officer made no attempt to secure a warrant and directed a lab technician to take a blood sample. Subsequent laboratory testing measured McNEELY's BAC at 0.154%, which was well above the legal limit of 0.008%.

McNEELY moved to suppress the results of the blood test arguing that the warrantless seizure of his blood violated the Fourth Amendment. The State argued that in drunk-driving investigations the natural dissipation of alcohol in the bloodstream constitutes an emergency and in every case, justifies the warrantless testing of blood.

ISSUE:

Does the natural metabolization of alcohol in the bloodstream present a *per se* exigency that justifies an exception to the Fourth amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases?

Held. No - exigencies in this context must be determined case by case based on the totality of the circumstances. The metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a warrant is required.

REASONING:

1. Search warrants are ordinarily required for searches of dwellings, and absent an emergency, no less could be required where intrusions into the human body are concerned, even when the search was conducted following a lawful arrest.

2. Exigency depends heavily on the existence of additional "special facts," such as whether an officer was delayed by the need to investigate an accident and transport an injured suspect to the hospital (citing Schember v. California).

3. While the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, it does not do so categorically whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances.

4. In the 47 years since Schmeber was decided advances allow for more expeditious processing of warrant applications, particularly in contexts like drunk-driving investigations where the evidence offered to establish probable cause is simple. Telephonic search warrants can be applied for both Federal (91 Stat. 319) and State (Stat. 12.35.015) - see Bulletin no. 60)).

NOTES:

Nothing in this opinion restricts you from asking consent from the suspect. The U.S. Supreme Court cited the following cases you may to review: Kentucky v. King, bulletin no. 354 - warrantless entry into private residence to prevent destruction of evidence; Skinner v. Railway Labor Executive's Assn., bulletin no. 129 - requiring blood tests of employees under certain circumstances does not violate Fourth Amendment; Illinois v. McArthur bulletin no. 245 - seizure of residence and refusal to allow owner access while waiting application of warrant upheld; California v. Acevedo bulletin no. 185 - warrantless search of closed container seized from warrantless search for disposal evidence; Illinois v. Wardrow, bulletin no. 236 - investigatory seizure of person fleeing from drug trafficking order; California v. Carney, bulletin no. 94 -warrantless seizure of motorhome and Michigan v. Sitz, bulletin no. 144 - investigatory sobriety checkpoint upheld; and Nelson v. State, bulletin no. 61 - involuntary seizure of blood during examination by physician without permission of patient results are subject to seizure by court order.

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