

April 17, 2013

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## Missouri v. McNeely

### ***The U.S. Supreme Court Rules That Natural Dissipation Of Alcohol In The Bloodstream Does Not Per Se Constitute Exigent Circumstances Sufficient To Justify Conducting A Blood Test Without A Warrant***

In *Missouri v. McNeely*, No. 11-1425 (April 17, 2013), an officer on routine patrol stopped McNeely around 2:00 a.m. for speeding and crossing the centerline. The officer noticed obvious signs of intoxication. McNeely agreed to perform, but failed, a battery of field sobriety tests. The officer then arrested him for DWI (driving while intoxicated). McNeely was taken by the officer to a hospital where the officer read him Missouri's implied consent rights and requested a blood test. McNeely refused. The officer, without securing a search warrant, then directed a hospital lab technician to take a blood sample, which was secured at 2:35 a.m. The results showed McNeely's BAC to be more than twice the legal limit.

The Court framed the question as follows: "[W]hether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." In *Schmerber v. California*, 384 U.S. 757, 770 (1966), the Court upheld a warrantless blood test of a person arrested for DUI because the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence." Specifically, the Court noted that the officer in *Schmerber* did not have time to seek out a magistrate and secure a warrant because the officer needed time to bring the accused to a hospital and to investigate the scene of the accident. Thus, in finding the warrantless blood test reasonable in *Schmerber*, the Court considered all of the facts and circumstances and based its holding on those specific facts. In other words, *Schmerber* did not create a *per se* rule, but rather embraced the totality of circumstances approach in which the metabolization of alcohol in the bloodstream and the ensuing loss of evidence is just one factor to be considered in deciding whether a warrant is required.

Thus, the Court found, in those impaired driving cases in which law enforcement can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so. In rejecting the bright-line *per se* rule, the Court also noted that the proposed rule failed to account for technological advances in communications made in the 47 years since *Schmerber* which "allows for the more expeditious processing of warrant applications, particularly in contexts like drunk-driving investigations where the evidence offered to establish probable cause is simple." In fact, adopting a *per se* rule would ignore current and future technological developments in warrant procedures and could diminish the incentives for jurisdictions to pursue progressive approaches to warrant acquisition that preserve the protections afforded by the warrant while also meeting the legitimate interests of law enforcement. Accordingly, "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...is reasonable must be determined case by case based on the totality of the circumstances."