Supreme Court Weighs in on Nonconsensual, Warrantless Blood Draws in DWI Cases

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The United States Supreme Court decided Missouri v McNeely yesterday, holding that in impaired driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. The high court thus resolved the split among state courts regarding whether its 47-year-old decision in Schmerber v. California, 384 U.S. 757 (1966), required facts in addition to the natural dissipation of alcohol to establish an emergency sufficient to trigger the exigent circumstances exception to the warrant requirement – it does – and rejected the State's call for a categorical rule authorizing warrantless blood draws whenever an officer has probable cause to believe a person has been driving while impaired based solely on the evanescent nature of alcohol.

Facts. The defendant in *McNeely* was stopped for speeding. The officer noticed signs that the defendant was impaired by alcohol, and the defendant admitted to having consumed a couple of beers at a bar. After the defendant performed poorly on field sobriety tests, he was arrested.

On the way to the police station, the defendant told the officer he would not provide a breath sample. The officer then drove to the hospital to obtain a sample of the defendant's blood for analysis. Upon arriving at the hospital, the officer asked the defendant whether he would consent to a blood test, informing him, pursuant to Missouri's implied consent law, that if he did not, his license would be revoked and the refusal could be used against him in a future prosecution.

The defendant refused. The officer then directed a hospital lab technician to draw the defendant's blood. Subsequent laboratory testing measured the defendant's blood alcohol concentration at 0.15.

The defendant was charged with DWI. He moved to suppress the breath results, arguing that taking his blood for chemical analysis without a search warrant violated the Fourth Amendment.

Lower court rulings. The trial court granted the defendant's motion to suppress. On appeal, the Missouri Court of Appeals stated an intention to reverse but transferred the case directly to the Missouri Supreme Court. The state supreme court affirmed, holding that the U.S. Supreme Court's decision in Schmerber v. California, 384 U.S. 757 (1966), "require[s] more than the mere dissipation of blood-alcohol evidence to support a warrantless blood draw in an alcohol-related case." Finding no special facts other than the dissipation of alcohol, the Missouri Supreme Court held that the nonconsensual warrantless blood draw violated the defendant's Fourth Amendment rights.

Supreme court ruling. The Supreme Court granted certiorari to resolve a split of authority on the question of whether the natural dissipation of alcohol in the bloodstream establishes a per se exigency that suffices on its own to justify an exception to the warrant requirement for nonconsensual blood testing in drunk-driving investigations. The high court, in an opinion authored by Justice Sotomayor, affirmed the judgment of the Missouri Supreme Court that it does not. The court held that:

- Warrantless searches carried out pursuant to the exigency exception comport with the Fourth Amendment's reasonableness requirement because there is a compelling need for official action and no time to secure a

warrant. Because the police action in such circumstances lacks the traditional justification that a warrant provides, courts must look to the totality of the circumstances to determine whether an emergency existed. The exigency exception thus differs from the categorical exceptions that apply to searches of automobiles and searches of persons incident to arrest, which do not require the courts to assess whether the policy justifications underlying the exception are satisfied.

- 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.

- In those drunk-driving investigations where police officers 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.

- Some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test.

- Exigent circumstances may exist when there is no accident. The procedures for obtaining a warrant and the availability of a magistrate may affect whether there is time to obtain a warrant and thus may establish an exigency.

Concurrence and dissent.

- Justice Kennedy concurred in part and wrote separately to note that states may wish to adopt rules and guidelines giving practical instruction to officers. He further observed that the Court might find it appropriate to consider a case in which it could provide more practical guidance about when an exigency exists.

- Chief Justice Roberts, joined by Justices Bryer and Alito, concurred in part and dissented in part. The Chief Justice agreed with the majority that exigencies are to be determined based on a totality of the circumstances, but argued that because the circumstances in impaired driving cases are often typical, the court should offer more guidance for the police. The Chief Justice argued for the following rule: If an officer investigating an impaired driving case reasonably concludes that there is not sufficient time to seek and receive a warrant or the officer applies for a warrant but does not receive a response before blood can be drawn, a warrantless blood draw may ensue.

- Justice Thomas dissented, arguing that the dissipation of alcohol, without more, constitutes exigent circumstances as it destroys evidence of a crime.

Impact for NC. The North Carolina court of appeals in State v. Fletcher, 202 N.C. App. 107 (2010), employed the totality of the circumstances analysis approved in *McNeely* in considering whether exigent circumstances existed to support the nonconsensual, warrantless withdrawal of the defendant's blood in an impaired driving case. *Fletcher* considered not only the dissipation of alcohol, but also the distance to the magistrate's office and the time required to obtain a warrant on a Saturday night. *Fletcher* concluded that an exigency existed based on a potential delay of two to three hours. Because the Supreme Court in *McNeely* rejected only the per se rule advocated by the State and did not define what length of delay would constitute an exigency, *McNeely* sheds no light on whether a delay of the sort in Fletcher is a "significant" delay that "negatively affect[s] the probative value of the results." (Slip op. at 9.)

Fletcher also upheld as constitutional G.S. 20-139.1(d1), which states: "If a person refuses to submit to any test or tests pursuant to this section, any law enforcement officer with probable cause may, without a court order, compel the person to provide blood or urine samples for analysis if the officer reasonably believes that the delay necessary to obtain a court order, under the circumstances, would result in the dissipation of the percentage of alcohol in the

person's blood or urine." The court held that the statute required "both probable cause and an officer's reasonable belief that a delay in testing would result in dissipation of the person's blood alcohol content," noting that "[i]n effect, our legislature has codified what constitutes exigent circumstances with respect to DWI's." 202 N.C. App. at 98.

Given that *Fletcher* itself required more than dissipation to support an exigency, perhaps G.S. 20-139.1(d1), as interpreted in *Fletcher*, and because of its "under the circumstances" clause is constitutional. On the other hand, if the statute is read to authorize warrantless blood draws based on the dissipation of alcohol alone, it clearly violates the standard announced in *McNeely*.