

## "US Supreme Court Decides to Review Missouri DUI Ruling"

On September 25, 2012, the US Supreme Court agreed to hear an appeal filed by the state of Missouri seeking review of a Missouri Supreme Court decision on warrantless blood draws in DUI cases.

**ISSUE:** As framed by the Missouri Supreme Court, the issue is under what "special facts" is a nonconsensual and warrantless blood draw in a DWI case a reasonable search and seizure under the Fourth Amendment of the US Constitution?

**HOLDING:** In a January 17, 2012 opinion, the Missouri Supreme Court held that a warrantless blood draw, in a DUI prosecution, in the absence of additional "special facts" would violate the United States Supreme Court's decision in Schmerber v California; and accordingly, the trial court's ruling sustaining the defendant's motion to suppress was correct. The lone fact that blood alcohol levels dissipate or reduce after alcohol consumption ceases is not a "per se exigency" as defined in Schmerber. The State's appeal of the trial court's ruling suppressing the results is denied; and on remand, the State may continue the prosecution of the DWI charge against McNeely based on any other evidence not gathered in violation of the United States Constitution.

**FACTS:** A Missouri highway patrolman initiated a traffic stop on a vehicle being driven by the defendant, Tyler McNeely, for speeding. The vehicle stop occurred shortly after 2:00 a.m. At the trial, the patrolman testified that he noticed McNeely displaying "tell-tale signs of intoxication." The trooper went on to state that his observations of McNeely changed the nature of his encounter from that of a routine traffic stop to an investigation of driving while intoxicated (or drunk driving). After performing poorly on field sobriety tests, McNeely was arrested for driving while intoxicated. McNeely declined to consent to a breath test. Although the officer had previously obtained search warrants when he wanted to test the blood of DWI/drunken driving suspects, he did not in this case. Upon McNeely's refusal to provide a breath test, the arresting officer immediately drove McNeely to a local hospital for a blood test. McNeely refused to consent to a blood test, and the officer then directed and ordered a phlebotomist to draw McNeely's blood solely for alcohol testing. The results of the blood test showed the defendant's blood alcohol concentration to be above Missouri's legal limit. At the trial of the case, McNeely moved to suppress the results of the blood test as a violation of his Fourth Amendment right to be free from unreasonable search and seizure. The gravamen of the defendant's argument was that a search warrant needed to be obtained prior to the blood test being ordered. The trial court agreed with the defendant's motion and suppressed the results of the test. The State then appealed the trial court's ruling to the Missouri Supreme Court.

**HOLDING:** In a 7-0 en banc ruling, the Missouri Supreme Court held that the trial court properly granted the defendant's motion to suppress the blood test results. The court's ruling emphasized that the United States Supreme Court has repeatedly held that searches conducted without warrants approved and issued by a judge are "per se" unreasonable pursuant to the Fourth Amendment. One recognized exception to this general rule is when there are "exigent circumstances" present where the time needed to obtain a search warrant would endanger life, allow a fleeing suspect to escape or risk the destruction of evidence. In Schmerber v California, the US Supreme Court held that one such exigent circumstance would involve a very limited exception allowing for a blood sample to be taken in alcohol related arrests without a warrant and without the defendant's consent, when there are "special facts" which give an officer reasonable belief that circumstances then existing present an emergency in which the delay of obtaining a search warrant could permit the evidence to be destroyed. Critically, Schmerber involved a police officer that had to take time to both investigate the scene of a motorcycle accident and transport

the defendant (and a passenger) to a hospital for emergency treatment. The Missouri Supreme Court focused on the fact that the officer in the case at bar was not faced in any manner with the same type of facts as in Schmerber. In McNeely, there was no accident to investigate, no need to arrange for medical treatment of any occupants of a vehicle, no delay that would have permitted evidence to be destroyed before a search warrant could be obtained and there was no evidence offered justifying the officer's decision not to obtain a search warrant. Basically, this was a routine DUI case. The arresting officer made no effort whatsoever to obtain a search warrant prior to ordering the blood draw; contrary to the numerous times he had obtained search warrants prior to blood draws in DUI cases in the past. The argument of the state's attorney of one special fact present - that blood alcohol concentration dissipates after drinking ceases - is not a "per se exigency" under Schmerber which would justify a blood test without first obtaining a search warrant. The Missouri Supreme Court went on to clearly state that to endorse warrantless blood draws in the absence of "special facts" would be to depart from and ignore the United States Supreme Court's holding in Schmerber. The US Supreme Court in Schmerber clearly delineated that the United States Constitution in no way permits or allows warrantless blood draws "under other circumstances" than were particularly present in the Schmerber facts scenario. The Missouri Supreme Court also pointed out that both Utah and Iowa's Supreme Courts have reached the same conclusion as reached in this opinion.

In summary, the trial court's decision was correct in granting the defendant's motion to suppress the blood test results because the blood draw was not preceded by a search warrant. The mere fact that alcohol levels dissipate in a person's blood over time and after the person has quit drinking does not qualify as a legal basis for obtaining and using a warrantless blood draw in DUI/DWI cases. As noted above, the United States Supreme Court recently (September 25, 2012) granted a petition for a writ of certiorari filed by the state of Missouri to review the Missouri Supreme Court's decision.