

1. US Supreme Court Requires Warrant Before Taking of Blood in DWI Missouri v McNeely 133 S. Ct. 1552 (2013).

Respondent McNeely was stopped by a Missouri police officer for speeding and crossing the centerline. After declining to take a breath test to measure his blood alcohol concentration (BAC), he was arrested and taken to a nearby hospital for blood testing. The officer never attempted to secure a search warrant. McNeely refused to consent to the blood test, but the officer directed a lab technician to take a sample. McNeely's BAC tested well above the legal limit, and he was charged with driving while intoxicated (DWI). He moved to suppress the blood test result, arguing that taking his blood without a warrant violated his Fourth Amendment rights. The trial court agreed, concluding that the exigency exception to the warrant requirement did not apply because, apart from the fact that McNeely's blood alcohol was dissipating, no circumstances suggested that the officer faced an emergency. The State Supreme Court affirmed, relying on Schmerber v. California, 384 U. S. 757, in which this Court upheld a DWI suspect's warrantless blood test where 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,' " *id.*, at 770. This case, the state court found, involved a routine DWI investigation where no factors other than the natural dissipation of blood alcohol suggested that there was an emergency, and, thus, the nonconsensual warrantless test violated McNeely's right to be free from unreasonable searches of his person.

Held: The judgment is affirmed.

Justice Sotomayor delivered the opinion of the Court with respect to Parts I, II-A, II-B, and IV, concluding that in drunk-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.

(a) The principle that a warrantless search of the person is reasonable only if it falls within a recognized exception, see, e.g., United States v. Robinson, 414 U. S. 218, applies here, where the search involved a compelled physical intrusion beneath McNeely's skin and into his veins to obtain a blood sample to use as evidence in a criminal investigation. One

recognized exception "applies when ' "the exigencies of the situation" make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable.' " Kentucky v. King, 563 U. S.. This Court looks to the totality of circumstances in determining whether an exigency exists. See Brigham City v. Stuart, 547 U. S. 398. Applying this approach in Schmerber, the Court found a warrantless blood test reasonable after considering all of the facts and circumstances of that case and carefully basing its holding on those specific facts, including that alcohol levels decline after drinking stops and that testing was delayed while officers transported the injured suspect to the hospital and investigated the accident scene.

2. Police Seeing Defendant Smoking Joint in Open Door Justified the Warrantless Entry into Defendant's Apartment and the Seizure of the Marijuana Cigarette. State v Walker 213 N.J. 281 (2013)

Although the information contained in the tip was uncorroborated, by the time the officers knocked at the door of defendant's apartment, subsequent events, created by defendant's own actions, established probable cause and exigent circumstances which justified an entry into

defendant's apartment. Thus, the warrantless seizure of the marijuana cigarette and all the CDS found in defendant's apartment was proper and permissible under the New Jersey and federal constitutions. Although the underlying offense here, possession of marijuana, is a disorderly persons offense, the circumstances indicate that the officers' warrantless entry into defendant's home was objectively reasonable. A limited entry was necessary to arrest defendant for the disorderly persons offense and to retrieve the marijuana cigarette. After entering, the officers saw in the living room CDS and other contraband in plain view. These items were subject to seizure as well.

3. New Laws: Cell Phone and Prenuptial Agreements.

P.L.2013, c.70.increases fine and Imposes License Suspension for Talking or Texting on Hand-held Device While Driving.

Approved 6/27/2013

Senate Bill No. 69 (2R) imposes increased fines for first, second and subsequent offenses of talking on a hand-held wireless telephone or texting a

message with a hand-held wireless electronic communication device while driving. Specifically, this bill increases the fines to \$200 to \$400 for a first offense, \$400 to \$600 for a second offense, and \$600 to \$800 for third or subsequent offenses.

Strengthens Enforceability of Premarital and Pre-Civil Union Agreements.

PL 2013, c70.

Approved 6/27/2013

This floor amendment provides that only premarital and pre-civil union agreements entered into on or after the effective date of the bill (immediately upon enactment), or entered into before effective date but voluntarily revised by the parties on or after that effective date would be subject to its provisions.

Thus, premarital and pre-civil union agreements entered into before the effective date would remain subject to the current law, which permits agreements to be set aside if deemed, *at the time of enforcement*, to be "unconscionable." See R.S.37:2-32, subsection c. and R.S.37:2-38, subsection b.

Only new agreements, or older agreements with new revisions, would be subject to the underlying bill's new standard of unconscionability: such agreements could not be deemed unconscionable unless determined to be unconscionable *when executed* because the party seeking to set aside the agreement: (1) was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party; (2) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; (3) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or (4) did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

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