

October 03, 2013 /**24-7PressRelease**/ -- An interesting development in Minnesota's driving under the influence law is currently underway that will have significant ramifications for most drivers in the state facing DUI charges.

Measuring a person's BAC constitutes a search of that person by law enforcement under the U.S. Constitution. The Fourth Amendment protects all people from unreasonable searches and seizures, and any search conducted without a warrant is presumed to be unreasonable under U.S. law. The question, then, is whether conducting a warrantless BAC test (as almost all such tests are) violates a person's constitutional rights.

A person can consent to a warrantless search by police. Every driver in the state, by virtue of obtaining a driver's license and driving on the state's roads, is thought to have given "implied consent" to take a blood alcohol test. Refusal to take a test is against the law and brings with it several potential penalties, including criminal prosecution for a separate crime of refusal and a [driver's license revocation](#) of at least one year. In addition, there are other exceptions to the warrant requirement that have been recognized by the U.S. Supreme Court.

The McNeely case

Minnesota courts have historically found that an officer can conduct a BAC test without a warrant whenever the officer suspects a driver is under the influence. A recent U.S. Supreme Court case, however, found that whether an officer can conduct such a warrantless search depends not simply on the presence of alcohol, but on whether a warrant could have been obtained before the alcohol evidence was substantially degraded. The Court decided that this question could only be answered by looking at the specific facts of each case.

In *Missouri v. McNeely*, Missouri argued that a warrantless BAC search met an exception to the Fourth Amendment. It argued that because alcohol dissipates over time, it is so important to take a test immediately that it meets the Fourth Amendment's "exigency exception," and should allow for a warrantless BAC search in every case. The U.S. Supreme Court disagreed, holding instead that the "totality of the circumstances" must be considered by the courts when determining if a warrantless BAC test violates a person's constitutional rights.

The Brooks case

The Minnesota Supreme Court recently heard [oral arguments](#) on this issue. The case, Minnesota v. Brooks, originally went to the U.S. Supreme Court. After McNeely, the U.S. Supreme Court sent the Brooks case back to the Minnesota Court of Appeals to reconsider its earlier ruling against Mr. Brooks in light of the McNeely decision. Because of the importance of the issue, and because attorneys and the courts need this issue resolved, the Minnesota Supreme Court stepped in and took the case away from the court of appeals on "accelerated review" to try to decide the matter more quickly than is usual.

In the oral arguments, which occurred on September 11, attorney Jeffrey Sheridan argued that a DWI search should be treated like any other criminal investigation, and that police officers must conduct a search within the scope of the Fourth Amendment -- which means that officers must obtain search warrants before BAC testing or come to court prepared to explain why one could not have been obtained in each case. The state's highest court will issue an opinion and decide the matter in the coming months.

Search and seizure law

What is and is not an unreasonable search under state and federal constitutional is a complex question. But the answer to that question is of vast importance, because evidence obtained in violation of a person's constitutional rights cannot be introduced in a court of law. In a case where the state's primary evidence of guilt is the result of an alcohol concentration test, its exclusion will often mean the difference between winning and losing that case for both parties.

Minnesota drivers charged with a DUI should contact an experienced criminal defense lawyer to ensure their constitutional rights are protected.

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