



MADD's mission is to eliminate drunk driving, fight drugged driving, support victims of these violent crimes, and prevent underage drinking.



Missouri v. McNeely - 2013

- McNeely was stopped after a highway patrol officer observed him exceed the posted speed limit, and cross over the centerline
- A policeman on scene noticed multiple signs of intoxication.
- The officer asked for consent to a blood test, and McNeely repeatedly refused.
- The results of the test showed a BAC of 0.154 percent.
- The trial judge ruled in McNeely's favor to suppress the results of the blood test.
- The Court stated that administering the blood test without a warrant was a violation of the suspect's Fourth Amendment protection against unreasonable searches and seizures.



Missouri v. McNeely – 2013

Held: “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 principle that a warrantless search of the person is reasonable only if it falls within a recognized exception... when, ‘the exigencies of the situation’ make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. This Court looks at the totality of the circumstances in determining whether an exigency exists.”

“Circumstances make obtaining a warrant impractical such that the alcohol’s dissipation will support an exigency, but that is a reason to decide each case on its facts... not to accept the ‘considerable overgeneralization’ that a per se rule would reflect.”



Birchfield v. North Dakota, et. al. – 2016

- All 50 States prohibit motorists from driving with a BAC exceeding .08.
- All 50 States have implied consent laws for licensed drivers.
- Typically, the penalty for noncompliance is license revocation.
- 13 States made it an **independent criminal offense** for a motorist to withdraw his or her implied consent after a lawful arrest for driving under the influence.



Birchfield v. North Dakota, et. al. - 2016

1. Whether a State may charge an arrested drunk driver with a **crime** - a misdemeanor - if he or she withdraws his or her implied consent by refusing to submit to a Blood Alcohol Content test?
2. Whether a State may lawfully require an arrested drunk driver to submit to a breath or blood alcohol test without a warrant under the Fourth Amendment against unreasonable search and seizure?

THE FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



The North Dakota Problem

- Nationwide **20%** of all drivers asked to submit to a BAC test refuse
- North Dakota refusal rate is **21%**
- North Dakota had the **highest per capita drunk driving death rate** in the Nation with **11.3 deaths per 100,000 people**
- North Dakota passed legislation in 2013 - Brielle's Law - making it an independent criminal offense for a driver to withdraw his/her implied consent
- Brielle's Law – Class B misdemeanor for first and second offense in a 7 year period; Class A for third offense in a 7 year period; Class C felony for fourth or subsequent offense in 15 year period



Factual Background - *William Robert Bernard, Jr. v. Minnesota*

- Bernard got his truck stuck in a river while trying to pull a boat out of the water. Witnesses said Bernard was the driver. Bernard, who was holding the keys, denied being the driver.
- Officers observed that Bernard's breath smelled of alcohol and that his eyes were bloodshot and watery.
- They informed him of Minnesota's implied consent law and informed him that refusing a **breath test** would result in criminal penalties.
- Bernard refused a breath test and was charged with first degree refusal because he had four prior DUI convictions.



Factual Background - *Danny Birchfield v. North Dakota*

- Birchfield drove his car off the highway. A state trooper arrived on the scene, where he smelled alcohol and observed that Birchfield's eyes were bloodshot and watery and that he was slurring.
- Birchfield performed poorly on the field sobriety tests and blew a .254% on the roadside breath test.
- The trooper arrested him and informed him of North Dakota's implied consent law and that refusing a **blood test** would lead to criminal penalties.
- As a repeat offender, Birchfield refused the blood test and pled guilty to violating the no refusal law.



Factual Background - Steve Michael Beylund v. Grant Levi (NDDoT)

- An officer observed Beylund unsuccessfully try to turn into a driveway and nearly hit a stop sign.
- When the officer approached the car, he saw an empty wine glass in the cup holder. Beylund smelled of alcohol and struggled to keep his balance.
- After the officer told him about the implied consent law and that refusing a test would result in criminal penalties, Beylund consented to a **blood test**.
- Beylund's BAC was .25 and his license was suspended for 2 years. He argued that his consent had been coerced by the officer's warning of criminal penalties.



Birchfield v. North Dakota, et. al. - 2016

- “The Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests... These searches may nevertheless be exempt from the [Fourth Amendment] warrant requirement if they fall within, as relevant here, the exception for searches conducted incident to a lawful arrest. This exception applies categorically, rather than on a case by case basis.”
- “The States and Federal Government have a paramount interest in preserving [public highway] safety, and States have a compelling interest in creating deterrents to drunken driving, a leading cause of traffic fatalities and injuries... Sanctions for refusing to take a BAC test were increased because consequences like license suspension were no longer adequate to persuade the most dangerous offenders to agree to a test that could lead to severe criminal sanctions. By making it a crime to refuse to submit to a BAC test, the laws at issue provide an incentive to cooperate and thus serve a very important function.”



Birchfield v. North Dakota, et. al. - 2016

- These searches may nevertheless be exempt from the warrant requirement if they fall within, as relevant here, the exception for searches conducted incident to a lawful arrest. This exception applies categorically, rather than on a case by case basis.
- “The mere ‘fact of the lawful arrest’ justifies ‘a full search of the person.’”



Individual Privacy Interests v. State Interest

- **Breath Test** - “Breath tests do not implicate significant privacy concerns. The physical intrusion is almost negligible. The tests do not require a piercing of the skin and entail a minimum inconvenience... Breath tests, unlike DNA samples, also yield only a BAC reading and leave no biological sample in the government’s possession. Finally, participation in a breath test is not likely to enhance the embarrassment inherent in any arrest.”



Individual Privacy Interests v. State Interest

- **Blood Test** - “The same cannot be said about blood tests. They [blood tests] require a piercing of the skin and extract a part of the subject’s body, and thus are significantly more intrusive than blowing into a tube. A blood test also gives law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. That prospect could cause anxiety for the person tested.”



Adam Vanek, General Counsel

Phone: 469.420.4422

Mobile: 214.998.1365

Email: adam.vanek@madd.org

