

WRITTEN TESTIMONY IN SUPPORT OF SB 498 and HB 1529

In 2013, the United States Supreme Court, in the landmark case of Missouri vs. McNeely, 569 U.S. 141 (2013) held that the natural dissipation of alcohol from the blood does not create a per se exigency exception permitting law enforcement to draw blood in a “garden variety” impaired driving case, absent a warrant.

The Supreme Court in McNeely explained and limited its prior decision in Schmerber v. California, 384 U.S. 757 (1966), in which it had upheld the warrantless blood draw in an impaired driving case because the officer “might reasonably have believed that he was encountered with an emergency, in which the delay in obtaining a warrant to draw blood would have threatened the destruction of evidence.” That is, the alcohol in Schmerber’s blood would have dissipated during the process of obtaining a warrant.

The McNeely court determined that the reasonableness of a warrantless search under the exigency exception to the warrant requirement must be evaluated on a case by case basis, based upon the totality of the circumstances. The Court went to great lengths to explain how warrants are much more easily obtained these days, what with electronic warrants and e mails.

The Supreme Court more recently decided the case of Birchfield v. North Dakota, 136 S.Ct. 2160 (2016) determined that while the physical intrusion of a breath test is negligible and entails a minimum of inconvenience, blood tests, on the other hand, are significantly more intrusive than are breath tests and in most situations a warrant was required prior to mandating a blood test.

Finally, in Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019), in a case involving a driver who was unconscious and deemed to be unable to give consent, the Supreme Court held that the police may almost always order a warrantless blood test to measure the suspect’s BAC without being in conflict with the Fourth Amendment. The Court then went on to say that they did not rule out the possibility that in an unusual case the defendant would be able to show that his blood would not have been drawn if the police had not been seeking BAC information and the police could not have reasonably determined that the warrant application process would interfere with other pressing needs or duties.

What these four Supreme Court cases have in common is that, in one way or another, they all stress the importance of seeking a warrant in order to obtain blood evidence in a “run-of-the-mill” impaired driving case. By “run-of-the-mill” I am referring to cases that don’t involve a fatality or life-threatening injury. In cases involving fatalities or life-threatening injuries, when an officer has a reasonable belief that the driver is impaired or under the influence, Maryland Transportation Code TA §16-205.1(c) authorizes a warrantless blood draw, using reasonable force if necessary. The Maryland Court of Special Appeals in Colbert v. State, 229 Md. App. 79 (2016) indicated that these are precisely the type of limited scenarios in which the Supreme Court would uphold a warrantless blood draw as explained in Missouri. v. McNeely.

The reason why we are asking that HB 1529 and SB 498 receive a favorable review is because it has been determined by certain members of the judiciary that the Maryland Transportation Article §16-205.1(b) *prohibits* search warrants in run-of-the-mill impaired driving cases. Specifically, it has been determined that the language in that subsection that reads “Except as provided in subsection (c), a person may not be compelled to take a test” prohibits a search warrant. Again, subsection (c) relates to situations involving a fatality or life-threatening injury, along with a reasonable belief of impairment.

So, while the Supreme Court says that the police must almost always seek a warrant prior to drawing blood in a garden variety impaired driving case, certain members of the Maryland judiciary have determined that they police may not do what the Supreme Court tells them they must do.

The Supreme Court stressed in all the above cases how serious they believe impaired driving cases are and that we have to do all we can to limit the carnage caused by impaired drivers.

Finally, as the Maryland appellate courts have consistently stated in cases involving TA §16-205.1, **“this section was enacted for the protection of the public, not for the protection of the accused. The purpose of this section is to protect other drivers on the road from those who would drive while intoxicated and to deter those who would otherwise decide to drive drunk.”**

It is for these reasons that the Maryland State’s Attorneys’ Association is asking that you give HB 1529/SB498 a favorable review.

Respectfully Submitted,

A handwritten signature in blue ink that reads "David Daggett" followed by the date "2/19/2020". The signature is written in a cursive style.

David Daggett

Maryland State’s Attorneys’ Association