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Court Says Police Need Warrant for Blood Test

By ADAM LIPTAK

WASHINGTON — The fact that alcohol dissipates from the bloodstream over time does not by itself give the police the right to draw blood without a warrant in drunken-driving investigations, the Supreme Court ruled on Wednesday.

The case arose from the arrest of Tyler G. McNeely, who was pulled over for speeding on a Missouri highway and, the State Supreme Court said, exhibited “the telltale signs of intoxication — bloodshot eyes, slurred speech and the smell of alcohol on his breath.” He performed poorly on a field sobriety test and was arrested.

Mr. McNeely refused to take a breath test and, after being taken to a hospital, to consent to a blood test. A blood test was performed anyway, about 25 minutes after he was pulled over, and it showed a blood alcohol level of 0.15 percent, almost twice the legal limit.

The state court suppressed the evidence, saying there had been no “exigent circumstances” that excused the failure to obtain a warrant. “Warrantless intrusions of the body are not to be undertaken lightly,” the court said in an unsigned opinion.

Justice Sonia Sotomayor, in an opinion joined by Justices Antonin Scalia, Ruth Bader Ginsburg, Elena Kagan and, for the most part, Anthony M. Kennedy, affirmed the state court’s decision. Justice Sotomayor said many factors had to be considered in deciding whether a warrant was needed.

“Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances,” Justice Sotomayor wrote.

Among the relevant factors, she said, are “the practical problems of obtaining a warrant within a time frame that still preserves the opportunity to obtain reliable evidence.” She said technological developments made promptly obtaining a warrant possible in many circumstances.

In 1966, in Schmerber v. California, the United States Supreme Court said no warrant was required to take blood without the driver’s consent after an accident in which the driver and a passenger had been injured. The fact that alcohol levels diminish over time figured in the court’s analysis, as did the time it took to investigate at the scene of the accident and move the injured people to the hospital.

In the Missouri case, Chief Justice John G. Roberts Jr., joined by Justices Stephen G. Breyer and Samuel A. Alito Jr., concurred in part and dissented in part.

“A police officer reading this court’s opinion would have no idea — no idea — what the Fourth Amendment requires of him,” the chief justice wrote, referring to the Constitution’s ban on unreasonable searches and seizures. He said it was possible “to offer guidance on how police should handle cases like the one before us.”

“Simply put,” the chief justice wrote, “when a drunk driving suspect fails field sobriety tests and refuses a breathalyzer, whether a warrant is required for a blood draw should come down to whether there is time to secure one.” No warrant should be required, he wrote, unless a police officer reasonably concludes that there was enough time.

Thirty states use electronic warrant applications, Chief Justice Roberts said. Many allow police officers to call a judge directly. A Kansas county has officers e-mail warrant applications to judges’ iPads.

Chief Justice Roberts said he would have returned the case to the lower court to apply the standard he proposed.

Justice Clarence Thomas dissented in the case, Missouri v. McNeely, No. 11-1425. “Nothing in the Fourth Amendment requires officers to allow evidence essential to enforcement of drunk-driving laws to be destroyed while they wait for a warrant to issue,” Justice Thomas wrote.