Case Law and Legislative Update

David Bernstein and Bill Lemons

CASE LAW UPDATE

State v. Bernard

859 N.W.2d 762 (Minn. Feb. 11, 2015), *rehearing denied* (March 16, 2015)

- Caller reported drunk driver only wearing underwear
- Defendant – who was only wearing underwear – denied being the driver
  - Admitted to drinking
  - Refused field sobriety tests
- Arrested
- Read Implied Consent advisory
  - Declined to contact an attorney
- Refused the breath test; charged with refusal

State v. Bernard

859 N.W.2d 762 (Minn. Feb. 11, 2015), *rehearing denied* (March 16, 2015)

- District Court: *McNeely* precluded the state from criminalizing refusal to submit to testing
- Court of Appeals: Reversed
  - Hypothetical Warrant – officer had a valid basis to ask for the warrant, so he didn't need one
- Bernard appealed, and the State joined in asking the Minnesota Supreme Court for review

State v. Bernard

859 N.W.2d 762 (Minn. Feb. 11, 2015), *rehearing denied* (March 16, 2015)

- Minnesota Supreme Court: A warrantless search is generally unreasonable unless an exception applies
  - In this case → search-incident-to-arrest
    - Must relate to officer safety or destruction of evidence
      - Destruction of evidence → *McNeely*
      - Majority: Applies to search of person's property, not body
    - Applies to breath, which is less invasive than blood
  - Not a due process violation
    - "Securing effective chemical tests … is reasonably related to the government's interest in keeping impaired drivers off the road."

State v. Bernard

859 N.W.2d 762 (Minn. Feb. 11, 2015), *rehearing denied* (March 16, 2015)

- Dissent: "Even though the court's opinion strikes a confident tone, the truth of the matter is that its decision is borne of obstinance, not law. The court today fundamentally departs from longstanding Fourth Amendment principles, and nullifies the warrant requirement in nearly every drunk-driving case."
  - Majority opinion ignores *McNeely*
  - Search-incident-to-arrest: No distinction between searching a person's property and body
- Bernard petitioned for review to the U.S. Supreme Court – still pending

State v. Fichtner

867 N.W.2d 242 (Minn. Ct. App. July 13, 2015)

- Minn. Stat. 169A.03, subd. 3(3):

  Aggravating factor includes:

  (3) having a child under the age of 16 in the motor vehicle at the time of the offense if the child is more than 36 months younger than the offender.

- Held: the presence of multiple children in vehicle at time of DWI constitutes only one aggravating factor

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State v. Stavish

868 N.W.2d 670 (Minn. Aug. 19, 2015)

- Minnesota State Patrol responded to a 911 call regarding a vehicle crash in Nicollet County
- Driver, Stavish, and passenger ejected from the vehicle
  - Passenger dead, Stavish seriously injured
- Stavish was transported by ambulance to the hospital
- There was a possibility Stavish would be transported by helicopter to a medical trauma center
- Officer did not obtain a warrant and authorized a blood draw approx. 70 minutes after the stop

State v. Stavish

868 N.W.2d 670 (Minn. Aug. 19, 2015)

- Exigent circumstances exception to warrant requirement:
  - Exigent circumstances justifying a warrantless search may exist when "there is compelling need for official action and no time to secure a warrant."
  - *McNeely*: natural dissipation of alcohol in the bloodstream is not enough; exigency must be decided based on a totality of the circumstances
  - Test: whether, under all of the facts reasonably available to the officer at the time of the search, it was objectively reasonable for the officer to conclude that he or she was faced with an emergency, in which the delay necessary to obtain a warrant would significantly undermine the efficacy of the search.

State v. Stavish

868 N.W.2d 670 (Minn. Aug. 19, 2015)

- Minnesota Supreme Court concluded that there were exigent circumstances in this case:
  - Important to draw alcohol within two hours
  - Stavish underwent emergency medical treatment at the hospital
    - Might be airlifted to another hospital
    - Officer did not inquire into more specifics; in fact, he can't because of federal and state privacy laws
  - No effort to obtain warrant, but seriousness of medical issues in this case established exigency
- Exigent circumstances analysis is very case specific

State v. Stavish

868 N.W.2d 670 (Minn. Aug. 19, 2015)

- Dissent: State did not meet its burden to prove exigency
  - State did not prove how long it would have taken to obtain a warrant
  - State cannot rely on exigent circumstances anytime someone is taken to a hospital with serious injuries

State v. Lindquist

-- N.W.2d -- , 2015 WL 4928147 (Minn. Aug. 19, 2015)

- February 19, 2011 – single-vehicle accident
- Driver transported to the hospital
- Officer did not read implied consent, authorized blood draw
- Lindquist convicted in a jury trial
- While this case was pending at the Court of Appeals, *McNeely* was decided
- Lindquist argued to suppress test results in light of *McNeely*

State v. Lindquist

-- N.W.2d -- , 2015 WL 4928147 (Minn. Aug. 19, 2015)

- Purpose of exclusionary rule is to deter police misconduct
- Good-faith exception: *U.S. v. Leon*, 468 U.S. 897 (1984): the "substantial social costs" of excluding incriminating evidence outweighed the exclusionary rule's benefit "when law enforcement officers have acted in objective good faith or their transgressions have been minor."
- More recent case: *State v. Davis*, 131 S.Ct. 2419 (2011)
- Minnesota had never previously adopted the exclusionary rule…

State v. Lindquist

-- N.W.2d -- , 2015 WL 4928147 (Minn. Aug. 19, 2015)

- …until now!

- "In summary, we hold that the exclusionary rule does not apply to violations of the Fourth Amendment to the U.S. Constitution, or Article I, Section 10, of the Minnesota Constitution when law enforcement acts in objectively reasonable reliance on binding appellate precedent."

State v. Lindquist

-- N.W.2d -- , 2015 WL 4928147 (Minn. Aug. 19, 2015)

- But be careful…
  - Applies to binding precedent only, not persuasive precedent
  - The binding precedent must specifically authorize the behavior
  - Only decided in the context of DWI tests, not other issues such as search warrants or police negligence
- In this case, the officer relied on binding appellate precedent at the time (*Shriner*, *Netland*) that authorized the specific behavior (warrantless blood draw), so the good-faith exception to the exclusionary rule applied

State v. Lindquist

-- N.W.2d -- , 2015 WL 4928147 (Minn. Aug. 19, 2015)

- Dissents:
  - Chief Justice Gildea: would not adopt the good-faith exception in Minnesota
  - Justices Page and Lillehaug: Negates the purpose of the Remedies Clause (Article I, Section 8 of the MN Constitution)
    - Exclusionary rule is statutory (Minn. Stat. 636.21)
    - Leaves defendants without a remedy in the law
    - Exception will swallow the rule

State v. Trahan

-- N.W.2d -- , 2015 WL 5927980 (Minn. Ct. App. Oct. 13, 2015)

- Trahan arrested for DWI
- Officer read the implied consent advisory
- Trahan agreed to a urine test, but the deputy said that Trahan tampered with the sample
- Trahan refused to take a blood test
- Trahan was charged with Refusal to Submit to Chemical Testing
- Trahan appealed; after *Bernard* was decided, the Minnesota Supreme Court remanded

State v. Trahan

-- N.W.2d -- , 2015 WL 5927980 (Minn. Ct. App. Oct. 13, 2015)

- A warrantless search is generally unreasonable unless an exception applies
- Court of Appeals: blood draw cannot qualify as a search-incident-to-arrest; more invasive than blood test
- No exigent circumstances or other exception to the warrant requirement
- Due process: everyone has a right to be free from unreasonable searches & seizures
- Therefore – the refusal statute is unconstitutional as it relates to requests for blood tests

State v. Trahan

-- N.W.2d -- , 2015 WL 5927980 (Minn. Ct. App. Oct. 13, 2015)

- Dissent (Judge Ross, who also wrote the Court of Appeals decision in *Bernard*):
  - Does not trigger strict scrutiny
  - No fundamental right because no search occurred
  - *McNeely*: States can use implied consent laws to enforce drunk driving violations
    - Driving is a privilege conditioned upon the implied consent laws
  - Chemical testing is critical to enforcing drunk driving laws
  - Alternative: get a warrant and strap them down
- State is preparing to appeal

Poeschel v. DPS

-- N.W.2d -- , (Minn. Ct. App. Oct. 26, 2015)

- Implied Consent license revocation
- Urine sample provided
- Suspect called an attorney. While on the phone, asked the officer if he had a search warrant. Suspect said she would provide a urine sample because she is required to and "because I'm being coerced, I'll give you a test"
- Held that the IC advisory is not coercive
- Sustained the license revocation
- Decision also held that right of additional testing was not violated

State v. Bennett

867 N.W.2d 539 (Minn. Ct. App. July 27, 2015)

- Held that Refusal crime does not violate doctrine of unconstitutional conditions
- Defendant refused a breath test
- Other similar decisions from Court of Appeals on this issue

Advice for Law Enforcement

- Obtain a breath test whenever possible under implied consent – DWI cases only
- For Drug DWI cases, breath testing is not possible. For now, obtain a search warrant and obtain a blood sample.
- For unconscious drivers, you can administratively revoke the drivers license, even though a blood sample is obtained with a search warrant. For conscious drivers, you can not, but the conviction will be sent to DVS.

Questions

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Legislative Update 2015

What Passed?

- DWI High BAC ⬇ from .20 to .16
- Gross Misdemeanor Reckless Driving
- Affirmative defense of necessity can be heard at implied consent hearing
- Proof of insurance

High BAC Lowered to .16

- DWI Aggravating Factor lowered to .16
- Effective: August 1, 2015

2015 Session Law: Chapter 65, Article 6

Necessity Defense IC Hearings

- Minn. Stat. 169A.53 amended to allow defense of necessity
- Axelburg v. Comm. of Public Safety, 848 N.W.2d 206 (Minn. 2014).
- Affirmative Defense – burden of proof is on the driver

2015 Session Law, Chapter 65, Article 6

Necessity Defense

The harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendant's breach of the law.

- No legal alternative
- Harm to be prevented is imminent
- Direct causal connection between breaking the law and preventing the harm

State v. Rein, 477 N.W. 2d 716 (Minn. App. 1991)

Necessity Defense

- Harm must generally be immediate and physical.
  - State v. Johnson,
    183 N.W.2d 541 (Minn. 1977)

Necessity Defense

- The defense is not available where danger or emergency can be avoided by taking advance precautions; Danger can not be caused by defendant's own recklessness or negligence

Necessity Defense

- Defendant must prove necessity by preponderance standard.
  - State v. Hage,

    596 N.W.2d 200 (Minn. 1999)

Necessity Defense High Standard for DWI:

- State v. Brodie
  532 N.W.2d 557 (Minn. 1995)
- State v. Hage
  595 N.W.2d 200 (Minn. 1999)
- State v. Koob
  (Minn. App. July 2, 2002)
- State v. Atha
  (Minn. App. November 17, 2009)

Investigation Questions

- Get a statement.
- Note where the incident occurred.
- Who was present?
- How far did they drive?
- Witnesses?

Reckless Driving

- Gross Misdemeanor: Great Bodily Harm or Death
- Minn. Stat. 169.13 subd. 1 and 3
- Effective August 1, 2015

2015 Session Law, Chapter 65, Article 6, Sections 3 – 4

Insurance

- ✓ Can provide proof of insurance in an electronic format
- ✓ Effective May 20, 2015

2015 Session Law, Chapter 75, Article 2, Section 27

Other

- Passing “utility company vehicle” with warning lights activated.
  Minn. Stat. 169.18.
  Effective August 1, 2015
- Texting penalty for subsequent offense is a $225 fine. Minn. Stat. 169.475.
  Effective August 1, 2015.

Other

- Headlamp changes.
  Effective May 23, 2015.
- Bail Enforcement Vehicles.
  Effective August 1, 2015.

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