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Drunk-driving and the Constitution

Cases and Controversies that Changed America

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Introduction

Historical Foundations of Supreme Court Drunk-Driving Decisions

For most of its storied history, the United States Supreme Court was never called upon to decide a case based upon the intoxicated operation of a motor vehicle. For most of the nation's early history, motor vehicles were not a part of life in our country. Moreover, even after the use of motor vehicles became widespread in our nation, there was simply no case that ever reached the justices. Generally speaking, cases and controversies related to motor vehicles, highway development and safety were deemed to be exclusively state-oriented issues in which the federal government had no discernible role.[1]

The origins of federal involvement with motor vehicles began in 1912 with the creation of the nation's first transcontinental roadway, the Lincoln Highway, an engineering feat that was largely accomplished under local state law and through the efforts of private industry. This was followed in the 1926 by the creation of the United States Numbered Highway System, the funding for which was provided by Congress. Finally, following World War II, both the executive branch of the federal government and Congress recognized the need, in the interests of national defense, for a modern system of highways that would link every part of the country in an efficient manner. The answer to this challenge was the creation in 1956 of the Interstate Highway System.

Apart from the increased involvement by the federal government in motor vehicle and transportation issues, the true turning point occurred in 1961 with the Court's publication of Mapp v. Ohio, 367 U.S. 643 (1961). This ruling made the protections of the Fourth Amendment applicable to the states through the Due Process Clause of the Fourteenth Amendment. As a result of *Mapp*, for the first time, state-law drunk-driving cases involving constitutional challenges under the Bill of Rights became subject to federal judicial review. The resulting body of case law has had an enormous impact on the civil rights of people living in our nation. As will been seen in these materials, the law related to the Fourth, Fifth and Sixth Amendments has been enormously influenced by decisions from our Supreme Court in drunk-driving cases.

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[1] One significant exception to this lack of Supreme Court involvement with motor vehicles was the landmark decision in *Carroll v. United States*, 267 *U.S.* 132, 45 *S.Ct.* 280, 69 *L.Ed.* 543 (1925), the decision which established the automobile exception to the warrant requirement under federal law.

Part I – Fourth Amendment Issues

a.) Searches and Seizures - In general

The Fourth Amendment limitations on the ability of the police conduct searches and seizures have applied to the states since 1961. In analyzing the relevant case law reported in this volume, it is important to keep certain fundamental Fourth Amendment principles in mind.

i.) Motor vehicle stops as a 4th Amendment seizure: Brendlin v. California, 551 U.S. 249 (2007).

ii.) Unreasonable searches: Elkins v. United States, 364 U.S. 206 (1960).

iii.) Motor vehicles as an effect: United States v. Jones, 565 U.S. 400 (2012).

iv.) Reduced expectation of privacy: California v. Carney, 471 U.S. 386, 392(1985).

b.) Motor vehicle stops – In general

Police involvement with intoxicated drivers may occur in a number of ways, some of which require an objectively reasonable level of suspicion and others that do not. Among the common reasons for a stop that ultimately results in a drunk-driving prosecution are the following:

i.) Reasonable suspicion: (Credential violation) Delaware v. Prouse, 440 U.S. 648 (1979).

ii.) Reasonable suspicion: (Anonymous tips) Navarette v. California, 572 U.S. 393 (2014)

iii.) Probable cause: (Traffic violations) Whren v. United States, 517 U.S. 806 (1996).

iv.) Community caretaking: Accidents – South Dakota v. Opperman, 428 U.S. 364 (1976)

v.) No suspicion necessary: DWI Checkpoints – Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990).

c.) Motor Vehicle Searches

Exceptions to the warrant requirement – In general

The lessened expectation of privacy, coupled with the inherent mobility of motor vehicles has spawned a number of exceptions to the warrant requirement over the years. Typically, evidence discovered and seized during a search under one of the following exceptions will be admissible in a drunk-driving case by way of the plain view doctrine. The physical evidence may include empty containers of alcoholic beverages, intoxicating drugs or drug paraphernalia, coolers, vomit-soiled clothing and other objects that raise an inference of recent consumption of intoxicants. Motor vehicles searches in a drunk-driving case may also result in the recovery of evidence that ties the defendant to another, unrelated crime. Thus, the need for law enforcement to conduct these searches in a reasonable manner is paramount.

Among the important exceptions to the warrant requirement in drunk-driving cases that may result in the recovery of incriminating evidence are the following:

i.) The automobile exception: Carroll v. United States, 267 U. S. 132 (1925)

ii.) Search for weapons: Michigan v. Long, 463 U. S. 1032 (1983).

iii.) Consent: Knowing & Voluntary

iv.) Community caretaking: Cady v. Dombrowski, 413 U.S. 433 (1973); Caniglia v. Strom. 141 S. Ct. 1596 (2021)

v.) Impoundment and inventory: Opperman v. South Dakota; Colorado v. Bertine, 479 U.S. 367 (1987)

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d.) Residential searches – In general

It is fundamental under constitutional doctrine that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.[2] Accordingly, the search of a residence by the police must occur either under the authority of a validly issued search warrant or under one of the narrow exceptions under the Fourth Amendment permitting such entries. The most commonly used among these are consent,[3] emergency aid,[4] exigent circumstances[5]and hot pursuit.[6] In the drunk-driving context, the warrantless entry into a home to arrest a fleeing suspect has been analyzed in two cases by the Court, both of which, as will been seen, resulted in a suppression of the evidence.

1.) Residential searches – Non-criminal, petty offenses – Welsh v. Wisconsin, 466 U.S. 740 (1984).

2.) Residential searches – Hot pursuit – Lange v. California, 141 S. Ct. 2011 (2021)

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[2] United States v. United States District Court, 407 U.S. 297, 313, 92 S.Ct. 2125, 2134, 32 L.Ed.2d 752 (1972); "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).

[3] *Georgia v. Randolph,* 547 U.S. 103, 116, n. 6, 126 S.Ct. 1515, 164 L.Ed.2d 208 (2006).

[4] Brigham v. Stuart, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006).

[5] Peyton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); *Warden v. Hayden, supra,* 387 *U.S.* 294, 87 *S.Ct.* 1642, 18 *L.Ed.*2d 782 (1967); Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed. 2d 290 (1978).

[6] United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976).

e.) Extraction of blood samples – In general

As the law has developed over the decades, the extraction of a blood sample from a living human being is now considered to be a search within the meaning of the Fourth Amendment. As a result, police agencies have a duty to act reasonably in the extraction of a blood sample by either obtaining judicial authority, usually in the form of a search warrant, or relying upon one of the recognized exception to the warrant requirement. This obligation was imposed upon the states as a result of Mapp v. Ohio. 367 U.S. 643 (1961). However, as will be seen in the rare blood extraction cases prior to *Mapp*, the Court had to justify its decisions in blood draw decisions by local police officers upon amorphous and ill-defined concepts of substantive due process of law.

1.) Extraction of blood samples - The "shocks the conscious of the Court" standard: Rochin v. California, 342 U.S. 165 (1952)

2.) Extraction of blood samples - Blood drawn from an unconscious suspect – Breithaupt v. Abram, 352 U.S. 432 (1957)

3.) Extraction of blood samples - Blood drawn from an unconscious suspect – Mitchell v. Wisconsin, 139 S.Ct. 2525 (2019)

4.) Extraction of blood samples - Blood draw without a search warrant - Schmerber v. California, 384 U.S. 757 (1966)

5.) Extraction of blood samples – Exigent circumstances - Missouri v. McNeely, 569 U.S. 141 (2013)

6.) Extraction of blood samples – Blood and breath tests taken as a search incident to arrest - Birchfield v. North Dakota, 8(2016)

Part II – Fifth Amendment Issues

a.) Admissions and non-testimonial evidence

In many instances, suspects who are under investigation for drunk-driving will make admissions at the scene of the traffic stop that will later prove to be highly incriminating. These pre-arrest admissions may come in response to preliminary questions by the investigating officer or as a result of spontaneous and often drunken declarations from the defendant. In either event, if the admissions are made voluntarily and are relevant on some issue in the case, they will likely be admissible at trial.

Police who investigate a drunk-driving incident may also obtain relevant evidence of guilt that is considered to be non-testimonial. "Non-testimonial" in this context means, the evidence does not come from a conscious decision by the defendant to make any type of declarative statement. For example, the suspect's performance on standard field sobriety tests at the scene of the motor vehicle stop may provide evidence to support both probable cause to arrest the suspect for driving while intoxicated as well as evidence of guilt at trial. Other field sobriety tests such as saying the alphabet, counting backwards, the results of a horizontal gaze nystagmus test and the like are also considered to be non-testimonial. These tests can provide a strong inference of guilt and, unlike an admission, do not involve any affirmative communications from the defendant.

Like a confession, the admissibility at trial of an admission will be subject to *Miranda* warnings when it was made in response to police questioning during a custodial interrogation. Non-testimonial evidence is not subject to *Miranda* warnings. In the landmark decision of Berkemer v. McCarty, 468 U.S. 420 (1984), the key legal issue for the Court was to gauge the moment when a suspected drunk-driver will be entitled to receive *Mirands* warnings[7] during the initial traffic stop and after the subsequent arrest for drunk-driving.

1.) Admissions and non-testimonial evidence – Traffic stops - Berkemer v. McCarty, 468 U.S. 420 (1984)

2.) Admissions and non-testimonial evidence – Admissions made during a traffic stop - Pennsylvania v. Bruder, 488 U.S. 9 (1988)

3.) Admissions and non-testimonial evidence – Breath test refusal as non-testimonial evidence - South Dakota v. Neville, 459 U.S. 553 (1983)

4.) Admissions and non-testimonial evidence – Admissions made during breath-test refusal - Pennsylvania v. Muniz, 496 U.S. 582 (1990)

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[7] Miranda v, Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

b.) Admissibility of forensic evidence at trial – In general

The case law related to the admissibility of forensic evidence in drunk-driving cases is based upon the twin holdings of Crawford v. Washington, 541 U.S. 36 (2004) and Davis v. Washington, 547 U.S. 813 (2006). These cases stand for the proposition that, notwithstanding state law exceptions to the hearsay rules, the Confrontation Clause of the Sixth Amendment requires that evidence that is testimonial in nature (that is, specifically prepared and intended to be used in a criminal prosecution of a targeted defendant) is not admissible unless the declarant appears as a witness at trial or has been subject to an opportunity for meaningful cross-examination. The main issue before the Supreme Court in the following two cases is whether forensic evidence in the form of scientific tests constitutes testimonial evidence. Simply stated, despite the hardships and inconvenience to state forensic laboratories, there is no forensic evidence exception to the requirements of *Crawford* and *Davis.*

1.) Admissibility of forensic evidence at trial – Witnesses - Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009):

2.) Admissibility of forensic evidence at trial – Witnesses - Bullcoming v. New Mexico, 564 U.S. 647 (2011)

3.) Admissibility of forensic evidence at trial - Failure of the police to preserve breath samples - California v. Trombetta, 467 U.S. 479 (1984):

c.) Due process – License loss prior to DWI trial

Due process - Immediate suspension of driving privileges based upon a refusal to take a breath test - Mackey v. Montrym, 443 U.S. 1 (1979)

Part III – Sixth Amendment Issues

a.) Trial by jury in DWI cases – In general

The Sixth Amendment of the United States Constitution provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. That provision is applicable to the states by virtue of the Fourteenth Amendment.[8]

In the vast majority of states in our nation, drunk-driving is considered a crime that often carries the potential for lengthy jail terms, especially in the case of repeat offenders. In a distinct minority of states,[9] drunk-driving is considered to be a petty traffic offense. For purposes of trial by jury, the distinction between a serious and petty offense is based upon the maximum jail term that the legislature has authorized.[10] For violations (petty offenses) where the maximum authorized jail term is 180-days or less, there is no presumptive right to a trial by jury.[11] The right to a jury trial attaches to serious offenses.

Despite this clear demarcation between serious and petty offenses, state legislatures may pack a drunk-driving violation with additional penalties, fees, fines, community service and other sanction to such an extent that a nominally petty offense would become so serious as to entitle the accused pursuant to the Sixth Amendment to a jury trial. This is the precise issue that was presented to the Court in our next case, Blanton v. City of north Las Vegas, 489 U.S. 538 (1989).

1.) Trial by jury – Petty vs. serious offenses - Blanton v. North Las Vegas, 489 U.S. 538 (1989)

2.) Trial by jury – Petty vs. serious offenses - United States v. Nachtigal, 507 U.S. 1 (1993)

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[8] Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968); See also the earlier case of *Pointer v. Texas,* 380 *U.S.* 400, 403, 85 *S.Ct.* 1065, 1067–68, 13 *L.Ed.*2d 923, 926 (1965).

[9] New Jersey is one of those states. Driving while intoxicated is considered to be a petty offense with jail terms capped at 180 days for third time and subsequent offenders. N.J.S.A. 39:4-50a.

[10] *Duncan v. Louisiana,* 391 *U.S.* 145, 88 *S.Ct.* 1444, 20 *L.Ed.*2d 491 (1968).

[11] " *Frank v. United States,* 395 *U.S.* 147, 148, 89 *S.Ct.* 1503, 1505, 23 *L.Ed.*2d 162, 166 (1969); *Baldwin v. New York,* 399 *U.S.* 66, 68, 90 *S.Ct.* 1886, 1887–88, 26 *L.Ed.*2d 437, 440 (1970).