DWI Update

- New Legislation: Felony DWI and Forfeiture/ Ignition Interlock
- New Case Law: Mitchell and Rosenbush
- New Issues: Source Code

Minn. Stat. 169A.24

- Provides catch-all language for felony CVO/ CVH convictions
- Smith decision
- Includes out of state convictions (Convictions for CVO)

2019 Minnesota Session Laws, Chapter 5, Article 6, Section 3

Minn. Stat. 169A.63

Allows someone to avoid DWI forfeiture by enrolling in the ignition interlock program

2019 Minnesota Session Laws, Chapter 5, Article 6, Section 4

Wisconsin v. Mitchell,

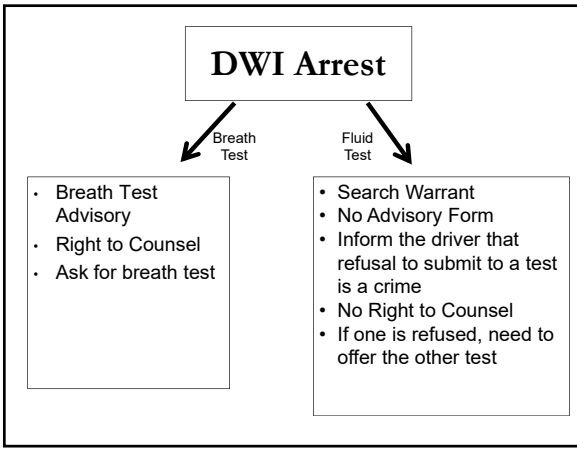
___ U.S. ___ (June 27, 2019).

- Warrantless blood draw from an unconscious driver
- Court held that this was an exigent circumstance where the driver was unconscious and treated medically
- Court did not rule for the state based upon implied consent

State v. Rosenbush,

931 N.W.2d 91 (Minn. 2019).

- Minnesota Supreme Court held that the limited right to counsel in Friedman does not apply when there is a search warrant for the blood draw under Minn. Stat. 171.177.
- The decision was 4 – 3
- There is a right to counsel before a breath test



Source Code

We are starting to see requests for the source code for the DMT breath test instrument.

We previously dealt with source code challenges from 2007 – 2012. This involved:

- The Minnesota Supreme Court ruled in Underdahl II that we had to produce the source code.
- Minnesota litigated a Federal lawsuit against the manufacturer to obtain the source code
- The source code was made available at the manufactuer headquarters in Kentucky
- An evidentiary hearing during December 2012

Do not agree to the defense attorney's motion requesting the source code

Source Code

There are 3 arguments to oppose the defense's source code motion:

1. Relevancy or materiality
2. The State does not have possession, custody, or control of the source code
3. Challenging the qualifications of the defense expert

Resources Available

- Brief template for source code request
- Affidavits of Steven Haenchen
- Affidavit of BCA breath test lab
- Orders by district court

Questions

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