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).

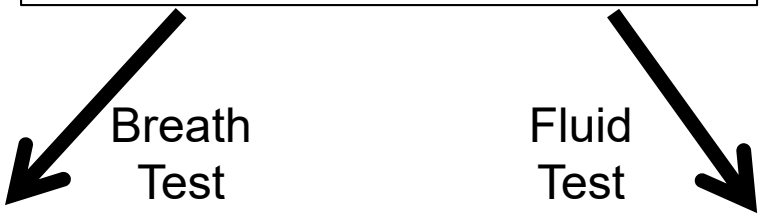
- Warrantless blood draw from an unconscious driver
- Court held that this was an exigent circumstance where the driver was unconscious and treated medically
- Court did not rule for the state based upon implied consent

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

DWI Arrest



- Breath Test Advisory
- Right to Counsel
- Ask for breath test

- Search Warrant
- No Advisory Form
- Inform the driver that refusal to submit to a test is a crime
- No Right to Counsel
- If one is refused, need to offer the other 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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