2017 DWI UPDATE

Criminal Justice Institute

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Themes

- Still a good year to be a prosecutor
- But drivers didn’t do too badly either
- Legislature should really follow the process when drafting DWI laws
- And as always . . .
- If you wanted a fair process, you shouldn’t have consumed alcohol before you drove!

Criminal Refusal

- In State v. Bernard, the Minnesota Supreme Court held that breath testing for alcohol concentration was a search incident to arrest and, because such searches never require a warrant, the state may criminalize refusing to test.
- In a footnote, court made clear that it was limiting its holding to breath cases.

Criminal Refusal

- SCOTUS granted Bernard's petition for certiorari.
- Minnesota Court of Appeals then decides State v. Trahan, and holds that blood tests for alcohol concentration are not searches incident to arrest because they are more intrusive than breath tests, and the state cannot criminalize refusing those tests

Criminal Refusal

- Minnesota Court of Appeals expands its holding in Trahan to urine testing in State v. Thompson.
- Court finds that urine testing touches on significant privacy interests and should be treated the same as blood testing.

Criminal Refusal

- Birchfield v. North Dakota (formerly known as Bernard v. Minnesota)
- SCOTUS concludes that blood tests for alcohol concentration are searches that require a warrant and, accordingly, a state cannot criminalize a person's refusal to submit to a blood test.

Criminal Refusal

- Court concludes that breath tests for alcohol concentration, however, are “searches incident to a lawful arrest,” and because such searches never require a warrant, a state may criminalize a person’s refusal to a breath test.
- Court does not address urine testing, as no urine cases were before it.

Criminal Refusal

- Ruling leaves Minnesota's appellate rulings intact.
- Bernard on breath testing.
- Trahan and Thompson are affirmed by the Minnesota Supreme Court.

Look Out, Here Comes the Legislature!

- In the wake of Birchfield, Trahan & Thompson, the DWI Taskforce and other groups proposed new legislation.
- Law enforcement groups complain that these cases created a “loop hole” that needs to be plugged.
- The Senate held public hearings on the various proposals.
- The Chair of the House Public Safety Committee (a retired police officer) refused to hold any public hearings on any proposal, which would normally kill a bill.
- But not this time . . .

The Legislative “Fix”

- H.F. No. 179 began its life on 1/12/2017 as a one page bill to prohibit DPS from requiring IID companies to collect and share “location tracking” information with the department.
- The Bill went through 4 “engrossments” and gained many authors between January and May 15, when it was passed by the House and sent to the Senate. The Bill passed was 1½ pages.
- 179 was “amended” in conference and passed by both the House and Senate 4 days later.
- H.F. No. 179 was now 31 pages long.

Making Sausage

- The new bill does still prohibit DPS from stalking.
- It also provides for a “new” way of collecting blood and urine samples.
- Search warrants.
- New law creates Minn. Stat. Sec. 171.177, titled “Revocation; Pursuant to Search Warrant.”

Making Sausage

- New statute creates new procedure and a special advisory (one sentence) for officer's to use when they want blood or urine.
- Allows for DPS to revoke DLs for positive test results taken by warrant.
- Also allows for DPS to revoke based on "refusal to comply with the execution of the search warrant."
- Says that if refused, "the test must not be given," unless it's a CVH/CVO
- May be prosecuted for "refusing to comply with the execution of the warrant.

Making Sausage

- Despite availability of refusal prosecution, statute contains no provision for consulting with an attorney.
- Provides for administrative and judicial review with slightly modified issues that may be litigated.
- Bill also extends the statute of limitations for judicial review to 60 days.
- Also permits a driver to defend against a revocation for the presence of a Schedule I & II Controlled Substance based on a prescription, “unless the court finds by a preponderance of the evidence that the use of the controlled substance impaired the person’s ability to operate a motor vehicle.”

Due Process and the MICA

- Court of Appeals, after a couple unpublished cases to the contrary, has now decided that the reading of the MICA to a driver followed by a request for a blood or urine test violates the Due Process Clause.
- Court concludes, based on the Minnesota Supreme Court's decision in McDonnell, that the remedy for such a violation is rescission of any resulting license revocation and suppression of any evidence obtained.
- Minnesota Supreme Court has accepted review of some of these cases and stayed others pending review.

Enhanceability

- 3 cases: Vaughn, Boecker & Smith.
- Vaughn just reinforces that an uncounseled, uncontested implied consent revocation can be used to enhance, even when the driver is acquitted of the companion criminal charge.
- The court remains unconcerned that people of modest means cannot ever defend themselves fully against a DWI charge.

Enhanceability

- Boecker and Smith.
- Same court, same issue, two different conclusions.
- Both cases involve whether a conviction under a statute not specifically enumerated in the list of enhanceable priors can be used to enhance the current charge.
- Stras writes the dissent in one and the majority in the other.
- Boecker looses, Smith wins.
- Read them both closely.
- Don’t ever underestimate the value of one vote!

Expungement

- State v. J.E.H.
- Referee denied an expungement petition, essentially holding that DWI is so dangerous that it should not be expunged.
- COA reversed and remanded for district court to consider all factors in the new expungement law.
- DWIs are expungable.

Can Challenge a 0.16 in an IC

- Janssen v. CPS
- Janssen wants to challenge his doubled revocation period for testing over 0.16. CPS argues that is not within the statutory “scope of hearing” list and district court agrees.
- COA says it would deny due process to preclude a driver from raising this issue.

Back-up Prosecutor

- State v. Olson & State v. Thomas
- In Olson, state was unprepared on day of trial due to officer not showing up. Motion for continuance denied. State dismisses.
- State recharges a few days later and Olson moves to dismiss. Dist. Ct. denies motion and Olson convicted in a stipulated fact trial.
- Court of Appeals reverses, holding that dismissal was in bad faith as a DIY continuance.
- Supreme Court reverses, holding that “good-faith” is not required and denying Olson’s motion was within the district court’s discretion.

Back-up Prosecutor

- In State v. Thomas, prosecutor rests without admitting evidence regarding prior convictions.
- Thomas moves for judgment of acquittal, since state had failed to prove one of the elements of a 2nd Degree DWI.
- District court does not rule on Thomas' motion before allowing state to move to re-open. Dist. Ct. then grants the state's motion and denies Thomas'.
- Supreme courts rules that "the state rests" has no meaning.
- Suggests that there may have been a different outcome if Thomas had rested in reliance on the state's missing evidence and moved for acquittal then.

Vehicle Forfeiture

- Briles v. 2013 GMC Terrain
- Son uses father's car while father is out of town. Son gets popped for his 6th in a car-totaling accident. State serves dad with notice that they intend to forfeit the vehicle. Notice says nothing about insurance proceeds. Since the case is wrecked, dad decides not to sue.
- County later files a "lien" with the insurance company, claim they are entitled to the collision proceeds. Father then sues, but well outside statute of limitations. County moves to dismiss and DC dismisses his complaint.

Vehicle Forfeiture

- COA rules that petition is untimely.
- But then goes on to rule that there is nothing in the DWI forfeiture statute that make insurance proceeds subject to forfeiture.
- Supreme court has granted review.

Post Conviction

- Brooks v. State
- Brooks 3 felony DWI convictions were the product of blood and urine tests. After Birchfield, Trahan and Thompson, Brooks moved the DC to apply those cases retroactively and vacate his convictions. Those requests were denied.
- Brooks appealed, raising retroactivity and ineffective assistance of both trial and appellate counsel.
- Court of appeals ruled that Birchfield was a new constitutional ruling and not an extension of Schmerber, and affirmed DC ruling.

State Constitutional Claims

- State v. Pettijohn, 2017 WL 2823027 (Iowa 2017)
- Pettijohn arrested on suspicion he was operating a motorboat while impaired. Read an implied consent advisory at police station and agreed to a breath test.
- Court held that while the breath test was a lawful search incident to arrest under the U.S. Constitution, it was not a lawful search under the Iowa Constitution.
- And it begins again . . .

Thank You!

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