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Birchfield v. North Dakota 136 S.Ct. 614

- Breath Test can be required by a search incident to a DUI arrest (Breath test is a "negligible" intrusion, like a mouth swap or a fingernail scraping)
- Blood Test is intrusive and requires consent, exigent circumstances or a search warrant

(Cannot threaten criminal sanctions)

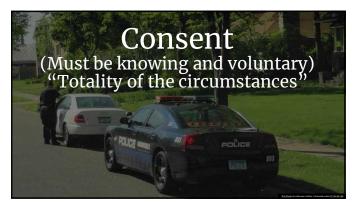
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State v. Henderson 2017 WL 838665 (3/3/17)

State v. Sensing, 843 S.W.2d 412 factors must be followed for an officer to testify regarding a breath test result If the officer fails to follow *Sensing*, a TBI expert can testify regarding the calibration and accuracy of the testing instrument and the test result



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State v. Hafer 2020 WL 918653 (2/26/20) Crash on interstate ramp

Asked for consent for a blood sample
Put in back of THP car and called a friend
for bail

Read improper implied consent form Will was not overborne when consent was requested

State v. Andrews 2023 WL 8924722 (12/27/23)

Head-on crash and Defendant was initially unconscious Defendant evaluated by EMS (GCS 14 then 15), transported to Vanderbilt

At Vanderbilt, Trooper administered HGN ("slight nystagmus" in both eyes)

Asked for consent for blood sample

Nurse obtained blood after she got verbal consent

Jail phone call to mom said consent given

Motion to Suppress denied. Court found voluntary consent

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Public Chapter 892 (Effective 5/1/2024) Law enforcement may execute a search warrant for <u>medical records or a test to</u> determine the alcohol or drug content, or both, of a person's blood anywhere in the

Adds to TCA 40-1-106

All magistrates have statewide jurisdiction to issue SW in any jurisdiction, if at least one (1) element of the alleged crime on which the SW is based is committed within the jurisdiction of the magistrate

Public Chapter 892 (Effective 5/1/2024) Amends TCA 55-10-408(a)

A Blood Sample procured pursuant to 55-10-406, all limited testing for alcohol and/or drugs is considered a reasonable search and allowed into evidence without additional need for a SW or court order

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Exigency

1issouri v McNeely (2013)

State v. Martin (2017)

State v. Oaks (2019)

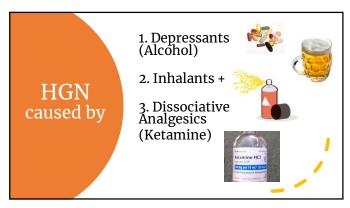
Mitchell v. Wisconsin (2019)

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State v. Davis, 2023 WL 7297937





State v. Murphy 953 S.W.2d 200 (Tenn. 1997) HGN testimony requires an expert Evid. Rules 702 and 703 State v. Reynolds 504 S.W.3d 283 (Tenn. 2016) HGN can be used for PC to arrest Footnote 6 (Qualifications of Expert) State v. Dale 2024 WL 139243 Can testify to other observations during HGN test See State v. Childress, 2016 WL 7468206







Drug Evaluation Classification (DREs)

State v. Brewer 2020 WL 1672958 (Apr. 6, 2020, Tenn. Cri. App.)

The evidence (DRE testimony as an expert) can substantially assist the trier of fact as required by Rules 702 and 703 and should be admitted, subject to vigorous cross-examination, with the weight accorded to the proof to be decided by the trier of fact

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