



Drug and Alcohol Testing

Judicial Conference
2024

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Birchfield v. North Dakota 136 S.Ct. 2160 (2016)

- 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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TCA
55-10-406

(b)(1) Breath:

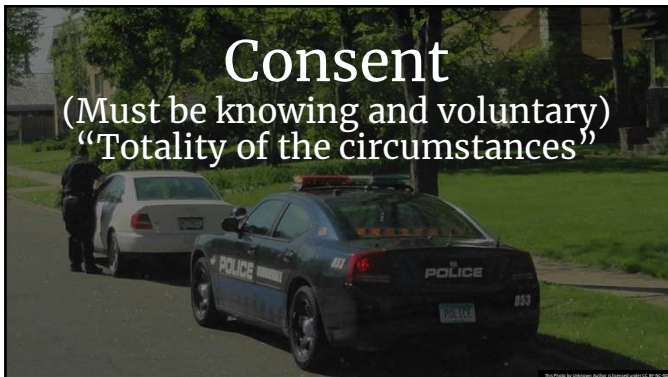
- (A) Implied Consent
- (B) Operator's Consent
- (C) Search Warrant
- (D) Incident to Arrest
- (E) According to sub (c)(1)

(2) Blood:

- (A) Implied Consent
- (B) Operator's Consent
- (C) Search Warrant
- (D) Exigent Circumstances
- (E) According to sub (c)(2)

Subsection (i): Admissible if by Consent

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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 criminal sanction implied consent
form
*Will was not overborne when consent was
requested

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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, Defendant was hesitant
Trooper to Trooper conversation (Told mandatory)
Nurse obtained blood after she got verbal consent
Jail phone call to mom said consent given
Motion to Suppress denied b/c Court found voluntary consent

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Search Warrants



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Public
Chapter
892
(Effective
5/1/2024)

Law enforcement may execute a search warrant for medical records or a test to determine the alcohol or drug content, or both, of a person's blood anywhere in the state

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

(Always have jurisdiction over evidence within their own jurisdiction)

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Public
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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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Exigent Circumstances



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Exigency

Missouri v McNeely (2013)

Mitchell v. Wisconsin (2019)

State v. Randy Reynolds
2023 WL 3835846

State v. Davis
2023 WL 7297937

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HGN Testimony

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HGN caused by

1. Depressants
(Alcohol)

2. Inhalants +

3. Dissociative
Analgesics
(Ketamine)



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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)

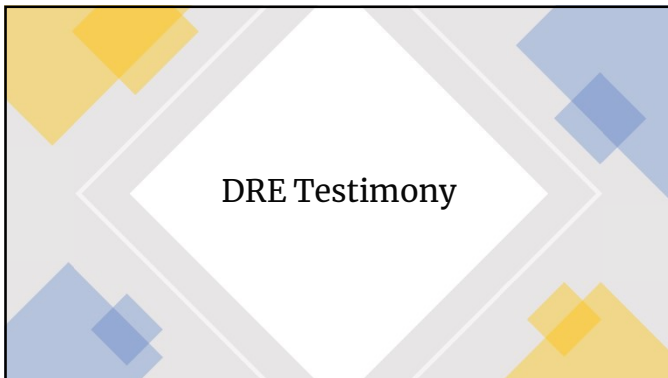
- HGN can be used for PC to arrest
- Footnote 6 (Qualifications of Expert)

State v. Dale
2024 WL 139243

- Can testify to other observations during HGN test
- See *State v. Childress*, 2016 WL 7468206



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DRE Testimony


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The New Impaired Driver

It is not just alcohol anymore

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PRESCRIBED MEDICINE AND OTC MEDS

- Impairment by drugs will not always appear obvious on SFSTs and video (Reaction time, perception and divided attention)
- TPJI 30.02 Prescription or lawful drug use is NOT a defense to DUI
- There is no legal limit to an impairing drug

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Drug Evaluation Classification (DREs)

State v. Brewer
2020 WL 1672958 (Apr. 6, 2020, Tenn. Crim. 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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