IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA,

CRIMINAL DIVISION "W"
CASE NO. 502010CF005829AXXXMB

vs.

JOHN B. GOODMAN,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS BLOOD EVIDENCE

THIS CAUSE came before the Court on Defendant's Motion to Suppress Blood Evidence, filed on November 19, 2013 pursuant to Florida Rule of Criminal Procedure 3.190(h) and (*i*). After reviewing the Motion, hearing the argument of counsel at the hearing held on January 3, 2014, and considering relevant case law, it is hereby **ORDERED AND ADJUDGED** as follows:

A. Findings of Fact

Defendant was involved in a motor vehicle crash at the intersection of 120 Ave South and Lake Worth Road in Wellington at approximately 1:00 a.m. on February 12, 2010. There were multiple 911 calls placed for assistance by passersby who saw Defendant's damaged vehicle in the area. Defendant was not present at the scene and he did not call 911 until approximately 1:55 a.m. to indicate he was the driver and give his location. Once back at the scene, Defendant advised that he was the driver of the Bentley and that he hit something that he did not see after he entered the intersection. Paramedics at the scene treated Defendant for his injuries and he was eventually transported to Wellington Regional Hospital at 2:26 a.m. At 2:31 a.m., authorities on the scene confirmed there was a fatality to the crash. One minute later, two DUI officers, who were also trained in DUI homicide, were dispatched to the scene.

Investigator Troy Snelgrove of Palm Beach County Sherriff's Office was not called out to the scene until approximately 3:10 a.m., more than two hours after the crash occurred, and arrived there at 3:18 a.m. After speaking with the other DUI officers on the scene and conducting his own investigation, Investigator Snelgrove left the scene at approximately 3:33 a.m. and drove to Wellington Regional Hospital to see Defendant. When Investigator Snelgrove first arrived at the hospital, Defendant was in the radiology department receiving x-rays. Upon meeting Defendant, Investigator Snelgrove observed, among other things, the strong odor of alcohol on Defendant's breath, his eyes were red and glassy, and that the square-toed cowboy boots matched those found leading away from the Bentley. At approximately 3:58 a.m., Investigator Snelgrove requested a sample of Defendant's blood after he explained he had probable cause to believe Defendant was driving intoxicated at the time of the crash. After Defendant refused to provide a blood sample, Investigator Snelgrove directed a nurse to perform the blood draw.

In detailing the process to obtain a warrant, Investigator Snelgrove first explained that it takes between thirty to forty-five minutes to write the narrative and need to include facts and make an application. He also stated that it is hard to get someone on the phone at that hour and then once the warrant is sent to the State Attorney's Office for a review of legal sufficiency, then the duty judge must be contacted and the officer must travel to the duty judge's residence. Investigator Snelgrove estimated it would have taken him between two to two-and-a-half hours to obtain a warrant at night in these circumstances.

Defendant's witness, Officer Melinda Hanton of Palm Beach Gardens Police Department, has worked as a DUI traffic enforcement officer since 2008. Officer Hanton explained she successfully obtained a search warrant for a nonconsensual blood draw while participating in DUI Saturation Patrol in February 2009. On that occasion, she was provided with a blank search

warrant which she filled out before the saturation patrol with her personal information and later added the facts of the case for the assistant state attorney at the mobile command post to review. By the time Officer Hanton finished her report and took it to the mobile command post, the duty judge was already anticipating the arrival of the warrant which was then promptly signed and returned via fax. Officer Hanton estimated that it took her an hour to obtain the warrant from start to finish.

B. Discussion

Defendant argues that the results of the warrantless blood draw performed at the direction of Investigator Snelgrove should be suppressed based on the recent decision of the Supreme Court of the United States in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013) ("*McNeely*"). The State counters that even in light of the decision in *McNeely*, Defendant's blood was drawn lawfully without a warrant due to exigent circumstances. The State alternatively posits that the blood draw was lawful because Investigator Snelgrove complied with Florida's Implied Consent Law, section 316.1933, Florida Statutes, the constitutionality of which has not been called into question by *McNeely*.

1. *Missouri v. McNeely*, 133 S. Ct. 1552 (U.S. 2013)

Defendant contends that the United States Supreme Court's recent decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (U.S. 2013), renders his warrantless blood draw unlawful. In *McNeely*, the Supreme Court addressed the sole question of "whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." 133 S. Ct. at 1556. In brief, the Court declined to establish a per se rule permitting warrantless blood draws in all drunk-driving cases and stated "the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood

test without a warrant." *Id.* at 1568.

The facts of *McNeely* involved the arrest of an individual who performed poorly on field-sobriety tests after he was initially stopped for speeding and crossing the center line. *Id.* at 1556-57. The individual refused to use a portable breath-test device to measure his blood alcohol concentration. *Id.* at 1557. During the transport of the individual to the station by the arresting officer, he again indicated he would refuse to provide a breath sample and thus the officer took him to a nearby hospital for blood testing. *Id.* The officer did not obtain a warrant for the blood draw. *Id.* After the officer explained the implied consent law, the individual still refused to submit to the blood test. *Id.* The trial court suppressed the results of the blood test since apart from mere metabolization of alcohol, "there were no other circumstances suggesting the officer faced an emergency in which he could not practicably obtain a warrant." *Id.* (citation omitted) The Missouri Supreme Court affirmed and concluded that *Schmerber v. California*, 384 U.S. 757 (1966) required more than the dissipation of blood-alcohol evidence to support a warrantless blood draw and that an exigency depended on the existence of additional special facts. *Id.*

The Court began its analysis by pointing to its precedent established by *Schmerber* where the Court upheld a warrantless blood test of an individual arrested for driving under the influence of alcohol because the officer might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence. *Id.* at 1575 (internal quotation marks and citation omitted). The Court noted that the *Schmerber* decision applied the totality of the circumstances principle to determine when a law enforcement officer faces an emergency that justified acting without a warrant. *Id.* at 1569. Thus, in holding that the natural dissipation of alcohol in the blood does not create a *per se* exigency, the Court reaffirmed the principle that "where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly

undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *Id.* at 1561.

2. Exigent Circumstances

Defendant contends that applying *McNeely* to the facts of the instant case there is nothing in the record to show exigent circumstances existed to support a finding that the blood draw was constitutional. (Mot. at 3.) As reaffirmed in *McNeely*, however, the totality of the circumstances approach used in other Fourth Amendment contexts is proper to determine "[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances."[1] 133 S. Ct. at 1564. "The relevant factors in determining in determining whether a warrantless search is reasonable, including the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence, will no doubt vary depending upon the circumstances in the case." *Id.* at 1568. In reviewing the applicable case law and standards, the *McNeely* court identified certain factors that would establish whether an exigent circumstance existed, including the natural dissipation of alcohol from the body, the time to seek out a magistrate to review a warrant, a DUI involving a crash where an investigation must be conducted, and the availability of electronic or telephonic warrants. *See* 133 S. Ct. at 1560-62.

The Court believes that its order is consistent with the only two other Courts to address the applicability of the recent *McNeely* decision and Florida's Implied Consent Law. *See also, State v. Aguilar*, 20 Fla. L. Weekly Supp. 658a (Fla. 11th Cir. Ct. May 16, 2013) (holding nonconsensual blood draw admissible since *McNeely* did not change the totality of the

[1] The *McNeely* decision solely addressed whether the dissipation of alcohol established a per se exigency since Missouri in its Petition for Certiorari to the Court "did not separately contend that the warrantless blood test was reasonable regardless of whether the natural dissipation of alcohol in a suspect's blood categorically justifies dispensing with the warrant requirement." 133 S.Ct. at 1568.

circumstances test to determine whether an exigent circumstance existed); *State v. Finnegan*, Case Number 432010CF000349A (Fla. 19th Cir. Ct. October 28, 2013) (same). Other state courts addressing challenges to their respective implied consent laws have also distinguished *McNeely*. *See State v. Brooks*, 838 N.W. 2d 563, 572 (Minn. 2013) (noting *McNeely* recognized that implied consent laws "are 'legal tools' states continue to have to enforce their drunk driving laws"); *In re Hart*, 835 N.W. 2d 292 (Wis. 2013) (stating a defendant's reliance on *McNeely* to challenge the lawfulness of the blood draw taken after he refused to provide a sample is "misplaced");

Here, the State has proven that the blood draw complies with the exigent circumstances exception to the warrant requirement of the Fourth Amendment. The crash occurred sometime around 1:00 a.m. and 911 calls were received shortly thereafter. Upon arriving at the scene, first responders only saw Defendant's Bentley, without a driver, and nothing else. It was not until approximately one hour later that Defendant made contact with authorities and alerted them that he was involved in the crash. Even at this point, no one was aware of another victim to the crash.[2] Investigator Snelgrove did not begin his DUI homicide investigation until after 3:00 a.m. and the blood draw was not performed until minutes before 4:00 a.m. The Court credits Investigator Snelgrove's assertions that it would have taken him a substantial amount of time to prepare a warrant for the blood draw and have it reviewed, approved, and executed. The testimony of Defendant's witness, Officer Hanton, is not helpful to Defendant's position that it is in fact possible to obtain a warrant for a blood draw. Strikingly, the episode where Officer Hanton obtained a search warrant for a blood draw was on the night of a DUI saturation patrol where there are mobile units ready and the State Attorney's Office and duty judge are on notice

[2] During his testimony at the hearing, Investigator Snelgrove admitted that at that point in time, there was nothing to indicate the crash was anything other than a "routine" DUI misdemeanor and that he would have been without probable cause to take a nonconsensual blood sample.

and ready to assist officers. Lastly, Officer Hanton's search warrant was already in "template" form having been reviewed by an assistant state attorney in advance of the DUI saturation patrol date. The Court therefore finds that the totality of the circumstances indicate that there was an exigency which justified taking Defendant's blood without first obtaining a warrant.

3. Florida's Implied Consent Law

Alternatively, this Court finds *McNeely* did not invalidate Section 316.1933, Florida Statutes, commonly referred to as Florida's Implied Consent Law, and that the draw of Defendant's blood was lawful pursuant to that statute.[3] Florida's Implied Consent Law, reads in relevant part:

> If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

§ 316.1933(1)(a), Fla. Stat. (2010). The Court's finding is bolstered by the fact that the *McNeely* court did not directly invalidate implied consent laws used in the majority of states, but instead narrowly focused its holding to the issue of whether the natural dissipation of blood is a *per se* exigency.

In the absence of an opinion on point from the Supreme Court of the United States or the Florida Supreme Court, Florida's trial courts are bound to follow the authority of the District

[3] The State argues Defendant is implicitly requesting the Court declare the section 316.1933 unconstitutional.

Courts of Appeal. *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). Florida's appellate courts have upheld the Implied Consent Law against constitutional challenge on Fourth Amendment grounds and have found it to be even more protective of an individual's rights than Fourth Amendment. *State v. Langsford*, 816 So. 2d 136 (Fla. 4th DCA 2002); *State v. Slaney*, 653 So. 2d 422 (Fla. 3d DCA 1995); *Jackson v. State*, 456 So. 2d 916 (Fla. 1st DCA 1984). Therefore, the Court concludes that Defendant's blood draw was also lawful pursuant to section 316.1933.

Accordingly, Defendant's Motion to Suppress Blood Evidence is hereby **DENIED**.

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this 16 day of January, 2014.

JEFFREY COLBATH
CIRCUIT JUDGE

Copy provided to:
Al Johnson, Esq., 401 North Dixie Highway, West Palm Beach, Florida 33401
Sherri Collins, Esq., 401 North Dixie Highway, West Palm Beach, Florida 33401
Douglas Duncan, Esq., P.O. Box 770, West Palm Beach, Florida, 33402
Elizabeth Parker, Esq., 515 N. Flagler Drive, Suite 325, West Palm Beach, Florida 33401
Scott Richardson, Esq., 1401 Forum Way, Suite 720, West Palm Beach, Florida 33401