

Blood evidence in Wedgwood DUI case in question

Supreme Court decision changes protocols

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After police arrested Mark Mullan – the driver accused of critically injuring a mother and young son, and killing the child's grandparents – his blood sample showed his alcohol level was nearly three times the legal limit, officers said.

But now, because of legal issues, police worry that the blood evidence against Mullan will be challenged in court and possibly suppressed if a challenge is successful.

On April 17, the U.S. Supreme Court stated that police must obtain a warrant before drawing blood from a suspect in a DUI case. Previously, Washington case law determined that police here did not need to get a warrant before obtaining a DUI suspect's blood as evidence in vehicular homicide and vehicular assault cases, said Pam Loginsky of the Washington Association of Prosecuting Attorneys.

Police in Mullan's case – in which a search warrant was not obtained – were in compliance with state laws at the time, and in most jurisdictions that wouldn't create a problem, prosecutors said.

"One issue that Washington faces – and I'm not sure any other jurisdiction faces – is that the good faith exception does not apply under the state constitution," Loginsky said. That's what creates the question about Mullan's blood sample, according to police, though a court motion has not yet been filed.

But many DUI cases, including the fatal Wedgwood case, are expected to have DUI blood samples challenged in court, even if officers were following proper protocols when collecting them, according to police and prosecutors. Officers said that would put a higher importance on field sobriety tests in previous cases, and field sobriety tests are voluntary.

Police have been told to obtain blood samples in all vehicular homicides, vehicular assaults, felony DUI cases, DUIs with injuries, and when a driver is suspected of being on drugs, among other scenarios, Loginsky said.

The Washington Association of Prosecuting Attorneys now recommends that police get search warrants in every DUI case - even injury cases, Loginsky said. Getting a search warrant typically increases the time between when a suspect is stopped and when blood evidence is drawn, allowing the blood-alcohol level to decline.

The case decided this month by the U.S. Supreme Court came after a Missouri man, Tyler McNeally, was pulled over by a state trooper. When McNeally refused to take a Breathalyzer test, the trooper drove him to a hospital and ordered a blood draw. Police didn't obtain a warrant because they believed the time it would take to do so would have allowed evidence – McNeally's blood – to change.

The Supreme Court voted 8-1 that police must obtain a search warrant, with Justice Clarence Thomas being the lone dissenter. He argued that obtaining a warrant unnecessarily slows the time-sensitive evidence collection process.

Justice Sonia Sotomayor said police can obtain a warrant quickly; local police have previously obtained warrant authorizations by phone or email. Some who agree with the court's decision said it was a victory for civil liberties.

Loginsky said that however slight the time delay, there will still be a delay, and expects judges to get more calls in the middle of the night for warrant approval.

Prosecutors have advised that there are only a few rare circumstances where a DUI blood draw can now be done without a warrant. Examples include a suspect being trapped in a vehicle for a significant period of time, or a suspect immediately requiring medication that could alter a blood-alcohol analysis.

In the Wedgwood case involving Mullan, blood work showed his alcohol level at .22 – far above the .08 driving limit. Charging documents, which provided those details, indicate he drank Bicardi rum the day of the collision.

This comes in the wake of state lawmakers reaching a tentative agreement to overhaul DUI laws. Further action is expected this month. Tuesday morning, Dan Schulte, the father, husband, and son of the Wedgwood victims, made his first public statement, saying the incident was preventable and that drunken driving laws need to be tougher.

Mullan has been charged with two counts of vehicular homicide and two counts of vehicular assault. He pleaded not guilty earlier this month.

Police said Mullan agreed to field sobriety tests, which he failed. The DUI Squad officer who evaluated him also had at least one other officer observing the tests.

Without that and Mullan's statements at the scene, police said there would be many more questions with the case. The field sobriety tests to which Mullan agreed are voluntary.

"We can figure out what to do going forward, but we can't change what's already been done in prior cases," Loginsky said. "Our community may be penalized for what officers did up to the McNeely decision through no fault of their own - they were doing what the court told them to do."

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