

No. 11-1425

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IN THE  
**Supreme Court of the United States**

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STATE OF MISSOURI,

*Petitioner,*

v.

TYLER G. MCNEELY,

*Respondent.*

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**On Writ of Certiorari  
to the Supreme Court of Missouri**

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**BRIEF OF THE NATIONAL COLLEGE FOR DUI  
DEFENSE AND THE NATIONAL ASSOCIATION  
OF CRIMINAL DEFENSE LAWYERS AS *AMICI  
CURIAE* IN SUPPORT OF RESPONDENT**

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## INTEREST OF *AMICI CURIAE*

*Amici curiae* are the National College for DUI Defense (“NCDD”) and the National Association of Criminal Defense Lawyers (“NACDL”).<sup>1</sup>

NCDD is a nonprofit professional organization of lawyers, with over 1,000 members, focusing on issues related to the defense of persons charged with driving under the influence. Through its educational programs, its website, and its email list, the College trains lawyers to represent persons accused of drunk driving. NCDD’s members have extensive experience litigating issues regarding blood alcohol tests.

NACDL, a non-profit corporation, is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL’s approximately 10,000 direct members in 28 countries—and 90 state, provincial, and local affiliate organizations totaling up to 40,000 attorneys—include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and counsel, made any monetary contribution towards the preparation and submission of this brief. Pursuant to Supreme Court Rule 37.2(a), *amici curiae* certify that counsel of record for both parties received timely notice of *amici curiae*’s intent to file this brief and have consented to its filing in letters on file with the Clerk’s office.



NACDL has frequently appeared as *amicus curiae* before the United States Supreme Court, the federal courts of appeal, and the highest courts of numerous states. In particular, in furtherance of NACDL's mission to safeguard fundamental constitutional rights, the Association frequently appears as *amicus curiae* in cases involving the Fourth Amendment and its state analogues, speaking to the importance of balancing core constitutional search and seizure protections with other constitutional and societal interests. As relates to the issues before the Court in this case, NACDL has an interest in protecting both privacy and associational rights from unwarranted and unreasonable government intrusion.

### SUMMARY OF THE ARGUMENT

Although Missouri complains that, in theory, obtaining a warrant to draw blood is a burden, the fact that at least twenty-one states regularly obtain warrants and successfully prosecute thousands of drunk driver cases each year belies that claim. Such a widespread practice indicates that a significant number of states strike the balance between privacy interests and policing efficacy differently. Missouri asks this Court not to strike a different balance, but to strike no balance at all and instead to permit a new *per se* rule that ignores privacy interests on a categorical basis.

It is undisputed that obtaining a warrant, even by email or telephone, necessarily takes some time. However, the dissipation of alcohol from the bloodstream only constitutes an exigency if substantial delay in obtaining a warrant prevents collection of a blood sample within the relevant window of time. In practice, substantial delays are not inherent to the warrant process. Anecdotal

evidence demonstrates that technology has expedited and streamlined warrant procedures, such that police routinely obtain warrants in less than thirty minutes in many jurisdictions.

In the context of drunk driving, search warrants are especially important because police are under pressure to secure timely evidence of the driver's blood alcohol content. Requiring an officer to apply for and obtain a search warrant before drawing blood from a driver who has not consented ensures that a neutral and detached magistrate assesses the specific circumstances of the case, and increases the likelihood that the driver will either consent to a breath test or cooperate with the blood draw.

## ARGUMENT

### I. *PER SE* WARRANTLESS BLOOD DRAWS ARE UNNECESSARY

Missouri wants a new *per se* rule that ignores individual privacy interests on a categorical basis. This Court should not adopt Missouri's rule because it is unnecessary and inappropriate. *See United States v. Drayton*, 536 U.S. 194, 201 (2002) ("for the most part *per se* rules are inappropriate in the Fourth Amendment context"). Missouri suggests that a *per se* rule in this case "comports with Fourth Amendment standards of reasonableness," Pet. Br. at 15, 28, even though the Court has repeatedly rejected blanket rules.<sup>2</sup> *See Arizona v. Gant*, 556 U.S. 332, 343 (2009);

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<sup>2</sup> Missouri attempts to justify a *per se* rule by arguing that it "provides the best and most probative evidence," Pet. Br. at 15, even though the Court has held that "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 393 (1978).

*Winston v. Lee*, 470 U.S. 753, 760 (1985); *Mapp v. Ohio*, 367 U.S. 643, 653 (1961).

**A. States Already Successfully Prosecute  
Thousands of Drunk Driving Cases After  
Police Obtain Warrants to Draw Blood**

There is no need for this Court to adopt a new *per se* rule permitting warrantless searches in all drunk driving cases. To the contrary, at least twenty-one states—including Missouri—have had little difficulty enforcing their laws even when the police have obtained search warrants before withdrawing blood for alcohol testing. These states include: Alabama, Arizona, Georgia, Illinois, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, New Mexico, North Carolina, Ohio, Oregon, Tennessee, Texas, Utah, Vermont, Washington, and Wyoming. *See* Addendum A.

In the states where obtaining warrants to draw blood has long been the norm, prosecutors have successfully obtained thousands of convictions. For example, the National Highway Traffic Safety Administration (“NHTSA”) recently examined four of these states—Arizona, Michigan, Oregon, and Utah—and reported that police have obtained 2,000 warrants a year in Arizona’s largest county, which includes Phoenix. NHTSA, DOT HS 810 852, USE OF WARRANTS FOR BREATH TEST REFUSAL: CASE STUDIES, (2007), at 4, 7 (“NHTSA CASE STUDIES”). In Michigan, police reportedly obtain a warrant in almost every case where the driver refuses to submit to a breath test. *Id.* at 15. Overall, NHTSA found that judges and prosecutors strongly supported warrants for blood draws because they have increased the number of cases with blood alcohol content (“BAC”) evidence, which has resulted in “more guilty pleas, fewer trials, and more convictions.” *Id.* at 36.

When states streamline the application process and prosecutors and judges make themselves more available, police can easily obtain search warrants to draw blood. For example, in states that are newer to the warrant process, NHTSA has been promoting “No-Refusal Weekends” where police publicize in advance that they will be getting warrants for drunk driving suspects who refuse to submit to a breath test. The NHTSA offers jurisdictions an online “No-Refusal Weekend Toolkit” with samples of simplified warrant forms that can be used to expedite the process. *See* NHTSA, NO REFUSAL, <http://www.nhtsa.gov/no-refusal> (last visited Dec. 14, 2012). Through efforts like these, states can “build solid cases,” which lead to more drunk driving convictions. *Id.*

Blood samples are obtained in a straightforward way. First, a police officer arrests the driver and asks for a breath sample. NHTSA CASE STUDIES, at 36. The officer informs the driver of the state’s implied consent laws and penalties. *Id.* If the driver refuses to provide a breath sample, the officer requests a warrant for a blood sample by completing standardized affidavit and warrant forms. *Id.* The officer then either electronically transfers the forms to the judge, magistrate, or prosecutor (or even reads them over the phone) and the warrant is then sworn over the telephone. *Id.*; *see also* Addendum B (forms used in Phoenix, Arizona). Once the warrant is granted, the driver must submit to the blood draw.

The entire process—including completing the forms, transmitting the information, obtaining the warrant, and transporting the driver to a medical facility or using a police phlebotomist to draw the

blood—ordinarily takes no more than two hours.<sup>3</sup> NHTSA CASE STUDIES, at 36. Police officers interviewed by NHTSA “generally supported the use of warrants” and were “willing to take the additional time . . . in order to obtain BAC evidence.” *Id.*

On the other hand, *amici* in support of Missouri cited only a handful of cases where the police took more than two hours to obtain BAC evidence.<sup>4</sup> In the case with the most egregious delay, the police did not draw the driver’s blood until four hours after the collision. *See Smith v. State*, 942 So. 2d 308, 313 (Miss. Ct. App. 2008). In spite of the long delay, the court *affirmed* the conviction. *Id.* at 322. In doing so, the court expressly rejected the argument that, in order for blood draw evidence to be admissible, it must be drawn “at the time of the accident.” *Id.* at 314.

Here, *amici* agree that unreasonable delay in obtaining a warrant should be *a factor* in determining whether to allow a warrantless blood draw under

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<sup>3</sup> Even the traditional consensual manner of obtaining BAC evidence, with a breath test, has built in delays. Police need time to read the driver an implied consent advisory, time to give the driver an opportunity to make a decision, including to consult with counsel (in the states that allow it), and police must observe a required 15 or 20 minute deprivation period where the suspect is observed and not allowed to eat, drink, belch or regurgitate before submitting to a breath test. In contrast, police in states like Michigan can easily obtain blood draw warrants so “officers will choose a blood test,” depending on the circumstances, because it “will be faster.” NHTSA CASE STUDIES, at 17. In Arizona, “blood test[s] can require no more police time than a breath test if blood test facilities are readily available.” *Id.* at 14.

<sup>4</sup> *See* Brief for Nat’l Dist. Attorneys Ass’n *et al.* as *Amici Curiae* Supporting Petitioner, at 11–13 (citing *Mata v. State*, 46 S.W.3d 902 (Tex. Crim. App. 2001); *State v. Eighth Judicial Dist. Ct.*, 267 P.3d 777 (Nev. 2011); and *Smith v. State*, 942 So.2d 308 (Miss. Ct. App. 2006)).

*Schmerber v. California*, 384 U.S. 757 (1966).<sup>5</sup> But Missouri goes too far in arguing that “an inherent exigency always exists” solely because alcohol naturally dissipates in the bloodstream. Pet. Br. at 26. To the contrary, because of predictable rates of dissipation, police actually have a “window of opportunity” in which to seek a search warrant to draw blood. Resp. Br. at 45.

### **B. Technological Advances Allow Police to Obtain Warrants in Minutes**

Advancements in communications technology have substantially expedited the process for obtaining search warrants, making it much easier to get a warrant within the relevant window of time. Using widespread electronic communications technology, police can obtain search warrants in minutes rather than hours.<sup>6</sup> Thus, whether the dissipation of alcohol from the blood stream qualifies as an exigent circumstance necessarily depends on how quickly an officer can obtain a warrant.

Several courts have accounted for the time it takes to obtain a warrant in determining whether an exigency existed. *See United States v. Cuaron*, 700 F.2d 582, 589 (10th Cir. 1983); *United States v.*

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<sup>5</sup> Anecdotal evidence suggests that as police are able to determine when a suspect has run out of time to consent to a breath test, they are also intimately familiar with the legal requirements of their jurisdictions and aware of the time needed to obtain a blood sample that satisfies those requirements.

<sup>6</sup> Many police cruisers have laptops with internet connections attached to their dashboards, allowing for virtually instantaneous transmission of information. *See* Patrick T. Sullivan, *Cape Police More Efficient With In-Car Laptops*, SOUTHEAST MISSOURIAN, Feb. 6, 2012, available at <http://www.semissourian.com/story/1812598.html>.

*McEachin*, 670 F.2d 1139, 1147 (D.C. Cir. 1981); *United States v. Baker*, 520 F. Supp. 1080, 1084 (S.D. Iowa 1981); *State v. Flannigan*, 978 P.2d 127, 131 (Ariz. Ct. App. 1998). The D.C. Circuit reasoned that “the courts must consider the availability of a telephonic warrant in determining whether exigent circumstances existed, unless it is clear that the exigency in a particular case was so great that it precluded recourse to any warrant procedure, however brief.” *McEachin*, 670 F.2d at 1147.

In 1966, when the Court decided *Schmerber*, no state statute allowed for the issuance of warrants by telephone or other electronic means.<sup>7</sup> Police officers seeking warrants had to appear personally before a judge. But today, thirty-five states have passed statutes that allow police officers to electronically submit warrant applications and judges to issue search warrants by one or more of the following methods: telephone, radio, facsimile, email, video conference, or text message. See Addendum C (listing statutes). Only fifteen states still specify written or in person applications or make no mention of electronic submission. See Addendum D (listing statutes). Moreover, even within states that have not expressly provided for electronic warrant procedures, police officers in

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<sup>7</sup> In 1970, four years after *Schmerber*, California adopted one of the first statutes providing for oral submission of testimony in 1970. See *People v. Peck*, 113 Cal. Rptr. 806, 809 (Cal. Ct. App. 1974); Justin H. Smith, Note, *Press One for Warrant: Reinventing the Fourth Amendment’s Search Warrant Requirement Through Electronic Procedures*, 55 VAND. L. REV. 1591, 1607–09 (2002).

some jurisdictions have nonetheless found ways to use technology creatively to expedite the process.<sup>8</sup>

### C. States Have E-Warrant Procedures

Of the thirty-five states that provide for remote warrant procedures, at least four—California, New Mexico, Utah, and Vermont—explicitly allow police to use of email or text messaging to apply for and receive a warrant. *See* Cal. Penal Code § 1526(b); N.M. R. Crim. P. 5-211(f)(3), (g)(3); Utah R. Crim. P. 40(l); Vt. R. Crim. P. 41(c)(4), (g)(2). For example, in Utah, “[a]ll communication between the magistrate and the peace officer or prosecuting attorney requesting the warrant may be remotely transmitted by voice, image, text, or any combination of those, or by other means.” Utah R. Crim. P. 40(l)(1). Utah has implemented an e-warrants system:

The e-warrants system allows Utah law enforcement officers to enter search warrant affidavit information. The system then electronically notifies a prosecutor and forwards the affidavit for review. After review, an officer can transfer the affidavit to a magistrate, electronically notifying him or her of the waiting request. The magistrate can then electronically review the affidavit

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<sup>8</sup> Even though Fla. Stat. Ann. § 933.07, does not address the use of technology to obtain a warrant, Palm Bay police officers have expedited the warrant process by emailing an affidavit to the judge and then videoconferencing with the judge via Skype. PALM BAY POLICE, INNOVATIVE POLICING CREATING A SAFER COMMUNITY (2011), at 10, *available at* [http://www.palmbayflorida.org/police/documents/annual\\_report\\_2011.pdf](http://www.palmbayflorida.org/police/documents/annual_report_2011.pdf). “The process takes an average of *less than thirty minutes* in comparison to several hours it would have taken using traditional means.” *Id.* (emphasis added).



and [electronically] generated warrant, electronically sign the warrant, or deny the request with comments, then electronically send the results back to the officer.

STATE OF UTAH, E-WARRANTS: CROSS BORDER COLLABORATION (2008), at 1, *available at* <http://www.nascio.org/awards/nominations/2008/2008UT2-e-Warrants%20Submission%206.2.08fs1fs.pdf>.

Utah's e-warrants system has reduced the amount of time it takes to obtain a warrant from several hours to several minutes. Jason Bergreen, *Utah Cops Praise Electronic Warrant System*, SALT LAKE TRIB. (Dec. 26, 2008) (explaining that it took *five minutes* to obtain an "e-warrant for a forced blood draw on a man arrested for DUI") (emphasis added).

Similarly, police officers in Douglas County, Kansas, are able to obtain search warrants in fifteen minutes by emailing a request for a warrant to a judge's iPad, which the judge may sign and return via email. Gregory T. Benefiel, *DUI Search Warrants: Prosecuting DUI Refusals*, THE KANSAS PROSECUTOR, Spring 2012, at 17–19, *available at* <http://www.kcdaa.org/Resources/Documents/KSProsecutor-Spring12.pdf>.

#### **D. Telephonic Warrants Also May Be Granted in Minutes**

At least twenty of the thirty-five states that allow remote warrants specifically allow the submission of testimony and issuance of warrants over the

telephone.<sup>9</sup> Telephonic warrants are more widespread than email or videoconferencing, and they are equally prompt. According to the Chief of Police in Cheyenne, Wyoming, obtaining a search warrant over the phone usually takes less than five minutes.<sup>10</sup> Lindsey Erin Kroskob, *Police Take First Forced Blood Draw*, WYOMING TRIB. EAGLE (Aug. 19, 2011); *see also* Addendum E (Wyoming affidavit for blood draw search warrant). In Billings, Montana, it takes about fifteen minutes to obtain a telephonic warrant. *Gazette Opinion: Evidence Shows Value of DUI Search Warrants*, BILLINGS GAZETTE (May 30, 2012).

When an officer has not even attempted to use the procedures in place for obtaining a warrant, as is the case here, the state should not benefit from the speculation that the officer might have encountered delay if he had made any effort. *Flannigan*, 978 P.2d at 131 (“We do not know how long the delay would have been because the police made no effort whatsoever to obtain a warrant. *The mere possibility of delay does not give rise to an exigency.*”) (emphasis

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<sup>9</sup> These states include Alabama, Alaska, Arkansas, Arizona, California, Idaho, Indiana, Louisiana, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, South Dakota, Utah, Washington, and Wisconsin. *See* Addendum C.

<sup>10</sup> Because Wyoming’s rules do not address remote means for obtaining a warrant, Wyoming was not included as one of the twenty states that provides for telephonic warrants, or one of the thirty-two states that allows electronic warrants generally. *See* Wyo. R. Crim. P. 41(c).

added).<sup>11</sup> If a jurisdiction's outmoded warrant procedures result in habitual delays, then the response should be to update the procedures, rather than dispense with the protections of the Fourth Amendment.

## II. *PER SE* WARRANTLESS BLOOD DRAWS ARE UNREASONABLE AND UNCONSTITUTIONAL

Contrary to Missouri's argument, drivers do not categorically forfeit Fourth Amendment protections against unreasonable searches simply by driving on public roads. See *United States v. Jones*, 565 U.S. \_\_\_, \_\_\_, 132 S. Ct. 945, 950–51 (2012); *Coolidge v. New Hampshire*, 403 U.S. 443, 461 (1971). Even on public roads, warrantless searches and seizures are presumptively unreasonable in areas where citizens maintain an expectation of privacy. See *Katz v. United States*, 389 U.S. 347, 357 (1967). A person has a reasonable expectation of privacy in his or her body; indeed, intrusions into the human body implicate the “most personal and deep-rooted expectations of privacy.” *Lee*, 470 U.S. at 760. This Court should not adopt a new *per se* rule that gives police unchecked power to intrude upon a driver's reasonable expectation of privacy in all drunk driving cases.

### A. The Warrant Requirement Checks Police Power in DUI Cases

Under the Court's Fourth Amendment cases, police officers already have substantial discretion when stopping drivers to enforce traffic laws. If a police of-

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<sup>11</sup> The court went on to say that “if the police had attempted to obtain a warrant but had encountered difficulties in reaching a magistrate, this change in circumstances might well have created an exigency justifying the warrantless seizure of defendant's blood.” *Flannigan*, 978 P.2d at 131.

ficer has an “articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered,” he may stop a vehicle to check the driver’s license and registration. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). If the “license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order,” the officer may stop the vehicle. *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). Police officers may ask “a moderate number of questions” to confirm or dispel suspicions, *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984), and they may direct the driver to exit the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, 119 n.10 (1977). Regardless of subjective intent, if the police officer has “probable cause to believe that a traffic violation has occurred,” then the officer is permitted to stop any vehicle. *Whren v. United States*, 517 U.S. 806, 810 (1996).

Petitioner wants to give police even more discretion by creating a categorical rule that would permit an officer, so long as he has probable cause, to draw blood without a warrant simply because “alcohol is naturally eliminated from the human body.”<sup>12</sup> Pet. Br. at 13. Petitioner’s rule is unreasonable and inap-

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<sup>12</sup> Petitioner’s categorical rule also increases the likelihood that the police will decide to draw the blood themselves rather than take the suspect to a medical facility. See *Schmerber*, 384 U.S. at 771-72 (allowing non-medical personnel to conduct even “the most rudimentary” medical techniques, like drawing blood, outside of the medical environment raises “serious questions”); see generally Holly Hinte, *Drunk Drivers and Vampire Cops: The “Gold Standard”*, 37 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 159 (2011) (analyzing police phlebotomists and their “detrimental consequences”).

propriate. *Drayton*, 536 U.S. at 201 (rejecting *per se* rules in the context of the Fourth Amendment).

### **B. Search Warrants Protect Officers and Drivers**

Requiring a search warrant before drawing blood ensures not only that a neutral and detached magistrate assesses the specific circumstances for the request, *Johnson v. United States*, 333 U.S. 10, 13–14 (1948), but it may also increase the chances that the suspect will consent to take a breath test when informed of the warrant process, see NHSTA CASE STUDIES at 13, 17, or choose to cooperate with the blood draw.<sup>13</sup> Kroskob, *supra* (“Usually, once we have the warrant they go ahead and cooperate with the blood draw,” Chief Brian Kozak said”). Additionally, search warrants protect officers from civil suits and liability. *Malley v. Briggs*, 475 U.S. 335, 345 (1986) (the good faith standard from *United States v. Leon*, 468 U.S. 897 (1984), applies to determine the qualified immunity in § 1983 actions for police officers obtaining warrants).

Rather than adopting a new categorical rule that gives police unchecked power to intrude upon a driv-

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<sup>13</sup> Blood draw situations are potentially dangerous for the officer and the intoxicated suspect. See Bruce Vielmetti, *DA Reviewing Death of West Allis Man After Taser Incident*, MILWAUKEE J. SENTINEL, Dec. 6, 2012, available at <http://www.jsonline.com/news/crime/da-reviewing-death-of-west-allis-man-after-taser-incident-fb7udli-182445041.html> (reporting how a man “resisted attempts to take a blood sample,” how the police “restrained and stunned [him] with a Taser,” and how he was found dead the next day). Suspects do not always cooperate with police blood draws. Undercover ABC 13, *Forced Blood Draw* (July 20, 2011) <http://www.youtube.com/watch?v=ZONkSLmVUtQ> (last visited Dec. 14, 2012) (showing the police forcibly drawing blood on the floor of the police station).

er's "most personal and deep-rooted expectations of privacy," *Lee*, 470 U.S. at 760, in all drunk driving cases, the Court should affirm the rule that it already has adopted. "[W]hether a warrantless blood test is unreasonable in any given case should be determined based on the totality of circumstances." Resp. Br. at 10; see also *United States v. Banks*, 540 U.S. 31, 36 (2003); *Ker v. California*, 374 U.S. 23, 33 (1963); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

Petitioner claims that the dissipation of alcohol in the body of a drunk driving suspect creates an exigency and that justifies dispensing with the warrant requirement in *every* case. However, anecdotal evidence shows exactly the opposite, that states are able to successfully prosecute cases using warrants to obtain blood alcohol tests in thousands of cases every year. Some states could even improve their already acceptable return times by using widely available electronic communications technology. Warrants help persuade suspects to consent to a breath test or cooperate with a non-consensual blood test, and provide some protection to officers from civil liability. Finally, under *Schmerber*, police may nevertheless draw blood without a warrant when reasonable efforts have failed to obtain the warrant and there are exigent circumstances particular to that situation. Thus, under the current totality of circumstances rule, police are able to obtain a blood sample that satisfies legal requirements in *every* case where they have probable cause to seek one.

## CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Supreme Court of the State of Missouri.

Respectfully submitted,

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December 17, 2012

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## **ADDENDUM**



**ADDENDUM A****States Using Warrants to Draw Blood**

**Alabama:** *Britton v. State*, 631 So. 2d 1073 (Ala. Crim. App. 1993); A. R. Crim. P. 16.2(b)(6)

**Arizona:** Ariz. Rev. Stat. Ann. §§ 13-3915 (D), (E), 28-1321, 28-1388

**Georgia:** Ga. Code Ann. § 40-5-67.1 (d.1); Rhonda Cook, *DUI Test Refusals Prompt Blood Warrant*, ATLANTA J.-CONST. (Dec. 23, 2011), <http://www.ajc.com/news/news/local/dui-test-refusals-prompt-blood-warrants/nQPnJ/> (last visited Dec. 14, 2012)

**Illinois:** *DuPage County Rolls Out 'No Refusal' Weekend Over Labor Day*, NAPERVILLE PATCH (Aug. 31, 2011), <http://naperville.patch.com/articles/dupage-county-rolls-out-no-refusal-weekend-over-labor-day-2> (last visited Dec. 14, 2012)

**Iowa:** Iowa Code §§ 321J.10, 321J.10A(1)(c); *State v. Harris*, 763 N.W.2d 269 (Iowa 2009); *State v. Johnson*, 744 N.W.2d 340 (Iowa 2008)

**Kansas:** Kan. Stat. Ann. § 8-1001 (p), (t); George Diepenbrock, *With iPads, Judges In Touch Any Time, Any Place*, LAWRENCE J WORLD (Feb. 5, 2012), <http://www2.ljworld.com/news/2012/feb/05/ipads-judges-touch-any-time-any-place/> (last visited Dec. 14, 2012); Gregory T. Benefiel, *DUI Search Warrants: Prosecuting DUI Refusals*, THE KANSAS PROSECUTOR, Vol. 9, No. 1 (Spring 2012), available at <http://www.kcdaa.org/Resources/Documents/KSProsecutor-Spring12.pdf>

**Louisiana:** Mike Steele & Heather Harel, *State Police Say "No Refusal" Weekend Has Been Successful*, WBRZ.COM (Sept. 6, 2010),

<http://www.wbrz.com/news/no-refusal-weekend/> (last visited Dec. 14, 2012); Raymond Legendre & Houma Courier, *No Refusal Weekend For Those Suspected Of DWI Has Critics, Supporters*, WWLTV.COM EYEWITNESS NEWS (Sept. 10, 2010), <http://www.wwltv.com/news/local/No-Refusal-weekend-for-those-suspected-of-DWI-case-critics-supporters-102228604.html> (last visited Dec. 14, 2012)

**Michigan:** Mich. Comp. Laws § 780.651; *State v. Snyder*, 449 N.W.2d 703 (Mich. Ct. App. 1989)

**Mississippi:** *McDuff v. State*, 763 So.2d 850 (Miss. 2000)

**Missouri:** *State v. McNeely*, 358 S.W.3d 65, 68 (Mo. 2012); Dana Fields, *Mo. Supreme Court Rejects Warrantless DWI Blood Test*, ASSOCIATED PRESS, Jan. 18, 2012, available at 1/18/12 AP Alert - MO (Westlaw)

**Montana:** Mont. Code Ann. § 61-8-402; Gwen Florio, *Judges Happily Lose Sleep Over Montana's New DUI Blood-draw Law*, THE MISSOULIAN (Dec. 18, 2011), [http://missoulain.com/news/local/judges-happily-lose-sleep-over-montana-s-new-dui-blood/article\\_2bbe48e0-2922-11e1-917d-001871e3ce6c.html](http://missoulain.com/news/local/judges-happily-lose-sleep-over-montana-s-new-dui-blood/article_2bbe48e0-2922-11e1-917d-001871e3ce6c.html) (last visited Dec. 14, 2012)

**New Mexico:** N.M. Stat. Ann. § 66-8-111; *State v. Hughey*, 163 P.3d 470 (N.M. 2007); *State v. Silago*, 119 P.3d 181 (N.M. Ct. App. 2005); *State v. Montoya*, 114 P.3d 393 (N.M. Ct. App. 2005); *State v. Duquette*, 994 P.2d 776 (N.M. Ct. App. 1999)

**North Carolina:** N.C. Gen. Stat. Ann. § 20-139.1(b5); Nat'l Highway Safety Transp. Admin., *Use of Warrants to Reduce Breath Test Refusals: Experiences From North Carolina*, DOT HS 811461

(Apr. 2011), *available at*  
[www.nhtsa.gov/staticfiles/nti/pdf/811461.pdf](http://www.nhtsa.gov/staticfiles/nti/pdf/811461.pdf)

**Ohio:** Ohio Rev. Code Ann., § 4511.19(D)(1)(b); Mary Beth Quirk, *Ohio Cops Implementing “No-Refusal” DUI Weekend With Blood-Draw Warrants*, THE CONSUMERIST (Feb. 3, 2012), <http://consumerist.com/2012/02/03/ohio-cops-implementing-no-refusal-dui-weekend-with-blood-draw-warrants/> (last visited Dec. 14, 2012); Jennifer Feehan & Erica Blake, *Refusing DUI Test Not Option - Wood Co. Authorities Seek Blood Draws If Drivers Object*, THE TOLEDO BLADE (Feb. 2, 2012), <http://www.toledoblade.com/Police-Fire/2012/02/02/Refusing-DUI-test-not-option.html> (last visited Dec. 14, 2012)

**Oregon:** Or. Rev. Stat. 813.320(2)(b); Nat’l Highway Traffic Safety Admin., *Use of Warrants For Breath Test Refusals: Case Studies*, DOT HS 810 852 (Oct. 2007), *available at*  
<http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/810852.pdf>

**Tennessee:** Tenn. Code Ann., § 55-10-406(a)(4)(A); *New DUI Law Leads To 8 Warrants For Blood Tests*, ASSOCIATED PRESS, July 10, 2012, *available at* 7/10/12 AP Alert – TN 19:11:38 (Westlaw); Kevin McKenzie, *‘No Refusal’ Labor Day Weekend To Combat DUI In Shelby, Tipton Counties*, THE COMMERCIAL APPEAL (Aug. 31, 2012), [www.commercialappeal.com/news/2012/aug/31/no-refusal-labor-day-weekend-to-combat-dui-in/](http://www.commercialappeal.com/news/2012/aug/31/no-refusal-labor-day-weekend-to-combat-dui-in/) (last visited Dec. 14, 2012)

**Texas:** Tex. Transp. Code Ann. § 724.011 et seq.; *Beeman v. State*, 86 S.W.3d 613 (Tex. Crim. App. 2002); Nathan Koppel, *Texas Blood Test Aims At Drunk Drivers*, WALL STREET JOURNAL (Dec. 11,

2011), *available at*  
<http://online.wsj.com/article/SB10001424052970204397704577070700748380114.html>

**Utah:** Jason Bergreen, *Utah Cops Praise Electronic Warrant System*, SALT LAKE TRIBUNE (Dec. 26, 2008), <http://www.policeone.com/police-products/communications/articles/1769302-Utah-cops-praise-electronic-warrant-system> (last visited Dec. 14, 2012)

**Vermont:** Vt. Stat. Ann. Tit. 23, § 1202 (f)

**Washington:** Wash. Rev. Code § 46.20.308(1); *City Of Seattle v. St. John*, 215 P.3d 194 (2009); *New Washington Law For DUI Blood Draw*, ASSOCIATED PRESS, Aug. 14, 2012, *available at* 8/14/12 AP Alert - WA 17:58:38 (Westlaw)

**Wyoming:** Wyo. Stat. Ann. § 31-6-102

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## ADDENDUM B

### Phoenix Police Affidavit In Support Of Tele-Fax Search Warrant (page one)

**YOUR DEPARTMENT NAME**  
**AFFIDAVIT IN SUPPORT OF**  
**TELE-FAX SEARCH WARRANT**

**SEARCH WARRANT #** \_\_\_\_\_  
**REPORT #** \_\_\_\_\_

**FAX TO:** Judge \_\_\_\_\_ **Fax #** \_\_\_\_\_ **Phone #** \_\_\_\_\_  
**FROM:** Sender: \_\_\_\_\_ **Fax #** \_\_\_\_\_ **Phone #** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Officer's name** \_\_\_\_\_ **I.D. #** \_\_\_\_\_

**Judge:** This is \_\_\_\_\_ I.D.# \_\_\_\_\_ of the \_\_\_\_\_

I am faxing you this sworn affidavit to obtain a Tele-Fax search warrant in support of a:

☐ DUI ☐ Aggravated assault ☐ \_\_\_\_\_  
☐ Aggravated DUI ☐ Homicide investigation

Please sign below as documentation that you swore me in via telephone with \_\_\_\_\_  
I.D.# \_\_\_\_\_ standing by as a witness.

**Judge:** \_\_\_\_\_  
of the \_\_\_\_\_ Court  
(Justice of the Peace/Judge or Magistrate)

**Affiant:** \_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Judge:** I have probable cause to believe that there is now in the blood or bodily fluids of: \_\_\_\_\_ date of birth \_\_\_\_\_

Located at \_\_\_\_\_

The following substances to wit: ☐ alcohol ☐ drugs  
☐ Identifying characteristics (DNA)

Together with other evidence of the crime of:

☐ driving a vehicle while under the influence of intoxicating liquor and/or drugs  
☐ actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs  
☐ \_\_\_\_\_

As set forth in this affidavit, I Officer \_\_\_\_\_ your Affiant, am a peace officer in the State of Arizona, employed by \_\_\_\_\_ I have been a sworn peace officer for \_\_\_\_\_ years and have the following training and experience:

I have graduated from: ☐ A.L.E.T.A. ☐ The Arizona Law Enforcement Academy  
☐ The Phoenix Police Academy ☐ \_\_\_\_\_

My training included identifying driver impairment due to alcohol or drugs. My duty assignments have included traffic, criminal and DUI investigations. I have specialized training in:

☐ H.G.N. (Horizontal Gaze Nystagmus) ☐ D.R.E. (Drug Recognition Expert)  
☐ DUI investigation and apprehension ☐ Phlebotomy  
☐ \_\_\_\_\_

I am investigating the crime of: ☐ DUI ☐ Aggravated DUI ☐ Aggravated assault ☐ Manslaughter ☐ Homicide  
☐ \_\_\_\_\_

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**ADDENDUM B—continued**

**Phoenix Police Affidavit In Support Of Tele-Fax Search Warrant  
(page two)**

**YOUR DEPARTMENT NAME**  
**AFFIDAVIT IN SUPPORT OF**  
**TELE-FAX SEARCH WARRANT**  
**(Continued)**

**SEARCH WARRANT #** \_\_\_\_\_  
**REPORT #** \_\_\_\_\_

which I believe to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_ at the time of \_\_\_\_\_ hours at  
the location of \_\_\_\_\_ in \_\_\_\_\_ County, State of Arizona, based on the following

reasons and circumstances:

- ☐ Collision (describe location and circumstances): \_\_\_\_\_  
☐ Driving behavior (list violations or physical control) \_\_\_\_\_

The driver license status of \_\_\_\_\_ is \_\_\_\_\_  
In addition, the following observations of symptoms of consumption and/or impairment were made of \_\_\_\_\_  
date of birth \_\_\_\_\_ by \_\_\_\_\_ of the \_\_\_\_\_

UNUSUAL ACTIONS

- ☐ belching  
☐ vomiting  
☐ urinated  
other \_\_\_\_\_

ODOR OF ALCOHOL

- ☐ faint  
☐ moderate  
☐ strong  
other \_\_\_\_\_

ATTITUDE

- ☐ antagonistic  
☐ combative  
☐ mood swings  
other \_\_\_\_\_

PUPILS

- ☐ equal  
☐ slow reaction  
☐ dilated/constricted  
other \_\_\_\_\_

SPEECH

- ☐ slurred  
☐ incoherent  
☐ profanity  
other \_\_\_\_\_

BALANCE

- ☐ swaying  
☐ lost balance/fell down  
☐ staggering  
other \_\_\_\_\_

FACE

- ☐ dazed expression  
☐ flushed  
☐ pale  
other \_\_\_\_\_

CLOTHING

- ☐ orderly  
☐ soiled  
☐ disarranged  
other \_\_\_\_\_

EYES

- ☐ watery  
☐ bloodshot  
other \_\_\_\_\_

In addition: \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit are evidence of driving or being in actual  
physical control of a vehicle while under the influence of intoxicating liquor and/or drugs.

**NIGHTTIME SEARCH WARRANT:**

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:00 AM, for the reason that it is now \_\_\_\_\_ hours,  
Therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a  
Time delay would render it useless.

Based on the preceding facts, I, \_\_\_\_\_ I.D.# \_\_\_\_\_ request that a Tele-Fax  
☐ daytime ☐ nighttime search warrant to be issued. This concludes my affidavit Your Honor.

**Affiant:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

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**ADDENDUM B—continued**

**Phoenix Police Affidavit In Support Of Telephonic Search Warrant  
(page one)**

**YOUR DEPARTMENT NAME**

**AFFIDAVIT IN SUPPORT OF**

**TELEPHONIC SEARCH WARRANT**

**SEARCH WARRANT #** \_\_\_\_\_

**REPORT #** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **Officer's name** \_\_\_\_\_ **I.D. #** \_\_\_\_\_

**Judge:** Hello?

**Officer:** Judge \_\_\_\_\_, this is \_\_\_\_\_ I.D. # \_\_\_\_\_ of the  
Phoenix Police Department, will you swear me in please?

**Judge:** (The Judge swears you in.)

**Officer:** This is \_\_\_\_\_ of the Phoenix Police Department. I am calling you on (date & time) \_\_\_\_\_  
with (name) \_\_\_\_\_ standing by as a witness.  
I am calling for a telephonic search warrant and have just, probable, and reasonable cause to believe that there  
is now in the blood/body fluids of \_\_\_\_\_ date of birth \_\_\_\_\_  
Located at \_\_\_\_\_

The following substances to wit: ☐ alcohol ☐ drugs  
☐ Identifying characteristics (DNA)

Together with other evidence of the crime of:

- ☐ driving a vehicle while under the influence of intoxicating liquor and/or drugs  
☐ actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs  
☐ \_\_\_\_\_

As set forth in this affidavit, that I, \_\_\_\_\_ your Affiant, am a peace officer in the State of Arizona,  
employed by the \_\_\_\_\_ I have been a sworn peace officer for \_\_\_\_\_ years and have the  
following training and experience:

I have graduated from: ☐ A.L.E.T.A. ☐ The Arizona Law Enforcement Academy  
☐ The Phoenix Police Academy ☐ \_\_\_\_\_

My training included identifying driver impairment due to alcohol or drugs. My duty assignments have included traffic, criminal  
and DUI investigations. I have specialized training in:

- ☐ H.G.N. (Horizontal Gaze Nystagmus) ☐ D.R.E. (Drug Recognition Expert)  
☐ DUI investigation and apprehension ☐ Phlebotomy  
☐ \_\_\_\_\_

I am investigating the crime of: ☐ DUI ☐ Aggravated DUI ☐ Aggravated assault ☐ Manslaughter ☐ Homicide  
☐ \_\_\_\_\_

Which I believe to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_ at the time of \_\_\_\_\_ hours,  
at the location of \_\_\_\_\_ in the City of \_\_\_\_\_,  
State of Arizona, based on the following reasons and circumstances:

- ☐ Collision (describe location and circumstances): \_\_\_\_\_  
☐ Driving behavior (list violations or physical control) \_\_\_\_\_

**ADDENDUM B—continued****Phoenix Police Affidavit In Support Of Telephonic Search Warrant  
(page two)****YOUR DEPARTMENT NAME****AFFIDAVIT IN SUPPORT OF****TELEPHONIC SEARCH WARRANT****SEARCH WARRANT #** \_\_\_\_\_**REPORT #** \_\_\_\_\_**(Continued)**

The driver license status of \_\_\_\_\_ is \_\_\_\_\_

In addition, the following observations of symptoms of consumption and/or impairment were made of \_\_\_\_\_

date of birth \_\_\_\_\_ by \_\_\_\_\_ of the \_\_\_\_\_

**UNUSUAL ACTIONS**

- ☐ belching  
☐ vomiting  
☐ urinated  
 other \_\_\_\_\_

**ODOR OF ALCOHOL**

- ☐ faint  
☐ moderate  
☐ strong  
 other \_\_\_\_\_

**ATTITUDE**

- ☐ antagonistic  
☐ combative  
☐ mood swings  
 other \_\_\_\_\_

**PUPILS**

- ☐ equal  
☐ slow reaction  
☐ dilated/constricted  
 other \_\_\_\_\_

**SPEECH**

- ☐ slurred  
☐ incoherent  
☐ profanity  
 other \_\_\_\_\_

**BALANCE**

- ☐ swaying  
☐ lost balance/fell down  
☐ staggering  
 other \_\_\_\_\_

**FACE**

- ☐ dazed expression  
☐ flushed  
☐ pale  
 other \_\_\_\_\_

**CLOTHING**

- ☐ orderly  
☐ soiled  
☐ disarranged  
 other \_\_\_\_\_

**EYES**

- ☐ watery  
☐ bloodshot  
 other \_\_\_\_\_

In addition: \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit is/are evidence of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs.

**NIGHTTIME SEARCH WARRANT:**

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:00 AM, for the reason that it is now \_\_\_\_\_ hours, therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a time delay would render it useless.

Based on the preceding facts, I, \_\_\_\_\_ I.D.# \_\_\_\_\_ request that a telephonic

☐ daytime ☐ nighttime search warrant to be issued. This concludes my affidavit Your Honor.**JUDGE:** ( await his/her reply)

**Officer:** I will now read verbatim to you the Standard Arizona Duplicate Original Search Warrant, State of Arizona, indicating which spaces I have completed.

**Affiant** \_\_\_\_\_**Witness** \_\_\_\_\_



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## ADDENDUM B—continued

### Arizona Department Of Public Safety Affidavit In Support Of Telephonic Search Warrant (page one)



ARIZONA DEPARTMENT OF PUBLIC SAFETY

#### AFFIDAVIT IN SUPPORT OF TELEPHONIC SEARCH WARRANT

DOCKET NUMBER		TODAY'S DATE	TIME	DR NUMBER
OFFICER NAME	I.D. NO.	WITNESS NAME	SUSPECT NAME	

**Read only verbatim the following document, including the necessary filled in areas.**

Judge \_\_\_\_\_, this is Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_ of the Arizona Department of Public Safety. I am requesting your assistance with a Telephonic Search Warrant in support of a:

- ☐ DUI investigation
 ☐ Aggravated assault investigation  
☐ Aggravated DUI investigation
 ☐ Homicide investigation

My testimony is being recorded and Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_ standing by as a witness. Will you swear me in, please?

Witness: X \_\_\_\_\_ I.D. No.: \_\_\_\_\_

*Thank you, your Honor. I will now continue with the affidavit.*

Judge, I have probable cause to believe that there is now in the blood or bodily fluids of (suspects name): \_\_\_\_\_, date of birth \_\_\_\_\_.

Located at: \_\_\_\_\_

The following substances and or property, to wit: \_\_\_\_\_  
☐ alcohol and / or drugs ☐

Together with other evidence of the crime of:

- ☐ driving a motor vehicle while under the influence of intoxicating liquor or drugs  
☐ actual physical control of a vehicle while under the influence of intoxicating liquor or drugs

As set forth in this affidavit, I, Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_ your affiant, am a peace officer in the State of Arizona, employed by the Arizona Department of Public Safety. I have been a sworn peace officer for \_\_\_\_\_ years, and have the following training and experience:

I have graduated from: ☐ A.L.E.T.A. ☐ The Arizona Law Enforcement Academy  
☐ The Phoenix Police Academy ☐ \_\_\_\_\_

Training included identifying driver impairment due to alcohol or drugs. My duty assignments have included traffic, criminal and DUI investigations. I have specialized training in:

- ☐ H.G.N. Horizontal Gaze Nystagmus ☐ D.R.E. Drug Recognition  
☐ DUI investigation and apprehension ☐ Phlebotomy  
☐ \_\_\_\_\_

I am investigating the crime of: ☐ DUI ☐ Aggravated DUI ☐ Aggravated assault ☐ Homicide  
☐ \_\_\_\_\_



**ADDENDUM B—continued****Arizona Department Of Public Safety Affidavit In Support Of Telephonic Search Warrant (page two)**

ARIZONA DEPARTMENT OF PUBLIC SAFETY

**AFFIDAVIT IN SUPPORT OF TELEPHONIC SEARCH WARRANT - (Continued)**

DOCKET NUMBER	TODAY'S DATE	TIME	DR NUMBER
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Which I believe to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the time of \_\_\_\_\_ hours at the location of \_\_\_\_\_, in \_\_\_\_\_ County, Arizona, based on the following reasons and circumstance:

- ☐ Accident (describe location and circumstances): \_\_\_\_\_  
☐ Driving behavior (list violations or physical control): \_\_\_\_\_

The status of \_\_\_\_\_ driver license is \_\_\_\_\_  
 In addition, the following observations of symptoms and / or impairment were made of \_\_\_\_\_, date of birth \_\_\_\_\_, by \_\_\_\_\_ of the ☐ Arizona Department of Public Safety ☐ Other agency \_\_\_\_\_

<b>EYES</b>	<b>FACE</b>	<b>ODOR OF ALCOHOL</b>	<b>SPEECH</b>	<b>CLOTHING</b>
<input type="checkbox"/> watery	<input type="checkbox"/> flushed	<input type="checkbox"/> faint	<input type="checkbox"/> slurred	<input type="checkbox"/> soiled
<input type="checkbox"/> bloodshot	<input type="checkbox"/> pale	<input type="checkbox"/> moderate	<input type="checkbox"/> incoherent	<input type="checkbox"/> disarranged / mussed
<input type="checkbox"/> _____	<input type="checkbox"/> dazed expression	<input type="checkbox"/> strong	<input type="checkbox"/> profanity	<input type="checkbox"/> torn

<b>BALANCE</b>	<b>ATTITUDE</b>	<b>UNUSUAL ACTIONS</b>	<b>PUPILS</b>
<input type="checkbox"/> swaying _____	<input type="checkbox"/> antagonistic	<input type="checkbox"/> hiccough	<input type="checkbox"/> poor reaction
<input type="checkbox"/> staggering	<input type="checkbox"/> combative	<input type="checkbox"/> vomiting	<input type="checkbox"/> dilated
<input type="checkbox"/> lost balance / fell down	<input type="checkbox"/> mood swings	<input type="checkbox"/> urinating	<input type="checkbox"/> _____

In addition: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit are evidence of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.

**NIGHT TIME SEARCH WARRANT:** (read this portion if applicable)

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:30 AM, for the reason that it is now \_\_\_\_\_ hours, therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a time delay would render it useless.

Based on the preceding facts, I, Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_, request that a Telephonic ☐ **daytime** ☐ **night time** search warrant to be issued. This concludes my affidavit Your Honor.

With your permission Your Honor, I will now read to you a Standard Duplicate Search Warrant.

*Upon reading the warrant, read the following:*

This concludes the reading of the Standard Duplicate Original Search Warrant, Your Honor. Do I have your permission to sign your name and execute the search warrant, Your Honor?

Affiant: **X** \_\_\_\_\_

Witness: **X** \_\_\_\_\_

11a

**ADDENDUM B—CONTINUED**

**Standard Arizona Search Warrant (page one)**

**STANDARD ARIZONA ORIGINAL SEARCH WARRANT  
STATE OF ARIZONA**

**SEARCH WAR-  
RANT # \_\_\_\_\_  
REPORT # \_\_\_\_\_**

COUNTY OF \_\_\_\_\_, STATE OF ARIZONA

IN THE \_\_\_\_\_ COURT

Proof by affidavit having been made this day before me by \_\_\_\_\_ I.D. # \_\_\_\_\_

of the \_\_\_\_\_ I am satisfied that there is probable cause to believe that:

☐ In the blood/body fluids of \_\_\_\_\_ date of birth \_\_\_\_\_

☐ Located at \_\_\_\_\_

in the State of Arizona, there is now being possessed or concealed certain property or substance(s) described as:

☐ Alcohol and/or ☐ drugs ☐ \_\_\_\_\_

together with other fruits, instrumentalities and evidence of a crime which property or things consists of any item or constitutes any evidence which tends to show that a public offense has been committed such being more fully described in the affidavit, to wit:

☐ Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs.

☐ Aggravated driving or in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs

☐ Aggravated assault

☐ Manslaughter

☐ Homicide

Which offense occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, at or near the location of \_\_\_\_\_, \_\_\_\_\_ County, State of Arizona

you are therefore commanded:

☐ in the daytime (excluding the time period between 10:00 p.m. and 6:30 a.m.)

☐ in the nighttime (good cause therefore having been shown)

to make a search of the above named or described person(s) for the herein above-described substances, and if you find the same or any part thereof, to retain such in your custody or in the custody of the agency you represent, as provided by ARS §13-3920. Return this warrant to me within five (5) business days of the date thereof, as directed by ARS §13-3918.

Given under my hand and dated this \_\_\_\_\_ day of \_\_\_\_\_,

**JUDGE:** \_\_\_\_\_

**Affiant:** \_\_\_\_\_

of the \_\_\_\_\_ Court

**Witness:** \_\_\_\_\_

(Justice of the Peace; Judge or Magistrate)

12a

**ADDENDUM B—continued**

**Standard Arizona Search Warrant (page two)**

Warrant Served: **Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_

Receipt for property taken: \_\_\_\_\_

Reason for non-service: \_\_\_\_\_

**ADDENDUM C**

**States That Expressly Allow Electronic  
Submission and Reception of Warrant Ap-  
plications and Search Warrants**

Ala. R. Crim. P. 3.8(b)

Alaska Stat. Ann. § 12.35.015

Ariz. Rev. Stat. Ann. §§ 13-3914(C), 13-3915(D), (E)

Ark. Code Ann. § 16-82-201

Cal. Penal Code § 1526(b)

Colo. Rev. Stat. Ann. § 16-1-106(3)(b)

Ga. Code Ann. § 17-5-21.1

Idaho Code Ann. §§ 19-4404, 19-4406

725 Ill. Comp. Stat. Ann. 5/108-4(a) (search war-  
rants may be issued electronically following writ-  
ten complaints)

Ind. Code. Ann. § 35-33-5-8

Iowa Code Ann. §§ 808.3, 808.4; Iowa Code Ann.  
§ 321J.10(3) (issuance of a search warrant may be  
based on oral testimony communicated by tele-  
phone only in circumstances involving traffic acci-  
dents)

Kan. Stat. Ann. §§ 22-2502(a), 22-2504

La. Code Crim. Proc. Ann. art. 162.1(B), (D)

Mich. Comp. Laws Ann. § 780.651(2)-(6)

Minn. R. Crim. P. 36.01, 36.05

Mo. Ann. Stat. § 542.276(3), (7)

Mont. Code Ann. §§ 46-5-221, 46-5-222

Neb. Rev. Stat. Ann. §§ 29-814.01, 29-814.03, 29-  
814.05

Nev. Rev. Stat. Ann. § 179.045(2), (4)

N.H. Rev. Stat. Ann. § 595-A:4-a

N.J. R. Crim. P. 3:5-3(b)

N.M. R. Crim. P. 5-211(F)(3), (G)(3)

N.Y. Crim. Proc. Law §§ 690.36(1), 690.40(3),  
690.45(1), (2) (McKinney 2012)

N.C. Gen. Stat. Ann. § 15A-245(a)(3)

N.D. R. Crim. P. 41(c)(2)-(3)

Ohio R. Crim. P. 41(C)(1)-(2)

Okla. Stat. Ann. tit. 22 §§ 1223.1, 1225(B)

Or. Rev. Stat. Ann. § 133.545(5)-(6)

Pa. R. Crim. P. 203(A), (C)

S.D. Codified Laws §§ 23A-35-4.2, 23A-35-5, 23A-  
35-6

Utah R. Crim. P. 40(l)

Vt. R. Crim. P. 41(c)(4), (g)(2)

Va. Code Ann. § 19.2-54

Wash. Super. Ct. Crim. R. 2.3(c)

Wis. Stat. Ann. § 968.12(3)

**ADDENDUM D**

**States That Specify Written or In Person  
Applications, or Lack Mention of Electronic  
Submission**

Conn. Gen. Stat. Ann. § 54-33a(c)

Del. Code. Ann. tit. 11 §§ 2306, 2307

Fla. Stat. Ann. §§ 933.06, 933.07(1)

Haw. Rev. Stat. § 803-34

Ky. R. Crim. P. 13.10(1)

Me. R. Crim. P. 41(c)

Md. Code Crim. P. § 1-203(a)(2)(i)

Mass. Gen. Laws Ann. ch. 276, § 2b

Miss. Code Ann. § 99-15-11

R.I. Gen. Laws Ann. § 12-5-3

S.C. Code Ann. § 17-13-140

Tenn. Code Ann. §§ 40-6-104, 40-6-105; Tenn. R.  
Crim. P. 41(c)

Tex. Code Crim. Proc. Ann. art. 18.01

W. Va. Code Ann. § 62-1A-3

Wyo. R. Crim. P. 41



## ADDENDUM E

## Wyoming Affidavit For DWUI Search And Seizure Warrant

## AFFIDAVIT FOR DWUI SEARCH AND SEIZURE WARRANT

I, the Undersigned certified peace officer in and for ☒ the State of Wyoming, ☒ County of Albany,  
☐ Municipality of \_\_\_\_\_, arrested \_\_\_\_\_ (Name of Driver),  
 \_\_\_\_\_ 1104, for driving under the influence of alcohol and/or a controlled substance in  
 (Driver's License # and State of Issuance)

violation of W.S. 31-5-233(b), or similar statute(s), on the 16 day of March, 2012

The Implied Consent Advisement was read to Driver. Driver REFUSED to submit to a blood, breath or urine test for the presence of alcohol or controlled substance.

## PROBABLE CAUSE FOR ARREST

I had the following reasons for Initial Contact/Stop and Preliminary Observation:

I contacted \_\_\_\_\_ for speeding 86 mph in a posted 65 mph zone on US Hwy 89. Upon contact I could smell unknown alcoholic beverage.

I observed the following physical conditions of Driver or observations of Driver's vehicle:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Bloodshot Watery Eyes | <input type="checkbox"/> Slurred Speech                   | <input checked="" type="checkbox"/> Odor of Alcohol on Driver/ in Vehicle  |
| <input type="checkbox"/> Soiled Clothing                  | <input checked="" type="checkbox"/> Admission of Drinking | <input type="checkbox"/> Odor of Marijuana on Driver/ in Vehicle           |
| <input type="checkbox"/> Poor Manual Dexterity            | <input type="checkbox"/> Inconsistent Responses           | <input type="checkbox"/> "Cover up" Odors like Breath Sprays               |
| <input type="checkbox"/> Bruises, Bumps or Scratches      | <input type="checkbox"/> Abusive Language                 | <input type="checkbox"/> Unusual Odors                                     |
| <input type="checkbox"/> Unusual Actions/Behavior         | <input type="checkbox"/> Unusual Statements               | <input type="checkbox"/> Alcohol Containers on Driver/in Vehicle           |
| <input checked="" type="checkbox"/> Poor Balance          | <input type="checkbox"/> Signs or Complaints of Injury    | <input type="checkbox"/> Drugs or Drug Paraphernalia on Driver/ in Vehicle |

Statements/Other: glassy eyes,

I requested the following Field Sobriety Test(s) and observed the following results:

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Horizontal Gaze Nystagmus               | <input checked="" type="checkbox"/> Walk & Turn                      | <input type="checkbox"/> One Leg Stand              |
| - EYE -   | <input type="checkbox"/> Lost Balance During Instructions            | <input type="checkbox"/> Swayed While Balancing     |
| <input checked="" type="checkbox"/> Lack of Smooth Pursuit                  | <input type="checkbox"/> Began Before Instructions Finished          | <input type="checkbox"/> Used Arms to Balance       |
| <input checked="" type="checkbox"/> Distinct Nystagmus at Maximum Deviation | <input checked="" type="checkbox"/> Missed Heel-to-Toe at Least Once | <input type="checkbox"/> Hopped to Maintain Balance |
| <input checked="" type="checkbox"/> Onset of Nystagmus Prior to 45 Degrees  | <input checked="" type="checkbox"/> Used Arms to Balance             | <input type="checkbox"/> Put Foot Down for Balance  |
|   | <input checked="" type="checkbox"/> Improper Turn                    |   |
|   | <input checked="" type="checkbox"/> Incorrect # of Steps             |   |
|   | <input type="checkbox"/> Stepped Off Line                            |   |
|   | <input type="checkbox"/> Stopped to Regain Balance                   |   |

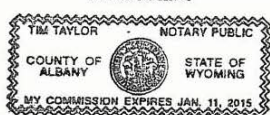
Additional Field Sobriety Test(s) Used/Additional Information:

Due to knee injuries unable to perform one leg stand. I received a partial breath test on pbt.

☒ A Portable Breath Test was obtained from Driver resulting in a .087 %BAC.

I, Robert D. King, Badge # 67 hereby request a Warrant pursuant to W.S. 31-6-102(d), based on probable cause as set forth herein, for the search and seizure of Driver's blood, breath and urine, with said Warrant to be served and executed upon Driver at any time or location within the jurisdictional boundaries of the issuing Court pursuant to W.R.Cr.P. 41 (c), as the evidence sought is of a perishable nature. By signing or affixing my electronic signature below, I swear and affirm that I am of the age of majority and that all the foregoing information is true and correct to the best of my knowledge.

Notarial Officer



Peace Officer's Signature

Date

3-16-12