



Legal Update

Police Must Obtain Defendant's Consent for BAC Analysis

Commonwealth v. Moreau, Supreme Judicial Court SJC-13168 (July 29, 2022)

Relevant facts

On September 29, 2020 officers responded to a single car crash. Upon arrival they found the defendant sitting in the driver's seat of a pickup truck that had collided with a tree. The defendant admitted to being the driver of the truck. The defendant was unsteady on his feet, had slurred speech and glassy eyes, and a strong odor of alcohol coming from his person. The defendant was transported to the hospital.

The police provided the hospital with a "preservation of evidence letter" looking to preserve any blood drawn from the defendant. The police later obtained and executed a search warrant for the defendant's blood that had been drawn by medical personnel. The blood was analyzed by the crime lab for blood alcohol content (BAC). The police never requested or obtained the defendant's consent to test his blood.

The defendant was charged with operating under the influence of liquor (OUI) and negligent operation of a motor vehicle. The defendant moved to suppress the results of the BAC analysis because he did not consent to the testing. The motion was denied, and this appeal followed.

Issue

Is a BAC analysis done by or at the direction of the police without the defendant's consent inadmissible in an OUI prosecution where the blood was drawn independently by a third party?

Short Answer

Yes. To be admissible in an OUI prosecution, the defendant must consent to a BAC analysis that is done by or at the direction of the police.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department's legal advisor or prosecutor.

Discussion

MGL c 24(1)(e) provides, in relevant part:

*“In any prosecution for a violation of [§ 24 (1) (a)], evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; *provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant...*” (emphasis added).*

The court found that the plain language of the statute requires that, for OUI prosecutions, any test or analysis done at the direction of a police officer for BAC is only admissible if the defendant has consented to the test or analysis. It does not matter who draws the blood or for what purpose.

“Thus, by its plain language, where a ‘chemical test or analysis...was made by or at the direction of a police officer,’ the defendant’s consent is required for the resulting BAC evidence to be admissible, regardless of whether the preceding blood draw was done by or at the direction of a police officer.” (emphasis in original.)

The court recognized the Legislature’s intent to protect the residents of the Commonwealth from the risk associated with motorists who are impaired by alcohol consumption. The statute provides that arrestees who do not consent to BAC testing will have their license suspended for at least six months under 90 § 24(1)(f)(1). The court noted that officers in this case, based upon their observations, likely had probable cause to arrest the defendant:

“Had the officer placed the defendant under arrest, § 24(1)(f)(1) would have been triggered such that, if the defendant refused to consent to a BAC test or analysis, his license would have been automatically ‘suspended for a period of at least 180 days and up to a lifetime loss.’” (emphasis in original.)

The court also noted that the officer was not precluded from arresting the defendant just because he was transported to the hospital.

The denial of the motion to suppress was reversed. The BAC evidence will be suppressed.

NOTE: This statute only addresses blood testing done by or at the direction of the police. This case should have no impact on the ability of the Commonwealth to seek and ultimately admit into evidence BAC results contained in a defendant’s medical records.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department’s legal advisor or prosecutor.