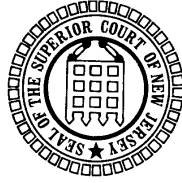


**SUPERIOR COURT OF NEW JERSEY**



EDWARD A. JEREJIAN  
JUDGE

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**TRIAL DE NOVO DECISION**

**State v. Noah Pressler**  
BMA No.: 003-01-14

**INTRODUCTION**

This is an appeal of a conviction in Englewood Cliffs Municipal Court. On March 8, 2013, the Englewood Cliffs Police Department charged defendant, Noah Pressler, with driving while intoxicated, contrary to N.J.S.A. 39:4-50, and reckless driving, contrary to N.J.S.A. 39:4-96. (Pa1 to 4).

The defendant appeared with counsel, Joseph M. Clark, Esq., on September 19, 2013, before the Honorable Marc C. Saperstein, J.M.C. in the Englewood Cliffs Municipal Court. Defendant filed a motion to dismiss for lack of probable cause and a motion to suppress evidence. After considering all submissions and hearing oral argument, Judge Saperstein denied both of defendant's motions. (T20-11 to 14).

On December 19, 2014, defendant entered a conditional guilty plea to driving while

intoxicated. (Pa1). The careless driving charge was dismissed at the time of the plea. (Pa2).

After accepting defendant's plea, Judge Saperstein sentenced defendant as a second time offender, to a fine of \$500, \$33 in court costs, a \$50 VCCB Assessment, a \$75 Safe Neighborhoods Services Fund assessment, a \$100 Drunk Driving Enforcement Fund surcharge, a \$100 DWI Surcharge, a two-year revocation of her driver's license, a 48 hours attendance at the Intoxicated Driver Resource Center, 50 hours community service and installation of an ignition interlock device for a period of two year commencing immediately after the license suspension. (Pa1). The court stayed all penalties, with the exception of the license suspension, pending appeal. (Pa1).

A timely notice of appeal was subsequently filed on January 8, 2014, with the Superior Court, Bergen County. This Court heard oral arguments on May 13, 2014.

Defendant alleges that the State illegally obtained defendant's blood without a warrant, because no exigency existed.

The State submits that defendant's blood was lawfully obtained.

### **STATEMENT OF FACTS**

The facts have been taken from the motion transcripts, and exhibits. On March 8, 2013, at approximately 8:00 a.m., defendant Noah Pressler was involved in a motor vehicle accident on Sylvan Avenue in Englewood Cliffs. (T10-13 to 15). Defendant's vehicle rear-ended another vehicle containing a female driver and minor passengers, and the accident resulted in damage to both vehicles. (T10-15 to 19). According to defendant, after the accident he became emotionally upset, and took four lorazepan pills. (Db2).

The Englewood Cliffs police arrived at the scene to assess the extent of injury to the parties. (T10-18 to 20). The officers detected a strong odor of alcohol on defendant's breath.

(T10-24 to 25). The officers also observed that the defendant's eyes were bloodshot and watery and he had slurred speech. (Db2). When the officers asked defendant to step out of the vehicle, he was unable to exit the vehicle without assistance. (T10-19 to 23). Defendant had difficulty standing on his own, and had to be held up by two other officers because he had balance issues. (Db2).

Because of the defendant's condition, the damage to the vehicles, and the involvement of minors in the accident, the police transported all parties to Englewood Hospital for medical evaluation. (T10-25 to 11-4). At the hospital, defendant was placed under arrest for DWI, based upon the police officers' observation at the scene. (T11-5 to 7). At the request of the police officers, defendant provided consent to a blood test to determine the defendant's blood alcohol content. (T11-7 to 10). A licensed medical technician drew blood from the defendant at the hospital, and submitted it for processing. (T11-10 to 12).

### **STANDARD OF REVIEW**

The Appellate Division has specified that the standard of review to be used by the Superior Court Law Division when hearing a municipal appeal is *de novo*. R. 3:23-8a. The function of the court is to determine the case completely anew on the record made in the Municipal Court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses. See State v. Johnson, 42 N.J. 146, 157 (1964). A trial *de novo* requires the trier to make findings of fact. The Law Division's role is not the appellate function governed by the substantial evidence rule, but rather an independent fact-finding function in respect of Defendant's guilt or innocence. See State v. States, 44 N.J. 285, 293 (1965); see also R. 3:23-8a. Appellate courts should defer to the credibility findings of the trial court because they are often influenced by matters such as observations of the character and

demeanor of witnesses and common human experience that are not transmitted by the record.  
See State v. Locurto, 157 N.J. 463, 475 (1999).

## **LEGAL ARGUMENT**

### **POINT I** **Law Enforcement Properly Obtained Defendant's Blood Sample**

The Fourth Amendment to the United States Constitution provides, in pertinent part: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....” U.S. Const. amend. IV. In its interpretation of the Fourth Amendment, the United States Supreme Court has directed that “the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure.” Terry v. Ohio, 392 U.S. 1, 20 (1968).

In Missouri v. McNeely, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1552 (2013), the United States Supreme Court held that in a non-consensual blood draw, the dissipation of alcohol is insufficient to justify a per se finding of exigency, which would make a search warrant unnecessary. In McNeely, the Court reaffirmed that the reviewing court must apply the traditional totality of the circumstances test to determine whether a law enforcement officer faced an emergency “that justified acting without a warrant.” Id. at 1559. In State v. Adkins, 433 N.J. Super. 479, 486 (App. Div. 2013), the Appellate Division ruled that McNeely should not be retroactively applied to blood draws before April 17, 2013. In this case, defendant’s blood draw occurred on March 8, 2013.

Based on the Appellate Division’s decision in State v. Adkins, this court finds that McNeely does not apply in this case. Further, McNeely is distinguishable to the circumstances of this case. In McNeely, the Court addressed the issue of exigency in a non-consensual blood drawing in drunk driving prosecution. In this case, defendant provided consent to a blood test to

determine the defendant's blood alcohol content. (T11-7 to 10). Although McNeely is not directly applicable in this case, this Court will consider the merits of defendant's claim under the McNeely totality of the circumstances test.

One of the factors the court should consider is the body's "natural metabolic process," which result in the percentage of alcohol in the blood decreasing as the alcohol absorbs. Because of this natural process, the Court held that a significant delay in testing will negatively affect the probative value of the results. Id. at 1560-61.

Another factor put forth in McNeely is the length of time that the warrant application process takes, including preparation by police, consultation, and review by prosecutors and review and approval by the court. Id. at 1562-63. Trial courts should assess the police officers' judgments from the "perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. at 1564.

The circumstances which describe exigent circumstances that would permit a warrantless blood draw are described in Schmerber v. California, 384 U.S. 757 (1986). In Schmerber, it was recognized that a police officer who had placed defendant under arrest for driving while intoxicated, may have reasonably believe he was confronted with an emergency, as time had to be taken to bring the defendant to the hospital and to investigate the scene of the accident. Given these facts, the Court held that the attempt to secure evidence of a blood-alcohol content in this case was an appropriate incident to petitioner's arrest. Id. at 770-71.

In this case, defendant was involved in a motor vehicle accident when he rear-ended another vehicle, resulting in damage to both vehicles. (T10-13 to 19). When the Englewood Cliffs police arrived at the scene to assess the extent of the parties' injuries, the officers detected a strong odor of alcohol on defendant's breath. (T10-18 to 25). The officers also observed that

the defendant's eyes were bloodshot and watery and he had slurred speech. (Db2). When the officers asked defendant to step out of the vehicle, he was unable to exit the vehicle without assistance. (T10-19 to 23). Defendant had difficulty standing on his own, and had to be held up by two other officers because he had balance issues. (Db2). As a result of the accident, defendant and the others involved in the accident had to be taken to the hospital for treatment. (T10-25 to 11-4).

At the hospital, defendant was placed under arrest for DWI, based upon the police officers' observation at the scene. (T11-5 to 7). Based under the precedent in Schmerber, as well as the evaluation suggested in McNealy, this Court is satisfied that a reasonable officer at the scene would have concluded that the process of transporting the defendant to the hospital and his subsequent treatment would require substantial time. Therefore, it was reasonable for the officer to believe that this period of time would pass before the police were able to obtain a warrant, thus interfering substantially with the probative value of the blood evidence.

Defendant also maintains that he did not properly consent to a blood draw, because defendant voluntarily took four lorazepam pills immediately prior to the police officers arriving at the scene. (Db2). Defendant suggests that his consumption of this medication made his written and oral consent involuntary, and therefore his blood alcohol results should be suppressed. (Db3).

The voluntariness of defendant's waiver is tested by the totality of all the surrounding circumstances. See State v. Miller, 76 N.J. 392, 402 (1978). The fact that an individual is under the influence does not automatically render his waiver invalid. See State v. Warmbrun, 277 N.J. Super. 51, 62-64 (App. Div. 1994), certif. den. 140 N.J. 277 (1995) (defendant's waiver was voluntary despite his intoxicated state, as he was capable of communicating, he was responsive,

and correctly answered questions.)

The level of condition that must be demonstrated as proof of voluntary intoxication to negate an offense that requires “purposeful” or “knowing” conduct is a “prostration of faculties such that defendant was rendered incapable of forming an intent.” State v. Cameron, 104 N.J. 42, 53-54 (1986). Notably, Cameron addresses the idea of “knowing” as an element of an offense and not for consent, however, this Court agrees with the State that the analysis in Cameron is relevant as it demonstrates the level of intoxication that is required in order to hold that defendant was unable to perform knowing or purposeful conduct.

In this case, defendant provided a written consent form to the police officers to allow them to draw his blood to determine his blood alcohol content. Defendant argues that because he was under the influence of drugs, he was incapable of giving valid consent. (Db2). Defendant admits that he was under the influence of drugs at the hospital, and defendant was subsequently arrested for driving while intoxicated based on the police officer’s observations on the scene. However, in accordance with the analysis put forth in Cameron, there is no evidence that defendant’s intoxication caused him to experience “prostration of faculties” such that he was unable to consent.

Based on the foregoing, this Court finds that in the circumstances of this case, the police officers acted reasonably, and defendant’s constitutional rights were not violated. The police officers had sufficient probable cause to determine that defendant was driving while intoxicated based on their observations at the scene. While at the hospital, defendant gave valid written consent for the police to draw blood in order to measure his blood alcohol content. However, even absent any consent by the defendant, exigent circumstances existed under the facts in this case to support the officer’s decision to draw defendant’s blood without first obtaining a warrant.

## CONCLUSION

Based on the record below, and after oral argument and a de novo hearing, this Court finds that the municipal court correctly found the defendant guilty of driving while intoxicated, in violation of N.J.S.A. 39:4-50. This Court finds the Defendant guilty *de novo*.

As such, this Court dissolves the stay granted by Judge Saperstein and imposes the same penalties for violations of N.J.S.A. 39:4-50, as a second time offender, as imposed below:

Fine: \$500  
Court Costs: \$33  
VCCB: \$50  
SNSF: \$75  
Surcharge: \$100  
DAEF Fee: \$100  
Driver License Suspension: 2 years  
IRDC: 48 hours  
Community Service: 50 hours  
Ignition Interlock: 2 years, commencing immediately after license suspension

Date: June 18, 2014

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Honorable Edward A. Jerejian, J.S.C.