

BIRCHFIELD V. NORTH DAKOTA: WARRANTLESS BREATH TESTS AND THE FOURTH AMENDMENT

SARA JANE SCHLAFSTEIN*

INTRODUCTION

In *Birchfield v. North Dakota*,¹ the United States Supreme Court addressed privacy concerns related to necessary blood alcohol concentration (“BAC”) testing during DUI stops and arrests. To determine if these searches are constitutional under the Fourth Amendment, the Court employed a balancing test, weighing the government’s interest in deterring and punishing drunk driving with the test’s intrusion on individuals’ privacy. The Court concluded that warrantless breath tests are constitutional when conducted incident to a lawful DUI arrest.

This commentary discusses the case *Bernard v. Minnesota*,² which was consolidated with another case into *Birchfield*. The Court’s holding applied to all three cases that involved the same question presented, but then discussed the applicability of its holding to each case.³ Accordingly, this commentary first focuses on *Bernard* and then broadly discusses the Court’s holding.

I. FACTS

This controversy arises from an incident that occurred on August 5, 2012 in Dakota County, Minnesota.⁴ At around 7:00 PM, police officers were notified that three intoxicated men were attempting to pull their

Copyright © 2017 Sara Jane Schlafstein.

* J.D. Candidate, Duke University School of Law, Class of 2018.

1. *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016) *consolidated with* *Bernard v. Minnesota*, 844 N.W.2d 41 (Minn. Ct. App. 2014) *and* *Beylund v. North Dakota*, 859 N.W.2d 403 (N.D. 2015).

2. 844 N.W.2d 41 (Minn. Ct. App. 2014).

3. *See infra* Part V.

4. Brief of Respondent at 2, *Bernard v. Minnesota*, (No. 14-1470) (2016).

boat out of a river using a truck.⁵ When the officers approached the three men, they noticed an odor of alcohol.⁶ William Bernard (“Petitioner”), who was identified by two witnesses as the driver, admitted to the officers that he had consumed alcohol, but denied driving the truck.⁷ The officers, however, found the keys to the truck in Petitioner’s hand.⁸ They subsequently arrested Petitioner and informed him that refusal to submit to a chemical alcohol test is a crime under Minnesota law.⁹ Without securing a search warrant, the officers decided to perform a breath test to determine Petitioner’s blood alcohol content.¹⁰ Petitioner refused to submit to the testing and was subsequently charged with two counts of the crime of First Degree Driving While Impaired – Test Refusal in violation of Minnesota law.¹¹

Petitioner filed a motion to dismiss the charges in the District Court of Dakota County, Minnesota.¹² Acknowledging that warrantless searches are generally unreasonable under the Fourth Amendment, the trial court dismissed the charges and concluded that “because no warrant was obtained and none of the recognized exceptions to the warrant requirement apply, no lawful basis exist[ed] in this case to request submission to a chemical test.”¹³

The Minnesota Court of Appeals reversed the trial court’s ruling.¹⁴ The court found that, because the constitutional requirements for securing a warrant existed prior to the test request, the officers could have obtained a warrant, so the warrantless breath test was constitutional under the Fourth Amendment.¹⁵

On appeal to the Minnesota Supreme Court, the court affirmed the decision of the appellate court but on different grounds. The court stated that the appellate court’s reasoning was “contrary to basic principles of Fourth Amendment law” because “[a] warrantless search is generally unreasonable, unless it falls into one of the recognized

5. *Id.*

6. *Id.*

7. *Id.* at 3.

8. *Id.*

9. Brief for Petitioner at 7, *Bernard v. Minnesota*, (No. 14-1470) (2016).

10. *Id.*

11. *Id.* (citing Minn. Stat. § 169A.20, subds. 2–3 (2014)).

12. Petition for Writ of Certiorari at 5, *Bernard*, (No. 14-1470).

13. *Id.* at 59a.

14. Brief of Respondent, *supra* note 4, at 3.

15. Petition for Writ of Certiorari, *supra* note 12, at 43a.

exceptions to the warrant requirement.”¹⁶ A search incident to a lawful arrest is one such exception.

The court found that searches of an arrestee’s person during a lawful arrest are *per se* constitutional and require no further justification.¹⁷ Thus, the court concluded that, when conducted during a lawful arrest, a warrantless breath test does not violate the Fourth Amendment because it falls under the search-incident-to-arrest exception.¹⁸

II. LEGAL BACKGROUND

A. *The Fourth Amendment*

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”¹⁹ It further states that “no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”²⁰ In general, a search is unreasonable if there is no warrant.²¹ The warrant requirement is however subject to exceptions.²² In *United States v. Robinson*,²³ the Court provided one such exception, that a warrantless search may be conducted incident to a lawful arrest.²⁴ When an officer makes a lawful arrest, she may search not only the body of the arrestee, but also the surrounding area and any possessions in the arrestee’s control.²⁵ In *Chimel v. California*,²⁶ the Court explained that this exception exists to protect an officer’s safety and to prevent the destruction of evidence.²⁷ The search-incident-to-

16. *Id.* at 7a.

17. *Id.* at 8a.

18. *Id.* at 9a.

19. U.S. CONST. amend. IV.

20. *Id.*

21. *Kentucky v. King*, 563 U.S. 452, 495 (2011).

22. *Id.* In addition to the lawful arrest exception, the exigent circumstances exception allows for a warrantless search when law enforcement does not have enough time to secure a warrant due to an emergency. *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). The Supreme Court has determined that the natural and inevitable dissipation of blood alcohol concentration does not necessarily trigger the exigent circumstances exception. *Missouri v. McNeely*, 133 S. Ct. 1552, 1556 (2013). The exigent circumstances exception must be determined on a case-by-case basis using a fact-based inquiry. *Id.*

23. *United States v. Robinson*, 414 U.S. 218 (1973).

24. *Id.* at 235.

25. *Id.* at 224.

26. 395 U.S. 752 (1969).

27. *Id.* at 763.

arrest exception is categorical rather than subject to a case-by-case analysis.²⁸ In *Robinson*, the Court clarified that the fact that an arrest is lawful itself justifies “a full search of the person.”²⁹ Accordingly, an officer does not need to assess the probability that the arrestee will obtain a weapon or destroy evidence in order to conduct a warrantless search upon a lawful arrest.

In *Riley v. California*,³⁰ the Court reaffirmed the categorical rule set forth in *Robinson*, and described how to apply the rule in modern situations, such as searches of cell phones, that were unfathomable when the Fourth Amendment was ratified.³¹ In such cases, a court must consider “the degree to which [the search] intrudes upon an individual’s privacy and . . . the degree to which it is needed for the promotion of legitimate governmental interests.”³² Thus, the Court will employ a balancing test to determine if the government’s interest in conducting the search outweighs the intrusion on the arrestee’s privacy.

B. Minnesota’s Driving While Impaired Laws

In 1961, Minnesota enacted an implied consent law to combat the dangers of drunk driving.³³ As of 2014, the law states that “any person who drives, operates, or is in physical control of a motor vehicle within this state or any boundary water of this state consents . . . to a chemical test of that person’s blood, breath, or urine for the purpose of determining the presence of alcohol, a controlled substance or its metabolite, or a hazardous substance.”³⁴ The act made consent to chemical testing upon arrest a condition of driving on public roads. Although the law allowed a suspected drunk driver to withdraw consent, such withdrawal would result in license sanctions for the driver. In 1971, Minnesota passed a *per se* drunk driving act.³⁵ Under this law, the state no longer has to prove that a defendant is actually impaired while driving. Instead, a court will presume intoxication if a defendant’s BAC is above 0.08%.³⁶ Because the *per se* statute can only

28. *McNeely*, 133 S. Ct. at 1556.

29. *Robinson*, 414 U.S. at 235.

30. 134 S. Ct. 2473 (2014).

31. *Id.* at 2484.

32. *Id.* at 2478 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)).

33. Brief of Respondent, *supra* note 4, at 1.

34. Minn. Stat. § 169A.51, subds. 1(a) (2014).

35. Brief of Respondent, *supra* note 4, at 1.

36. *Id.*

be enforced by determining a driver's BAC level, the state subsequently made it a criminal offense "for any person to refuse to submit to a chemical test of the person's blood, breath, or urine" when lawfully stopped by an officer for suspected drunk driving.³⁷

III. ARGUMENTS

A. *Petitioner's Arguments*

Petitioner asserts that the Minnesota Supreme Court's ruling is "shockingly wrong" in that "it untethers the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement from the exception's rationale, while giving greater constitutional protection to an arrestee's pockets or handbag than to the arrestee's body."³⁸ Petitioner agrees with the Minnesota Supreme Court's dissenting opinion that the ruling "fundamentally departs from longstanding Fourth Amendment principles, and nullifies the warrant requirement in nearly every drunk-driving case."³⁹

Petitioner claims that the Court has consistently explained that the purpose of the search-incident-to-arrest exception is to protect officer safety and to prevent the destruction of evidence.⁴⁰ Alcohol in the blood dissolves at a stable, predictable rate and is not subject to the control of the individual.⁴¹ Petitioner draws a distinction between the active destruction of evidence by the arrestee and the loss of evidence due to a naturally occurring process.⁴² According to Petitioner, only concern for the active destruction of evidence can constitute sufficient grounds for conducting a warrantless search under the search-incident-to-arrest exception.⁴³ Thus, Petitioner contends that the concern of alcohol naturally dissipating in the blood stream is not sufficient to justify a warrantless breath test.⁴⁴ Additionally, a person's breath cannot be used as a weapon that would cause harm to an officer.⁴⁵ For these reasons, Petitioner argues that a breath test does not further the purposes of the search-incident-to-arrest exception and, therefore, a

37. M.S.A. § 169A.20, subd. 2.

38. Petition for Writ of Certiorari, *supra* note 12, at 3.

39. *Id.*

40. Brief for Petitioner, *supra* note 9, at 12.

41. *Id.* at 17.

42. *Id.* at 11.

43. *See id.* at 11–12.

44. *Id.* at 17.

45. *Id.*

warrantless breath test is not a valid search under the Fourth Amendment.⁴⁶

Nonetheless, the Minnesota Supreme Court held that the search-incident-to-arrest exception applies in this case because a warrantless search of an arrestee's person is categorically valid during a lawful arrest.⁴⁷ In *Robinson*, the Court stated that searches of an arrestee's body incident to a lawful arrest are constitutional regardless of "the probability in a particular arrest situation that weapons or evidence would in fact be found."⁴⁸ Following this reasoning, a breath test during a lawful arrest requires no justification of protecting officers or preserving evidence.

Petitioner argues that this interpretation is a misreading of the Court's intention.⁴⁹ Petitioner asserts that the Court instead "ask[s] . . . whether application of the search incident to arrest doctrine to this particular category of [search] would 'untether the rule from the justifications underlying' the exception."⁵⁰ Accordingly, Petitioner argues that the Minnesota Supreme Court's "holding can fairly be said to turn Fourth Amendment doctrine on its head, and simply cannot be reconciled with this Court's decisions."⁵¹ The rationales of protecting officer safety and preservation of evidence must apply to searches of both the property and the person of the arrestee during a lawful arrest.⁵² Breath tests, as Petitioner explains, can never alone protect officer safety or preserve evidence, and, thus, it is a category of search that is not permissible without a warrant under the search-incident-to-arrest justifications.⁵³

Petitioner further argues that there is no difference between a warrantless blood test and breath test in the context of a DUI investigation.⁵⁴ The Minnesota Supreme Court drew a distinction between breath tests and blood tests, stating that the latter are more intrusive.⁵⁵ Petitioner argues that the Court has "explicitly held that breath tests are searches for Fourth Amendment purposes."⁵⁶ When

46. *Id.* at 13.

47. *Id.* at 17.

48. *United States v. Robinson*, 414 U.S. 218, 235 (1973).

49. *Id.*

50. *Id.* (citing *Riley v. California*, 134 S. Ct. 2473, 2485 (2014)).

51. *Id.* at 17.

52. *Id.* at 18.

53. *Id.* at 21.

54. *Id.* at 23.

55. *Id.*

56. *Id.* (quoting *Skinner v. Ry. Labor Excs. Ass'n.*, 489 U.S. 602, 616–17 (1989)).

weighing the privacy interests of an arrestee against the government's interest in reducing instances of drunk driving,⁵⁷ a breath test should be considered a "profound intrusion *into* a person's bodily integrity."⁵⁸ Rather than a usual exhalation of air, a breath test captures alveolar air from deep inside of the lungs.⁵⁹ To collect this air sample, an arrestee must consistently blow air into the Breathalyzer for several seconds.⁶⁰ As further evidence that breath tests and blood tests should be treated similarly in terms of privacy interests, Petitioner points to different states' treatment of these types of tests, asserting that most states that impose restrictions on the use of warrantless blood tests impose identical restrictions on the use of warrantless breath tests.⁶¹

For these reasons, Petitioner argues that the warrantless breath test at issue here was unconstitutional, and accordingly, the state may not impose criminal penalties on an individual who refuses an unconstitutional search.⁶² Thus, Petitioner claims that the Court should reverse the decision of the Minnesota Supreme Court.

B. Respondent's Arguments

Respondent argues that Minnesota's test-refusal statute is constitutional because a warrantless breath test is permissible under the search-incident-to-arrest exception. Respondent begins the analysis with the notion that warrantless searches are generally considered unreasonable and thus are prohibited under the Fourth Amendment.⁶³ There are, however, a number of well recognized exceptions to the warrant requirement.⁶⁴ The exception at issue here is the search-incident-to-arrest exception which allows an officer to search an arrestee's person or property when the search is incident to a lawful arrest.⁶⁵ Respondent argues that in *Robinson*, the Court adopted "the bright-line rule that police officers may, without a warrant, always conduct a full search of a person who has been lawfully arrested."⁶⁶ Rejecting a case-by-case approach, the Court stated that an

57. See *Riley v. California*, 134 S. Ct. 2473, 2488–89 (2014).

58. Brief for Petitioner, *supra* note 9, at 24 (quoting Petition for Writ of Certiorari, *supra* note 12, at 28a (Page and Stras, JJ., dissenting)).

59. Brief for Petitioner, *supra* note 9, at 24.

60. *Id.*

61. *Id.* at 25.

62. *Id.* at 26.

63. Brief of Respondent, *supra* note 4, at 8.

64. *Id.*

65. *Id.*

66. *Id.* at 9 (citing *United States v. Robinson*, 414 U.S. 218, 235 (1973)).

arrest based on probable cause is reasonable under the Fourth Amendment, and that any search incident to such arrest is permissible without further justification.⁶⁷ Respondent contends that this bright-line rule was later rearticulated in *McNeely* where, in addition to citing *Robinson*, the Court “recognized a limited class of traditional exceptions to the warrant requirement that apply categorically and thus do not require an assessment of whether policy justifications underlying the exception . . . are implicated in a particular case.”⁶⁸

Next, Respondent argues that the Minnesota Supreme Court correctly applied this categorical rule, holding that a warrantless breath test incident to a lawful arrest for DUI does not violate the Fourth Amendment.⁶⁹ Accordingly, because the compelled breath test is constitutional, the state may impose criminal sanctions on an arrestee for refusing to submit to the testing.⁷⁰ Additionally, because the categorical rule applies, Respondent rejects Petitioner’s argument that because they do not further officer safety or evidence preservation, breath tests do not fall under the search-incident-to-arrest exception.⁷¹ This notion, Respondent argues, cannot be reconciled with the categorical rule articulated in both *Robinson* and *McNeely*.⁷²

Respondent also rejects Petitioner’s argument that breath tests do not further the goal of preserving evidence.⁷³ Because alcohol naturally dissipates in an individual’s blood, postponement of breath testing will negatively affect the test results.⁷⁴ Respondent further argues that the Minnesota Supreme Court was correct in drawing a distinction between breath testing and blood testing. In *Skinner v. Railway Labor Executives Association*,⁷⁵ this Court stated that “[u]nlike blood tests, breath tests do not require piercing of the skin and may be conducted safely outside a hospital environment and with a minimum of inconvenience or embarrassment.”⁷⁶ Accordingly, Respondent contends that breath tests appropriately fall within the search-incident-to-arrest doctrine.

67. *Id.*

68. *Id.* at 10 (quoting *Missouri v. McNeely*, 133 S. Ct. 1552, 1559 n.3 (2013)).

69. Brief of Respondent, *supra* note 4, at 10.

70. *Id.* at 9.

71. *Id.* at 11.

72. *Id.*

73. *Id.*

74. *Id.* at 12.

75. 489 U.S. 602 (1989).

76. Brief of Respondent, *supra* note 4, at 12 (quoting *Skinner*, 489 U.S. at 625).

Respondent next argues in the alternative that “Minnesota’s test refusal statute is constitutional as applied to breath tests because a warrantless breath test administered to a suspect lawfully arrested for drunk driving satisfies the general reasonableness requirement of the Fourth Amendment.”⁷⁷ The Fourth Amendment does not prohibit all privacy intrusions, but instead prohibits only those that are unreasonable.⁷⁸ When a categorical exception, as described in *Robinson*, does not apply to a certain category of searches, the Court will “balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable.”⁷⁹ When employing this balancing test, the Court will examine a particular search by weighing the government’s interest against the degree of intrusion on an individual’s privacy.⁸⁰

Respondent contends that implied-consent and test-refusal laws effectively promote the government’s significant and legitimate interest in combating the dangers of drunk driving.⁸¹ The Court has repeatedly “recognized the costs of drunk driving as a substantial and compelling governmental interest.”⁸² Minnesota’s implied-consent and test-refusal laws have been effective in deterring individuals from driving while intoxicated and has lowered the rate of test refusal during lawful DUI arrests.⁸³ Respondent maintains that the laws are also narrowly tailored to further the government’s legitimate interest because an officer is only allowed to compel a breath test when she has probable cause to believe that the arrestee is driving under the influence of alcohol.⁸⁴ The application of implied-consent and test-refusal laws is further limited because before imposing any criminal punishment, a neutral magistrate judge will dismiss the case if she determines that the officer lacked the requisite probable cause.⁸⁵ Thus, Respondent argues that because the implied-consent and test-refusal laws are narrowly tailored and effectively further the government’s

77. *Id.* at 13.

78. *Id.* (citing U.S. CONST. amend. IV).

79. *Id.* at 14.

80. *Id.*

81. *Id.*

82. *Id.* at 15; *see also* *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957) (noting the dangers with which drunk driving burdens society).

83. *Id.* at 16.

84. *Id.* at 19.

85. *Id.* at 23.

interest in limiting drunk driving, they should be upheld by the Court as constitutional.⁸⁶

Respondent next explains that in *Skinner*, the Court found that breath tests constitute a lesser intrusion on privacy than blood tests.⁸⁷ Respondent explains that “the breath test itself simply requires the suspect to blow into a straw-like mouthpiece attached to the end of a tube that is connected to the [Breathalyzer] . . . anywhere from four to fourteen seconds.”⁸⁸ Unlike a blood test, breath tests only reveal information about the amount of alcohol in an arrestee’s bloodstream.⁸⁹ Thus, according to Respondent, the implied-consent and test-refusal laws at issue are a minimal intrusion on an individual’s privacy and should be upheld.⁹⁰

For these reasons, Respondent argues that warrantless breath tests during a lawful DUI arrest are constitutional under the Fourth Amendment, and thus the imposition of criminal sanctions for test-refusal is correspondingly constitutional.

IV. HOLDING

In *Birchfield v. North Dakota*, the United States Supreme Court concluded that “[b]ecause breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, . . . a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving.”⁹¹ As such, warrantless breath tests incident to a lawful arrest are constitutional under the Fourth Amendment.

V. ANALYSIS

The Court came to the correct conclusion in *Birchfield v. North Dakota*, upholding warrantless breath tests during lawful DUI arrests as constitutional.

The Court began its analysis by examining the privacy interests implicated in breath and blood tests, finding that “breath tests do not implicat[e] significant privacy concerns.”⁹² Analogizing the act as similar

86. *Id.* at 17.

87. *Id.* at 19. (citing *Skinner v. Railway Labor Execs.Ass’n*, 489 U.S. 602, 625 (1989)).

88. *Id.* at 20.

89. *Id.* at 21.

90. *Id.* at 19.

91. *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2185 (2016).

92. *Id.* at 2164 (quoting *Skinner*, 489 U.S. at 626).

to “blowing up a party balloon,” the Court reasoned that the physical invasiveness of a breath test is minimal because it merely requires the arrestee to blow into a straw connected to the testing machine for a period of four to fifteen seconds.⁹³ As the Court explained, breath tests are only capable of revealing minimal information about the alcohol content in the arrestee’s breath, and the nature of the test is unlikely to cause heightened embarrassment for an individual during an arrest.⁹⁴ The Court rejected Petitioner’s argument that the test is intrusive because it requires the arrestee to provide a sample of aveolar (deep lung) air, stating that breathing is a necessary and common occurrence.⁹⁵ The Court contrasted the privacy concerns inherent in breath tests with those implicated in blood tests, and determined that blood tests are more physically invasive because they require an unnatural piercing of the skin.⁹⁶ The Court was correct in drawing a distinction between breath tests and blood tests. Because breath tests are minimally invasive, the privacy concern associated with warrantless searches are much less prevalent with breath tests than with blood tests.

The Court then considered the government’s interest in obtaining alcohol content test results for individuals suspected of drunk driving.⁹⁷ The Court determined that “[t]he States and the Federal Government have a ‘paramount interest . . . in preserving the safety of . . . public highways.’”⁹⁸ Drunk driving is a primary cause of traffic deaths and injuries.⁹⁹ In addition to neutralizing the threat posed by drunk drivers who have already gotten behind the wheel, the government also has a compelling interest in creating effective “deterrent[s] to drunk driving” so that such individuals make responsible decisions and do not become a safety threat.¹⁰⁰

In its attempt to balance the government’s interest with individuals’ rights to privacy, the Court was correct in determining that the government has a strong interest in protecting the safety of citizens. Some searches without a warrant are necessary in order for the government to effectively keep its citizens safe, and the interest of

93. *Id.* at 2176.

94. *Id.* at 2177.

95. *Id.*

96. *Id.* at 2178.

97. *Id.*

98. *Id.* (quoting *Mackey v. Montrym*, 443 U.S. 1, 17 (1979)).

99. *Id.* at 2178.

100. *Id.* at 2179 (quoting *Mackey*, 443 U.S. at 18).

safety outweighs the concern of minimal privacy intrusion associated with breath tests, and thus, warrantless breath tests are constitutional.

The Court then addressed Petitioner's objection to considering breath tests under the search-incident-to-arrest exception. Petitioner argued that an officer can only conduct a warrantless search to protect the officer's safety or to protect evidence from destruction. The Court rejected the distinction that Petitioner drew between active destruction of evidence and loss of evidence through a natural process.¹⁰¹ The Court stated that "[i]n both situations the State is justifiably concerned that evidence may be lost, and [Petitioner] does not explain why the cause of the loss should be dispositive."¹⁰² Many Supreme Court decisions have recognized a state's interest in preservation of evidence rather than merely preventing the destruction of evidence.¹⁰³

The *per se* approach adopted by the Supreme Court, which permits warrantless breath tests incident to lawful DUI arrests may be criticized as inconsistent with the Fourth Amendment because it effectively nullifies the warrant requirement in drunk driving arrests. The Fourth Amendment, however, only prohibits *unreasonable* searches. Because the government's interest in protecting the safety of its citizens is so paramount, and because the method of testing is minimally invasive, a warrantless breath test during a lawful DUI arrest cannot be categorized as an unreasonable search.

For practical reasons, the Court was correct in deciding that a warrant is not necessary for breath tests incident to a lawful DUI arrest. Requiring an officer to obtain a warrant for breath testing would likely encumber courts, adding to their already busy dockets. This could leave officers unable to obtain a warrant in time to effectively administer a breath test. Additionally, the implied-consent law is necessary to incentivize suspected drunk drivers to take the breath test. Without breath tests, officers and prosecutors would not be able to prove a DUI case due to lack of evidence. Before enacting the implied-consent law, penalties for drunk driving were greater than penalties for refusing to take a breath test. This provided an incentive for drivers to refuse to take the test in order to avoid the drunk driving penalties and instead settle for the less severe refusal penalties. As such, absent the implied-consent law, drivers would be more likely to refuse testing which would

101. *Id.* at 2182

102. *Id.*

103. *Id.*

reduce the government's ability to effectively monitor and punish drunk drivers.

CONCLUSION

While Fourth Amendment jurisprudence is designed to protect individuals' privacy, it allows for warrantless searches under limited circumstances when the government's interest outweighs the intrusion on privacy. A breath test during a lawful DUI arrest is such a circumstance. Thus the Court was correct in concluding that a warrantless breath test incident to a lawful DUI arrest is constitutional under the Fourth Amendment.