



"The problem is that (the state doesn't) have probable cause of any crime," Lothstein said of Dennis's case. "The general feeling in the criminal justice community is the statute is unconstitutional."

There are other ways the police can get blood samples - though not always immediately, and typically not with a warrant.

If the driver involved in an accident requires hospital treatment, a blood sample is taken for medical purposes. If a court grants the police a search warrant, it can sometimes be used as evidence, said Manchester defense attorney Jaye Rancourt.

Rancourt, who appealed a similar case before the state Supreme Court in 2005, said there's a "lot of gray" when it comes to search warrants for blood. Other aspects of the case were settled before the justices ruled on the specific issue.

Her client, Rose Marie Wall, had been in an accident. The police believed she had been intoxicated and seized blood samples from the hospital without a warrant.

"The statute allows the police to take blood from an individual under certain circumstances," Rancourt said. "If there's an accident and the police need blood, they can say, 'We want a blood sample from that person.' Instead of doing that, and sometimes they don't if the hospital refuses to give it, they'll just go back and get it."

According to Lothstein, a warrantless blood draw could possibly be found constitutional if it's done during the night, when it's unusually difficult to contact a judge, or if there is probable cause to believe the driver is intoxicated.

In Dennis's case, nearly six hours had passed between the accident and when he turned himself in to the police.

Trooper Chris Decker of the state police, which led the investigation, testified in August that the police had been gathering other evidence before the blood test was given and that Dennis had agreed to give his blood voluntarily, although it's unclear whether he signed a consent waiver.

Other factors, such as the fact that Dennis's blood alcohol content was under the legal limit, may have presented problems for the state had it sought to indict Dennis.

Regardless, Lothstein said, prosecutors should have known they needed a warrant in a case like this, Lothstein said.

"There isn't any excuse for prosecutors not to know all of this," he said. "They should have gone to the judge and gotten the warrant. Any good judge would say, 'Well, I'm sorry there's an accident. That doesn't give you a right to collect a blood sample.' We don't just stick a needle in someone when there's an accident."

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