



## SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

# *LEGAL AFFAIRS* *UPDATE*

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### **A warrant is not required to draw blood from an unconscious drunk-driving suspect in situations where seeking a warrant would interfere with other pressing needs or duties.**

A Sheboygan Police Department officer received a report that Gerald Mitchell appeared very drunk, climbed into a van, and drove away. The officer found Mitchell wandering near a lake, stumbling and slurring. Mitchell could hardly stand without the help of two officers. The officer administered a preliminary breath test, which registered a blood alcohol concentration (BAC) level of 0.24%. Mitchell was arrested for operating a vehicle while intoxicated. The officer drove him to the station to conduct a more reliable breath test, but Mitchell was too lethargic for the test. When the officer drove Mitchell to a hospital for a blood test, he lost consciousness and had to be wheeled in. The officer asked hospital staff to draw a blood sample while Mitchell was unconscious. The blood test revealed that his BAC, 90 minutes after his arrest, was 0.222%.

Mitchell was charged with violating two drunk-driving statutes. The trial court denied Mitchell's motion to suppress the warrantless blood test results on the ground that it violated his Fourth Amendment right against unreasonable searches, and he was convicted. In *Mitchell v. Wisconsin*, the United States Supreme Court reviewed whether a warrant is required to draw blood from an unconscious drunk driving suspect.

The Fourth Amendment guards the "right of the people to be secure in their persons... against unreasonable searches" and provides that "no Warrants shall issue, but upon probable cause." A blood draw is a search of the person. Thus, a warrant or exception is required.

The Supreme Court has previously held that if an officer has probable cause to arrest a motorist for drunk driving, the officer may conduct a warrantless, nonconsensual *breath* test as a search incident to arrest.

Additionally, an officer may conduct a warrantless, nonconsensual *blood* test if the facts of the particular case create an exigent circumstance justifying the test. The fleeting quality of BAC evidence alone is not enough to justify the exigent circumstances exception. However, a warrantless blood test of a drunk driver may be permissible when police have other pressing duties and further delay caused by the warrant application would threaten the destruction of evidence.

Here, the Supreme Court considered two factors to determine whether there were exigent circumstances that would allow for a warrantless, non-consensual blood draw. Those two factors were 1) whether the need for a blood test is compelling, and 2) whether the pressing need leaves no time to seek a warrant.

The Court concluded that there is a compelling need for a blood test of a drunk driving suspect whose condition deprives officials of a reasonable opportunity to conduct a breath test.

The Court then evaluated whether the compelling need justifies a warrantless search because there is no time to secure a warrant. Exigency exists when 1) BAC evidence is dissipating and 2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application. Both conditions are met when a drunk-driving suspect is unconscious.

Thus, "[w]hen police have probable cause to believe a person has committed a drunk-driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver's BAC."

#### **WHAT THIS MEANS:**

**A deputy may obtain a warrantless blood draw when a drunk-driving suspect is unconscious and the deputy does not have reasonable time to seek a warrant due to other pressing public safety priorities. Conversely, a deputy must obtain a search warrant for a blood draw if there is time, and no exigency exists.**