SCOTUS – Warrantless Blood Draw of an Unconscious Suspected Drunk Driver is Allowed Under Certain Circumstances

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On June 27, 2019, the United States Supreme Court released its decision in the matter of Mitchell v. Wisconsin, 588 U.S. ___ (2019). This case involves the warrantless blood test of an unconscious, suspected drunk driver. As we know from previous cases, the United States Supreme Court has allowed for *warrantless and nonconsensual breath tests* of an individual who has been validly arrested for drunk driving, but *not a non-consensual blood test*, Birchfield v. North Dakota, 579 U.S. ___ (2016).

Blood Alcohol Content (BAC) tests are a Search under the Fourth Amendment

The 4th Amendment protects the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures" and that "no Warrants shall issue, but upon probable cause..." The Court has previously ruled that BAC tests are "searches" under the Fourth Amendment. Birchfield, slip opinion at 14. However, the Supreme Court has provided exceptions to the search warrant requirement, Illinois v. McArthur, 531 U.S. 326, 330 (2001), and additionally, has stated that a warrantless search is allowed when "there is a compelling need for official action and no time to secure a warrant." Missouri v. McNeely, 569 U.S. 141, 149 (2013).

Search Incident to a Custodial Arrest

BAC tests are "searches" under the 4th Amendment. Birchfield, slip opinion at 14. As such, normally a search warrant is required for a lawful search but there are well-defined exceptions that the court has applied. The court has ruled that BAC tests are considered to be a "search incident to a custodial arrest" when testing *conscious* drunk-driving suspects. "We held that [the suspects'] drunk driving arrests, taken alone, justify warrantless breath tests but not blood tests, since breath tests are less intrusive, just as informative, and (in the case of conscious suspects) readily available." Birchfield, slip opinion at 35 (emphasis added).

Exigent Circumstances

In certain, limited circumstances, the court has allowed blood draw BAC tests as "exigent circumstances," "to prevent the imminent destruction of evidence." Missouri v. McNeely, 569 U.S. 141, 149 (2013). Due to the fact that blood-alcohol evidence is always dissipating in

the suspects' bloodstream, the Court in McNeely was asked to determine if the exigency exception applies to the blood testing of drunk driving suspects. The court determined that the "*fleeting quality of BAC evidence alone is not enough*" to justify the warrantless blood test of drunk driving suspects. *Citing* Schmerber v. California, 384 U. S. 757 (emphasis added). However, in Schmerber, the court found that the circumstances, in that case, did justify the warrantless blood test of a drunk driving suspect for a driver who had gotten into a car accident that "gave police other pressing duties," for then the "further delay" caused by a warrant application really "would have threatened the destruction of evidence. McNeely at 152, citing Schmerber. The Court in Mitchell distinguished the Schmerber and McNeely situations in that Schmerber (car accident) has a much higher exigency and that McNeely had a minimum urgency common to all drunk driving cases. According to the Court, in the Schmerber case, a car accident heightened the urgency and such a situation is similar to the medical emergency in Mitchell, thereby creating a condition of heightened urgency in this matter; thereby creating exigent circumstances.

Is the administration of a blood test without a warrant on an unconscious drunk driving suspect reasonable under the 4th Amendment?

The Supreme Court stated that there is clearly a "compelling need" for a blood test of drunk-driving suspects whose condition deprives officials of a reasonable opportunity to conduct a breath test. Specifically, the court cited the following compelling interests:

1. Highway safety is a vital public interest – a "compelling" and "paramount" interest, Mackey v. Montrym, 443 U.S. 1, 17-18;

2. When it comes to promoting this "compelling" and "paramount" interest, federal and state lawmakers have long determined that BAC limits make a significant difference in safety;

3. Enforcing BAC limits requires a reliable test to withstand legal scrutiny. Additionally, such testing must be promptly administered due to the biological dissipation of alcohol in the bloodstream; and

4. When a breath test is unavailable to promote these public safety interests, a blood draw becomes necessary." McNeely, at 170.

According to the Court majority, for the above-stated reasons, there is a "compelling need" for a blood test of drunk driving suspects whose condition deprives officials of a reasonable opportunity to conduct a breath test. McNeely, at 170. The court must then determine if this compelling need justifies a warrantless search because there is "no time to secure a warrant." McNeely, at 170.

Justification of the Exigency?

Under these circumstances, an exigency exists when 1. BAC evidence is dissipating; and 2. some other factor creates pressing health, safety or law enforcement need that would take priority over a warrant application. "Both conditions are met when a drunk-driving suspect

is unconscious, so Schmerber controls: With such suspects too, a warrantless blood draw is lawful." Mitchell, slip opinion at 13. In fact, the court stated that not only does Schmerber control because the conditions are met, but also the unconsciousness of the suspected drunk-driver doesn't just create a pressing need for the warrantless blood draw, the condition of the driver itself is a medical emergency.

Court's Holding

"When 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 without offending the Fourth Amendment. We did not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties." Mitchell slip opinion at 16-17 (emphasis added)

Wrap Up

Mitchell stands for the proposition at a warrantless BAC blood draw of an unconscious drunk-driving suspect may be justified under Schmerber, and McNeely, but the court left open the opportunity for the drunk driving suspect to argue that there may be unusual circumstances to show that the blood draw "would not have been done" had the police not been seeking BAC information AND that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties. (Mitchell, slip opinion at 16-17).

This means that under the circumstances described above, if there is time and/or no exigency, officers must obtain a search warrant for a blood draw. However, if the driver is unconscious, thereby creating the inability to obtain a breath test AND an exigency exists due to the dissipation of alcohol in the body and "pressing health, safety or law enforcement need that would take priority over a warrant application" then a warrantless blood draw may be legal. But the suspected drunk driver will have the opportunity to challenge the warrantless blood draw, alleging that police only drew blood for BAC purposes AND that obtaining a warrant would not have interfered with other pressing law enforcement needs or duties.

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