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SCOTUS Opinion: Police May Take Blood Test Of Unconscious Driver Without Warrant Under Exigent Circumstances Doctrine

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After Gerald Mitchell was arrested for driving while intoxicated, his breath test came out three times over the legal limit. He then became unconscious. Wisconsin law presumed that an unconscious person consents to a blood test, so the police took him to a hospital where a blood test revealed his BAC well over the legal limit. During his prosecution, Mitchell moved to strike the results of the blood test as an unreasonable search under the Fourth Amendment because it was conducted without a warrant. The trial court denied the motion, and the Wisconsin Supreme Court affirmed the convictions. In *Mitchell v. Wisconsin*, the Court, in a 5-4 decision by Justice Alito, reversed, holding (for a four-vote plurality) that the exigent-circumstances doctrine generally permits a blood test without a warrant when a driver is unconscious. Alito noted that there was a compelling need to determine the BAC of drunk-driving suspects, and the fact that the concentration of alcohol dissipates in the bloodstream over time generates the need to move quickly without a warrant. However, the plurality acknowledged that there may be unusual cases where a defendant could argue that his or her blood would not have been drawn because the police were not seeking a BAC reading, and so remanded to allow Mitchell to make that argument. Justice Thomas concurred in the judgment, arguing in favor of a *per se* rule that allowed such blood tests any time the police had probable cause to believe the driver is drunk. Justice Sotomayor, joined by Justices Ginsburg and Kagan, dissented, arguing that since the police had time to get a warrant, that should have been the end of the matter. Justice Gorsuch filed a dissent to argue that the case should have been dismissed as improvidently granted because the question presented did not address the exigent circumstances doctrine. A link to the opinion is here.

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