Mitchell v. Wisconsin

(2019) __ U.S. __ [2019 WL 2619471]

Issue

If a DUI arrestee is unconscious, must officers obtain a search warrant before ordering a blood draw?

Facts

An officer in Wisconsin arrested Gerald Mitchell for DUI based mainly on Mitchell's "stumbling" and "slurring" of words, plus a preliminary breath test result of 0.24%. Because Mitchell "could hardly stand without the support of two officers," and because he was "too lethargic" for a breath test, he was transported to a hospital for a blood test. En route, however, he lost consciousness so, upon arrival, an officer requested that medical staff draw a blood sample. The sample tested at 0.222%. When Mitchell's motion to suppress the blood test result was denied, the case went to trial and he was convicted. He appealed to the Supreme Court.

Discussion

The Court ruled that when a DUI arrestee is unconscious, and is therefore unable to provide a breath sample, it is usually reasonable for officers to order a warrantless blood test. Said the Court, "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."

Comment

Much has been written about DUI blood testing in the past few years, and this has resulted in some confusion. It started in 2013 when the Supreme Court ruled that the natural dissipation of alcohol from the bloodstream no longer constitutes an exigent circumstance.[1] Two years later, the Court ruled that, for various technical reasons, warrantless blood draws are not permitted under the Implied Consent Laws.[2] So it was not surprising to see a case in which a defendant could seriously argue that the Fourth Amendment prohibits officers from ordering blood draws from DUI arrestees who were unconscious and therefore incapable of providing a breath sample. What was surprising was that the court's analysis of this straightforward issue took eight dense pages (including an extended explanation that drunk driving is dangerous), followed by a lengthy dissenting opinion signed by three justices who disagreed with the majority's ruling.

As noted, the Court ruled that warrantless blood draws from unconscious DUI arrestees would "almost always" be reasonable. Why *almost* always? The reason, said the Court, is 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

[1] *Missouri v. McNeely* (2013) 569 U.S. 141.
[2] *Birchfield v. North Dakota* (2016) __ U.S. __ [136 S.Ct. 2160].

police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties." Translation: When officers arrive at a hospital with an unconscious DUI arrestee, it is usually reasonable to obtain a blood sample without a warrant—but not always.

Years ago, there was a recurring theme in most of the Supreme Court's Fourth Amendment cases that "[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront."[3] It would be helpful if the Court explained why this principle has been jettisoned. POV

Date posted: July 1, 2019

[3] *Dunaway v. New York* (1979) 442 U.S. 200.