

## People v. Toure

(2015) 232 Cal.App.4th 1096

### Issue

Did exigent circumstances justify a warrantless blood draw from a combative DUI arrestee who had caused an injury accident?

### Facts

At approximately 9 P.M. Madou Toure was driving a tractor-trailer rig westbound on State Route 58 in San Bernardino County. Witnesses said Toure started swerving into the eastbound lane several times, causing several oncoming drivers to take evasive action by running off the road. Toure eventually began driving continuously in the eastbound lane for about two miles, at which point he crashed into an oncoming car. Both occupants of the car were injured. Toure kept going for a while until a tire blew out. He then momentarily stepped down from the cab (“mumbling” to himself), but then got back inside saying something like “I’m outta here.” Fearing that Toure was going to drive off again, one of the witnesses reached into the truck and removed the ignition key.

About then CHP officers arrived at the crash site and, after determining that an ambulance was en route, they drove up to Toure’s truck and found him in the driver’s seat holding on to the steering wheel. One of the officers opened the passenger door and ordered him to step outside but Toure just started yelling obscenities at the officer. After pulling Toure out of the truck, the officer ordered him to turn around so he could pat search him for weapons. But Toure clenched his fists, spun around, and tried to hit one of the officers. Toure was eventually handcuffed but continued to yell, spit, and kick at the officers.

The officer immediately saw and smelled various classic signs that Toure was intoxicated. But they were unable to administer a field sobriety test because he was still combative. So, after arresting him for DUI, they drove him to the CHP office in Barstow where they notified him of California’s implied consent law. When an officer asked him if he would submit to a blood test, Toure swore at him. Thus, the officers were faced with a dilemma: they could not remove the handcuffs because Toure was still out of control; but they could not wait for him to settle down because that might take hours and, meanwhile, the alcohol in his bloodstream was continuously degrading. So a sergeant approved a forced blood draw, the results of which were 0.15%. Toure was charged with, among other things, DUI with injuries and resisting arrest. A jury found him guilty, and the judge sentenced him to almost five years in prison.

### Discussion

On appeal, Toure argued that the results of the blood test should have been suppressed because the officers failed to obtain a warrant. This motion was based on the United States Supreme Court’s 2013 ruling in *Missouri v. McNeely*<sup>1</sup> in which the Court ruled that the dissipation of alcohol from the bloodstream does not, in and of itself, constitute an exigent circumstances that would justify a warrantless blood draw. Instead, the Court ruled there must be some additional circumstances that reasonably indicated that a delay in obtaining a blood sample would significantly undermine the reliability of

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<sup>1</sup> (2013) \_\_ US \_\_ [133 S.Ct. 1552].

the test results. And in making this determination, the Court said the relevant factors include “the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence.” The question, then, was whether such practical problems were present in Toure’s case.

The Court of Appeal ruled they were. Specifically, it noted that, in addition to the dissipation of alcohol in the bloodstream, the following additional circumstances justified a warrantless blood draw: (1) the officers were delayed at the scene because Toure had caused an injury accident that required some of their attention; (2) Toure was combative which required that he be physically restrained, (3) it would have been dangerous to try to administer a field sobriety test to a combative arrestee; (4) Toure refused to tell the officers when he had stopped drinking, thereby making it more difficult estimate his degree of intoxication; and (5), it was necessary to keep Toure restrained at the Barstow office because he continued to be combative.

Consequently, the court ruled that there were sufficient exigent circumstances to justify a warrantless blood draw and, accordingly, it affirmed Toure’s conviction. POV

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