



Constitutional Policing Update

IS A WARRANTLESS BLOOD DRAW OF AN UNCONSCIOUS DRIVER CONSTITUTIONAL?

This update will help you (1) lawfully investigate unconscious drivers in DUI cases; and (2) identify ways to document your analysis in your police reports to justify the lawfulness of your actions and support a successful prosecution.

A blood draw is a search and subject to the Fourth Amendment for which a warrant is required unless an exception to the warrant requirement applies. Exigent Circumstances is an exception to the Fourth Amendment's search warrant requirement. The exigencies of the situation must make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. *Lange v. California*, 141 S.Ct. 2011 (2021). Whether an officer is presented with exigent circumstances for a warrantless blood draw is a **case-by-case determination** and not something to be done in all accidents or unconscious driver situations. Let's explore when you have the legal authority for a warrantless blood draw.

U.S. Supreme Court Rulings

In *Schmerber*, the hospital staff took blood from a suspect after a traffic accident. In that case, the Court found there were "special facts" to find the blood draw by hospital professionals was not a constitutional violation. *Schmerber v. California*, 384 U. S. 757 (1966)

Nearly, 50 years later, in *McNeely*, the Court held that the mere fact that blood alcohol content (BAC) dissipates over time is not enough to justify exigent circumstances to bypass the warrant requirement for a blood draw in every case. The *McNeely* Court emphasized that exigent circumstances must be determined on a case-by-case basis, considering the totality of the circumstances. *Missouri v. McNeely*, 569 U. S. 141 (2013)

In 2019, in *Mitchell v. Wisconsin*, the Court addressed the specific scenario of unconscious drivers. The *Mitchell* cases did not overrule *McNeely*. But, it compared an unconscious DUI suspect with the urgency of car accident in the *Schmerber* case where the specific facts established an exigency for warrantless blood draw. The *Mitchell* Court found that an unconscious driver could be a situation of heightened urgency, like the medical emergency in *Schmerber*. If an officer can identify specific facts when investigating an incident involving an unconscious driver supporting a medical emergency, then the officer can establish exigent circumstances to support a warrantless blood draw. The Court reasoned that the unconsciousness of the driver often creates additional urgent tasks for officers, such as ensuring medical care and managing the accident scene, which can justify a warrantless blood draw. *Mitchell v. Wisconsin*, 588 U.S. 840 (2019)

What Qualifies as Exigent Circumstances Under *Schmerber*, *McNeely*, and *Mitchell*?

An 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. *Schmerber v. California*. Law enforcement must establish "a compelling need for official action and no time to secure a warrant." *Missouri v. McNeely*. When a drunk-driving suspect is unconscious, law enforcement is faced with both situations. The BAC evidence is diminishing by the minute, and a driver's unconsciousness can itself be a medical emergency. *Mitchell v. Wisconsin*. **But the exigency is not guaranteed unless law enforcement articulates specific circumstances surrounding the medical emergency of an unconscious driver that creates a heightened urgency with a health or safety component.**





California Case Law

In *People v. Nault*, 72 Cal.App. 5th 1144 (2021), the defendant was involved in a fatal car accident and was rendered unconscious. He had to be taken to the hospital by helicopter. The officer did not have an opportunity to administer a breath test and the officer was presented with exigent circumstances justifying the warrantless blood draw.

Unlike *Mitchell* and *Nault*, in *People v. Alvarez*, 98 Cal.App.5th 531 (2023), the California Court of Appeal considered the constitutionality of a warrantless blood draw from driver who was taken to the hospital as a precaution, following an accident with multiple fatalities. Alvarez was conscious for the first 90 minutes following the accident. The Court found the officer had plenty of time to obtain a breath test or (especially with advances in technology) to get a warrant. The court concluded that no exigent circumstances justified the warrantless blood draw because the officer had ample time to obtain a warrant and no emergency medical interventions were required.

In California, while the exigent circumstances exception can justify a warrantless blood draw from an unconscious driver, each case must be evaluated individually. The courts will consider whether the officer had sufficient time to obtain a warrant and whether any additional urgent tasks or medical emergencies justified the warrantless search.

Some questions to ask yourself to help determine exigency and helpful to document in your report

- Did the suspect get transported immediately for medical treatment?
- Can the suspect provide knowing and voluntary consent?
- Are there steps you can take to try find out when the suspect will be released from the emergency room?
- Can hospital staff estimate if it will be multiple hours before the suspect will be conscious or released from the hospital?
- Is the suspect initially conscious and combative not allowing the investigation to identify a drinking pattern or obtain consent, and then subsequently falls unconscious leaving the officer with no reasonable opportunity to obtain a timely warrant?
- Are there any timing issues with obtaining the warrant in your specific case—i.e., temporary technical difficulties to obtain court approval— do other available methods to obtain a warrant coupled with the medical treatment of the suspect create an urgent need for the officer to act?
- Is there a staffing issue that limits the ability of the officer to delegate the task of obtaining a warrant?
- Are there any facts that establish real, serious, and immediate consequences if time is taken to obtain a warrant?

Bottom Line

If in a DUI the driver is unconscious, there is an inability to obtain a breath test and the person has an immediate need for medical attention, then a warrantless blood draw may be legal. A peace officer can articulate in their reports the facts and circumstances of the particular case to show an exigency exists due to the dissipation of alcohol in the body and specific facts related to the collision/unconscious driver that are pressing health, safety or law enforcement need that would take priority over the time delay in obtaining a search warrant. **As always, with the Fourth Amendment, the facts and details in your reports are critical to establishing the reasonableness of your search. If the facts supporting an exigency are insufficient, you can always get a *McNeely* warrant and still obtain a blood sample to complete your investigation.**

