



SCOTUS rules in favor of warrantless blood draw

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U.S. Supreme Court has ruled that police may forcibly and warrantlessly carry out blood draws on unconscious drivers suspected of drunk driving.

The Court's 5-4 decision in *Mitchell v. State of Wisconsin* found that an unconscious driver suspected of driving under the influence of alcohol constitutes an emergency situation that allows police to ignore the Fourth Amendment's warrant requirement and draw blood from that suspect without consent or a warrant, regardless of whether there is an opportunity to obtain a warrant.

In an amicus brief filed in the case, attorneys for The Rutherford Institute had argued that "implied consent" laws, which suggest that merely driving on a state-owned road implies that a person has consented to police sobriety tests, breathalyzers and blood draws, should not be used as a means of allowing police to bypass fundamental Fourth Amendment protections for privacy and bodily integrity.

"All of those freedoms we cherish – the ones enshrined in the Constitution, the ones that affirm our right to due process, privacy, bodily integrity, the right to not have police seize our property without a warrant, or search and detain us without probable cause – amount to nothing when the government and its agents are allowed to disregard those prohibitions on government overreach at will," said constitutional attorney John W. Whitehead, president of The Rutherford Institute and author of "Battlefield America: The War on the American People".

"What this ruling makes clear is that our so-called Fourth Amendment rights have been reduced to technicalities in the face of the government's ongoing power grabs."

In May 2013, the Sheboygan, WI, police received a call that Gerald Mitchell was in distress. Mitchell had driven his van to the shore of Lake Michigan and consumed 40 pills and a mixture of vodka and soda.

Police found Mitchell walking unsteadily along the lake, although his van was parked elsewhere. Mitchell was given a roadside sobriety test, which showed that he had a blood-alcohol concentration of .24. He was taken into custody and driven to the police station where he was placed in a holding cell.

While in the cell, Mitchell began to fall asleep or pass out, although he could be roused if stimulated.

Wanting another test of Mitchell's blood-alcohol level but unsure if Mitchell could cooperate with a breath test, police took Mitchell to a hospital to have his blood drawn and tested.

Mitchell was unconscious upon arriving at the hospital. Police then read an unconscious Mitchell his rights under Wisconsin's "implied consent" law, including his right to refuse to submit to a blood or breath test, and then proceeded to have a hospital technician forcibly draw his blood.

Upon being prosecuted for operating a vehicle while intoxicated, Mitchell moved to suppress the blood test results on the ground that his blood was taken without a warrant or exigent circumstances.

After losing in the Wisconsin state courts, Mitchell appealed to the U.S. Supreme Court, arguing that the forced blood draws violated his Fourth Amendment rights. Although the Supreme Court has previously ruled that forced, warrantless blood draws are unconstitutional, it justified the blood draw in Mitchell as dependent on "exigent circumstances". Twenty-eight states have laws similar to Wisconsin's "implied consent" law.

The Supreme Court's opinion and The Rutherford Institute's amicus brief in *Mitchell v. State of Wisconsin* are available at www.rutherford.org. Affiliate attorneys D. Alicia Hickok, Mark Taticchi, D. Alexander Harrell, and Matthew C. Sapp of Drinker Biddle & Reath LLP, in Philadelphia and Dallas assisted The Rutherford Institute and CATO in presenting its arguments.

The Rutherford Institute, a nonprofit civil liberties organization, provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated.