



**LGIT'S ROLL CALL REPORTER  
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**QUESTION:** Is the natural metabolization of alcohol in the bloodstream a “self-created” exigent circumstance that justifies an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood testing in drunk-driving cases?

**ANSWER:** No. The existence of exigent circumstances in a drunk-driving case must be determined case by case on the totality of the circumstances.

**CASE:** *Missouri v. McNeely*, United States Supreme Court, Decided April 17, 2013

In this case, the Supreme Court considered whether the “exigent circumstances” rule automatically allows a police officer to order medical personnel to withdraw an arrestee’s blood, without consent, before the alcohol metabolizes into the bloodstream. The facts of the case established that, while on highway patrol at approximately 2:08 a.m., a Missouri police officer stopped Tyler McNeely’s truck after observing it speeding and repeatedly crossing the centerline. After stopping McNeely, the officer noticed several additional signs that McNeely was intoxicated, including McNeely’s bloodshot eyes, slurred speech, and the odor of alcohol on his breath. McNeely also acknowledged that he had consumed “a couple of beers” at a bar. When he was asked to exit his truck, McNeely appeared unsteady on his feet. Based upon these observations, the officer administered a battery of field sobriety tests. After McNeely performed poorly, he refused to allow the officer to use a portable breath-test device to measure his blood alcohol concentration (BAC). McNeely was arrested.

The officer began to transport McNeely to the police station, but when he indicated he would again refuse to give a breath sample, the officer took McNeely to a nearby hospital for blood testing. The officer did not attempt to obtain a warrant. At the hospital, the officer asked McNeely whether he would consent to a blood test. Reading from a standard implied consent form, the officer explained to McNeely that, under Missouri law, refusal to submit voluntarily to the test would lead to the immediate revocation of McNeely’s driver’s license for one year and could be used against him in a future prosecution. McNeely refused consent. The officer then directed a lab technician to take a blood sample. The sample was taken at approximately 2:35 a.m. Subsequent laboratory testing measured McNeely’s BAC at 0.154 percent, which was well above Missouri’s legal limit of 0.08 percent. McNeely was charged with driving while intoxicated (DWI).

Prior to trial, McNeely moved to suppress the results of the blood test, arguing that, the officer’s failure to obtain a warrant violated his Fourth Amendment rights. The trial court agreed and suppressed the test results. The State appealed and the case was heard in the Missouri Supreme Court.

Relying on a forty year old Supreme Court case, *Schmerber v. California*, 384 U.S. 757 (1966), the appeals court applied a “totality of the circumstances” to determine when an “exigency” exists that would allow a warrantless blood draw. The court concluded that *Schmerber* “requires more than the mere dissipation of blood-alcohol evidence to support a warrantless blood draw in an alcohol-related case.” Instead, exigency depends on the existence of additional “special facts,” such as whether an officer was delayed by the need to investigate an accident and then transport an injured suspect to the hospital, (as had been the case in *Schmerber*). The court found that this was a routine DWI case in which no “special facts” existed. Consequently, the court upheld the suppression of the test results. At the State of Missouri’s request, the Supreme Court of the United States agreed to review the case.

The Supreme Court affirmed the decision to suppress the test results.

The Court considered the evidence introduced during the hearing on the motion to suppress that BAC levels typically decrease by .015 to .02 percent per hour. The Court found, however, that this fact alone is insufficient to create an automatic rule allowing an officer to order a non-consensual blood test. The Court held that, in drunk-driving investigations, when an officer can *reasonably* obtain a warrant *before* a blood sample is taken, the Fourth Amendment requires the officer to do so. In this case, there were no such circumstances.

**NOTE:** In Maryland, there are consequences when a driver refuses an officer’s request to submit to a chemical test for intoxication. Those consequences aside, there may be circumstances, such as an accident involving severe injuries or death, in which the officer believes that it necessary to quickly obtain a blood sample. Under the Fourth Amendment, the officer is required to obtain a warrant unless exigent circumstances exist.

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