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Birchfield v. North Dakota

The U. S. Supreme Court Holds That The Fourth Amendment Permits Warrantless Breath Tests Incident To Arrests For DUI, But Not Warrantless Blood Tests

Birchfield v. North Dakota, No. 14-1468 (June 23, 2016), is a consolidation of three cases. In each case, the petitioner was arrested for DUI. The states in which they were arrested make it a crime to refuse to take a BAC test. Petitioner Birchfield was convicted for refusing to take a blood test. Petitioner Bernard was charged with refusal to take a breath test. Petitioner Beylund agreed to a blood test after being told that his refusal would result in criminal charges. The question presented was whether motorists lawfully arrested for DUI may be convicted of a crime or otherwise penalized for refusing to take a warrantless test measuring the alcohol in their bloodstream.

The Court noted that success for all three petitioners depended on the proposition that the criminal law ordinarily may not compel a motorist to submit to the taking of a blood sample or to a breath test unless a warrant authorizing such testing is issued by a magistrate. If, however, such warrantless searches comport with the Fourth Amendment, a State may criminalize the refusal to comply with a demand to submit to the required testing, just as a State may make it a crime for a person to obstruct the execution of a valid search warrant.

Taking a blood sample or administering a breath test is a search governed by the Fourth Amendment. These searches may nevertheless be exempt from the warrant requirement if they fall within a number of exceptions. For example, in *Missouri v. McNeely*, 569 U.S. ___, (133 S.Ct. 1552, 185 L.Ed.2d 696), the Court found that exigent circumstances may, but does not always justify a warrantless blood test. Here, the question was whether the exception for searches conducted incident to a lawful arrest applies. And this exception, the Court emphasized, applies *categorically*, rather than on a case-by-case basis like the exception for exigent circumstances.

The Court stated that the application of the search incident to arrest exception turns on a consideration of the impact of breath and blood tests on individual privacy concerns. The Court found that breath tests do no implicate significant privacy concerns for three reasons. First, the physical intrusion is almost negligible; breath tests do not require a piercing of the skin and entail a minimum of inconvenience. Second, breath tests are capable of revealing only one bit of information, the amount of alcohol in the subject's breath. Finally, participation in a breath test is not an experience likely to cause any great enhancement in the embarrassment that is inherent in any arrest.

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But, the Court found, blood tests are a different matter. A blood test requires piercing of the skin and an extraction of a part of the subject's body. Also, unlike a breath test, a blood test places in the hands of law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading.

The Court then analyzed the governmental need to obtain BAC readings. The Court found that the States and Federal Government have a paramount interest in preserving public highway safety. States also have a compelling interest in creating deterrents to impaired driving. By making it a crime to refuse to submit to a BAC test, the laws at issue serve a very important function.

Thus, having assessed the effect of BAC tests on privacy interests and the need for such tests, the Court concluded that the Fourth Amendment permits warrantless breath tests incident to arrests for DUI. However, blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Therefore, the Court further concluded that the search incident to arrest doctrine does not justify the warrantless taking of a blood sample. Moreover, motorists cannot be deemed to have implicitly consented to submit to a blood test on pain of committing a criminal offense.

Accordingly, the Court reversed Birchfield's conviction because he was threatened with an unlawful search. But, Bernard may properly be prosecuted for refusing to take a lawful warrantless breath test. Finally, Beylund submitted to a blood test after police told him that the law required his submission. The state Supreme Court held that his consent was voluntary on the erroneous assumption that the State could permissibly compel both blood and breath tests. Therefore, the Court remanded for a reevaluation of his consent under the totality of circumstances.

Unlike the state statutes at issue in *Birchfield*, Georgia does not provide for criminal punishment for refusing to submit to a BAC test. In *Williams v. State*, 296 Ga. 817 (2015) our Supreme Court held that both the State and Federal Constitution protect against unreasonable searches and seizures and apply to the compelled withdrawal of blood, breath and other bodily substances. But, neither *Williams* nor its progeny considered the incident-to-arrest exception when considering the validity of a BAC test. *Birchfield's* holding now provides that for breath tests, implied consent alone is necessary to show the validity of the test because breath tests categorically fall within the incident-to-arrest exception to the warrant requirement under the Fourth Amendment.

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