Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MITCHELL *v.* WISCONSIN

CERTIORARI TO THE SUPREME COURT OF WISCONSIN

No. 18–6210. Argued April 23, 2019—Decided June 27, 2019

Petitioner Gerald Mitchell was arrested for operating a vehicle while intoxicated after a preliminary breath test registered a blood alcohol concentration (BAC) that was triple Wisconsin's legal limit for driving. As is standard practice, the arresting officer drove Mitchell to a police station for a more reliable breath test using evidence-grade equipment. By the time Mitchell reached the station, he was too lethargic for a breath test, so the officer drove him to a nearby hospital for a blood test. Mitchell was unconscious by the time he arrived at the hospital, but his blood was drawn anyway under a state law that presumes that a person incapable of withdrawing implied consent to BAC testing has not done so. The blood analysis showed Mitchell's BAC to be above the legal limit, and he was charged with violating two drunk-driving laws. Mitchell moved to suppress the results of the blood test on the ground that it violated his Fourth Amendment right against "unreasonable searches" because it was conducted without a warrant. The trial court denied the motion, and Mitchell was convicted. On certification from the intermediate appellate court, the Wisconsin Supreme Court affirmed the lawfulness of Mitchell's blood test.

Held: The judgment is vacated, and the case is remanded.

2018 WI 84, 383 Wis. 2d 192, 914 N. W. 2d 151, vacated and remanded.

JUSTICE ALITO, joined by THE CHIEF JUSTICE, JUSTICE BREYER, and JUSTICE KAVANAUGH, concluded that when a driver is unconscious and cannot be given a breath test, the exigent-circumstances doctrine generally permits a blood test without a warrant. Pp. 5–17.

(a) BAC tests are Fourth Amendment searches. See *Birchfield* v. *North Dakota*, 579 U. S. ___, ___. A warrant is normally required for a lawful search, but there are well-defined exceptions to this rule, including the "exigent circumstances" exception, which allows warrant-

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less searches "to prevent the imminent destruction of evidence." *Missouri* v. *McNeely*, 569 U. S. 141, 149. In *McNeely*, this Court held that the fleeting nature of blood-alcohol evidence alone was not enough to bring BAC testing within the exigency exception. *Id.*, at 156. But in *Schmerber* v. *California*, 384 U. S. 757, the dissipation of BAC did justify a blood test of a drunk driver whose accident gave police other pressing duties, for then the *further* delay caused by a warrant application would indeed have threatened the destruction of evidence. Like *Schmerber*, unconscious-driver cases will involve a heightened degree of urgency for several reasons. And when the driver's stupor or unconsciousness deprives officials of a reasonable opportunity to administer a breath test using evidence-grade equipment, a blood test will be essential for achieving the goals of BAC testing. Pp. 5–7.

(b) Under the exigent circumstances exception, a warrantless search is allowed when "'there is compelling need for official action and no time to secure a warrant.'" *McNeely*, 569 U. S., at 149. Pp. 7–16.

(1) There is clearly a "compelling need" for a blood test of drunk-driving suspects whose condition deprives officials of a reasonable opportunity to conduct a breath test. First, highway safety is a vital public interest—a "compelling" and "paramount" interest, *Mackey* v. *Montrym*, 443 U. S. 1, 17–18. Second, when it comes to promoting that interest, federal and state lawmakers have long been convinced that legal limits on a driver's BAC make a big difference. And there is good reason to think that such laws have worked. *Birchfield*, 579 U. S., at ___. Third, enforcing BAC limits obviously requires a test that is accurate enough to stand up in court. *Id.*, at ___. And such testing must be prompt because it is "a biological certainty" that "[a]lcohol dissipates from the bloodstream," "literally disappearing by the minute." *McNeely*, 569 U. S., at 169 (ROBERTS, C. J., concurring). Finally, when a breath test is unavailable to promote the interests served by legal BAC limits, "a blood draw becomes necessary." *Id.*, at 170. Pp. 9–12.

(2) *Schmerber* demonstrates that 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. Because both conditions are met when a drunk-driving suspect is unconscious, *Schmerber* controls. A driver's unconsciousness does not just create pressing needs; it is *itself* a medical emergency. In such a case, as in *Schmerber*, an officer could "reasonably have believed that he was confronted with an emergency." 384 U. S., at 771. And in many unconscious-driver cases, the exigency will be *especially* acute. A driver so drunk as to lose con-

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sciousness is quite likely to crash, giving officers a slew of urgent tasks beyond that of securing medical care for the suspect—tasks that would require them to put off applying for a warrant. The time needed to secure a warrant may have shrunk over the years, but it has not disappeared; and forcing police to put off other urgent tasks for even a relatively short period of time may have terrible collateral costs. Pp. 12–16.

(c) On remand, Mitchell may attempt to show that his was an unusual case, in which his blood would not have been drawn had police not been seeking BAC information and police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties. Pp. 16–17.

JUSTICE THOMAS would apply a *per se* rule, under which the natural metabolization of alcohol in the blood stream "creates an exigency once police have probable cause to believe the driver is drunk," regardless of whether the driver is conscious. *Missouri* v. *McNeely*, 569 U. S. 141, 178 (THOMAS, J., dissenting). Pp. 1–4.

ALITO, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and BREYER and KAVANAUGH, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG and KAGAN, JJ., joined. GORSUCH, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 18–6210

GERALD P. MITCHELL, PETITIONER *v.* WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 27, 2019]

JUSTICE ALITO announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE BREYER, and JUSTICE KAVANAUGH join.

In this case, we return to a topic that we have addressed twice in recent years: the circumstances under which a police officer may administer a warrantless blood alcohol concentration (BAC) test to a motorist who appears to have been driving under the influence of alcohol. We have previously addressed what officers may do in two broad categories of cases. First, an officer may conduct a BAC test if the facts of a particular case bring it within the exigent-circumstances exception to the Fourth Amendment's general requirement of a warrant. Second, if an officer has probable cause to arrest a motorist for drunk driving, the officer may conduct a breath test (but not a blood test) under the rule allowing warrantless searches of a person incident to arrest.

Today, we consider what police officers may do in a narrow but important category of cases: those in which the driver is unconscious and therefore cannot be given a breath test. In such cases, we hold, the exigent-circumstances rule almost always permits a blood test

without a warrant. When a breath test is impossible, enforcement of the drunk-driving laws depends upon the administration of a blood test. And when a police officer encounters an unconscious driver, it is very likely that the driver would be taken to an emergency room and that his blood would be drawn for diagnostic purposes even if the police were not seeking BAC information. In addition, police officers most frequently come upon unconscious drivers when they report to the scene of an accident, and under those circumstances, the officers' many responsibilities—such as attending to other injured drivers or passengers and preventing further accidents—may be incompatible with the procedures that would be required to obtain a warrant. Thus, when a driver is unconscious, the general rule is that a warrant is not needed.

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In *Birchfield* v. *North Dakota*, 579 U. S. ___ (2016), we recounted the country's efforts over the years to address the terrible problem of drunk driving. Today, "all States have laws that prohibit motorists from driving with a [BAC] that exceeds a specified level." *Id.*, at ___ (slip op., at 2). And to help enforce BAC limits, every State has passed what are popularly called implied-consent laws. *Ibid.* As "a condition of the privilege of" using the public roads, these laws require that drivers submit to BAC testing "when there is sufficient reason to believe they are violating the State's drunk-driving laws." *Id.*, at ___, ___ (slip op., at 2, 6).

Wisconsin's implied-consent law is much like those of the other 49 States and the District of Columbia. It deems drivers to have consented to breath or blood tests if an officer has reason to believe they have committed one of

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