

Arrest, Search and Investigation

[*Missouri v. McNeely*](#), 569 U.S. ___ (April 17, 2013). The Court held that in drunk driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. After stopping the defendant's vehicle for speeding and crossing the centerline, the officer noticed several signs that the defendant was intoxicated and the defendant acknowledged that he had consumed "a couple of beers." When the defendant performed poorly on field sobriety tests and declined to use a portable breath-test device, the officer placed him under arrest and began driving to the stationhouse. But when the defendant said he would again refuse to provide a breath sample, the officer took him to a nearby hospital for blood testing where a blood sample was drawn. The officer did not attempt to secure a warrant. Tests results showed the defendant's BAC above the legal limit. The defendant was charged with impaired driving and he moved to suppress the blood test. The trial court granted the defendant's motion, concluding that the exigency exception to the warrant requirement did not apply because, apart from the fact that as in all intoxication cases, the defendant's blood alcohol was being metabolized by his liver, there were no circumstances suggesting the officer faced an emergency in which he could not practicably obtain a warrant. The state supreme court affirmed, reasoning that *Schmerber v. California*, 384 U. S. 757 (1966), required lower courts to consider the totality of the circumstances when determining whether exigency permits a nonconsensual, warrantless blood draw. The state 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." The U.S. Supreme Court granted certiorari to resolve a split of authority on the question whether the natural dissipation of alcohol in the bloodstream establishes a per se exigency that suffices on its own to justify an exception to the warrant requirement for nonconsensual blood testing in drunk driving investigations. The Court affirmed. The Court began by noting that under *Schmerber* and the Court's case law, applying the exigent circumstances exception requires consideration of all of the facts and circumstances of the particular case. It went on to reject the State's request for a per se rule for blood testing in drunk driving cases, declining to "depart from careful case-by-case assessment of exigency." It concluded: "while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, as it did in *Schmerber*, it does not do so categorically. Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances."