

## **PRESS RELEASE**

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**FOR: IMMEDIATE RELEASE - July 1, 2019**

**RE: US Supreme Ct. Rules: Police Can Draw Blood from Unconscious (Drunk) Driver w/out Warrant**

**CONTACT PERSON: District Attorney Jon E. Budelmann, (315) 730-3325**

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District Attorney Jon E. Budelmann stated the United States Supreme Court announced this week in a 5 to 4 decision [in MITCHELL v. WISCONSIN], a ruling that Implied Consent DWI Blood Test laws are Constitutional.

New York State has an “implied consent” law nearly identical to the law upheld in Mitchell v. Wisconsin, which provides that every person who operates a motor vehicle on the public highways is deemed to consented to a blood, breath, urine, or saliva test to determine alcohol or drug content in their blood provided the Police can establish probable cause to arrest such driver for (any of the subdivisions) of operating under the influence of alcohol or drugs.

A person must be given a warning of the consequences of not submitting to such test, and has the option to refuse such test, but the law then provides for the immediate suspension of their driver’s license, and subsequent revocation of that person’s license (if it is determined that they knowingly and persistently refused the test). Such revocation can remain in effect regardless of the outcome of any DWI charges.

When an alcohol or drug impaired driver is unconscious, either due to injuries sustained in a crash or due to a high level of drug or alcohol content in their bloodstream/impairment. In Mitchell v Wisconsin the drunk driver passed out before he could be administered a chemical breath test at the Station. He had to be taken to an ER where he remained unconscious while his blood was drawn, revealing a BAC of .22%. The law in both Wisconsin and NY say that the driver is deemed to have consented to the test in advance and therefore a blood sample can be drawn for analysis without a warrant.

Part of the decision is based upon the fact that alcohol and drugs in the bloodstream/body dissipate quickly making it impractical, and sometimes impossible, to obtain a search warrant/order from a judge timely enough to be practical. The United States Supreme Court today that the combination of the person being unconscious and the fact that evidence is being lost during any delay in obtaining the sample, constituted exigent circumstances and no search warrant was needed. Again this is premised upon the officer having probable cause to believe that driver was driving under the influence of alcohol or drugs.

DA Budelmann said that the majority of the Supreme Court recognized that these implied consent laws, which almost every state now has, are critical tools necessary to protect the public from intoxicated and drug impaired

drivers, and allow law enforcement and prosecutors to hold drunk and drugged drivers accountable for endangering the lives of others using our highways.

[https://www.supremecourt.gov/opinions/18pdf/18-6210\\_2co3.pdf](https://www.supremecourt.gov/opinions/18pdf/18-6210_2co3.pdf)