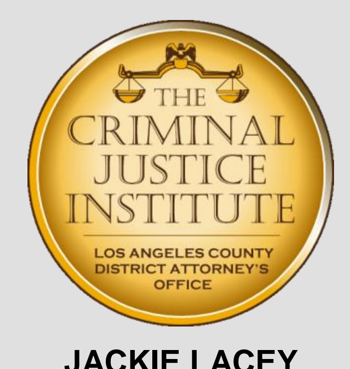


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# ONE MINUTE BRIEF

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**NUMBER**: 2019-08 **DATE**: 03-27-19 **BY**: Devallis Rutledge **TOPIC**: Reasonableness of Blood Draw

**ISSUE: When a defendant challenges the *reasonableness* of a blood draw under a valid *McNeely* warrant, who has the burden of proof?**

Edward Ryan Fish was arrested for DUI. He refused to submit to a breath or blood test, so the arresting officer obtained a **search warrant** to collect a blood sample, as authorized by *Missouri v. McNeely* (2013) 569 US 141, and PC § 1524(a)(13). Fish moved to suppress the results of his blood test, on the ground that the sample was not taken by "acceptable medical practices."

At the suppression hearing, the officer testified that Fish's blood was drawn in his presence at a **hospital**. No other evidence was adduced as to the manner in which the blood sample was drawn. The trial court suppressed the BAC evidence on the ground that the *People* had not shown that the blood was drawn in a medically acceptable manner. The prosecution appealed, as permitted by PC § 1538.5(j). The Court of Appeal unanimously **reversed**.

The appellate court said that Fish was lawfully arrested and his blood had been taken under authority of a valid search warrant that commanded the officer to have the blood sample taken in a "reasonable, medically-approved manner." The court then cited two reasons for ruling that defendant bore the burden of showing any irregularity: (1) the judicial preference for searches under warrant carries a **presumption of lawful execution**; and (2) it is statutorily **presumed that official duty is regularly performed**, including the duty to comply with a magistrate's directive to see that blood is drawn in a reasonable, medically-approved manner.

● First, said the court,

*"Searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a **warrant** issued by a magistrate normally **suffices to establish** that a law enforcement officer has acted in good faith in conducting the search. … Because the presumption of validity applies to a warrant and its supporting affidavit, there is no reason to conclude that the **presumption of validity** does not apply to its **manner of execution**."*

*People v. Fish* (2018) 29 Cal.App.5th 462, 466.

● Also,

*"Evidence Code section 664 provides: 'It is presumed that official duty has been regularly performed.' … The presumption appears to apply on an issue as to the **lawfulness of a search made pursuant to a valid warrant**." Id.,* at 468-69.

● Furthermore,

*"The testimony of a **police officer**, when he or she is a **percipient witness** to the blood draw in question, may properly be considered in evaluating whether the blood draw was conducted in a constitutionally reasonable manner. … The evidence of the manner of the blood draw **need not come from the individual who performed it**, or from some other expert witness." Id.,* at 470.

● Therefore, said the court, unless the manner of drawing a blood sample is peculiarly within the knowledge of the People (*e.g.,* drawn from an unconscious person), *"We hold that, where the circumstances of a blood draw are **typical and routine**, i.e., not peculiarly within the knowledge of the People, **the burden of proof** [as to the **un**reasonableness of the blood draw under a valid warrant] **is on the defendant**. … Defendant failed to carry **his burden** of proving that the blood draw was **not** performed in a reasonable manner." Id.,* at 464, 470. (Suppression order reversed.)

**<u>BOTTOM LINE</u>: When a defendant challenges a routine blood draw under a valid warrant as having been conducted in an unreasonable manner, <u>s/he</u> has the burden of proof.**

(Citations omitted and emphases added in quoted material.)

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