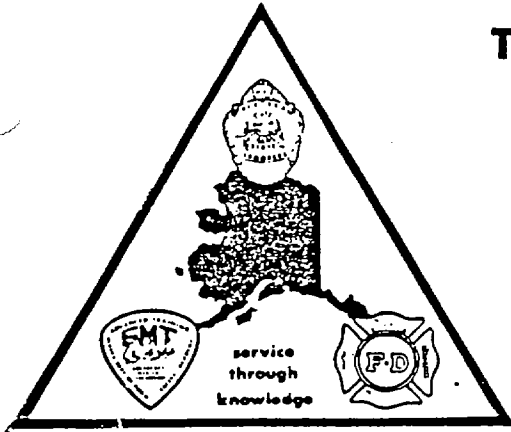


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 61
September 27, 1982



INVOLUNTARY SEIZURE OF BLOOD DURING EXAMINATION BY PHYSICIAN WITHOUT PERMISSION OF VICTIM

Reference: Larry W. NELSON
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 129
650 P.2d 426
September 24, 1982

FACTS:

NELSON was involved in an automobile accident. The investigating officer asked NELSON to submit to a breathalyzer examination and he refused. NELSON was then transported to a hospital for treatment of injuries received in the accident. Without any prompting from the police, the doctor ordered a blood test for alcohol; the doctor neither requested authorization from NELSON nor informed him that he was going to perform such a test.

At trial, the State introduced the results of the blood test which showed NELSON's blood alcohol concentration to be .184 percent. The trial court ruled the test results admissible. NELSON was convicted of driving while intoxicated; he appealed.

ISSUE NO. 1:

Because NELSON refused to take the breathalyzer, can the results of the blood test administered by the physician be used at trial?

HELD: Yes.

ISSUE NO. 2:

Does NELSON have a patient-physician privilege to preclude introduction of the blood test results?

HELD: No.

REASONING:

1. Had the police in any way directed personnel at the hospital to take the blood sample and administer the blood test, the results of the blood test would have been inadmissible.

2. In this case, the blood test was administered for diagnostic purposes independently from the police. (emphasis added)

3. The fact that NELSON refused to submit to a police breathalyzer examination should not stand as an obstacle to the admission of the results of the hospital administered test. (emphasis added)

4. Evidence Rule 504(d)(7) expressly states that physician-patient privilege does not apply in criminal proceedings. (emphasis added)

NOTES:

THE POLICE IN THIS CASE HAD FIRST OBTAINED A SEARCH WARRANT TO GET RESULTS OF THE BREATHALYZER FROM THE HOSPITAL. This case differs from the cases of Anchorage v. Buffinton, Gerber, Early and Willis (see Legal Bulletin No. 21) where police involuntarily seized blood from the defendants for chemical testing. The court in those cases ruled that State Statute AS 28.35.032(2) precludes the police from ordering any chemical test to detect alcohol (in OMVI cases) once the defendant has refused to submit to a breathalyzer.

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