

In The Justice Court,  
County of Pima, State of Arizona

HON. CARMEN DOLNY  
JUSTICE OF THE PEACE  
PRECINCT NO. 4

CASE NUMBERS: TR03-046204  
TR03-007911  
HEARING DATE:  
DECISION DATE: 10-29-04

State of Arizona  
PLAINTIFF(S)

PLAINTIFF'S ATTORNEY

Esequiel Rascon Jimenez  
Chris Tina Jungers  
DEFENDANT(S)

Jennifer Naimolski  
James Charnesky  
DEFENDANT'S ATTORNEY

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MINUTE ENTRY

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The issue before the court is whether, under the facts of these two cases, defendants' Fourth Amendment rights to be free of unreasonable searches and seizures was violated because of the circumstances and manner in which blood evidence was taken by arresting officers.

The essential facts in both cases are undisputed and are set forth in detail on the record. Other than the similarity of the issues in controversy, the cases are unrelated. Both defendants were stopped and investigated for suspected driving under the influence and arrested and charged with that offense. In both cases the respective arresting officers sought to obtain blood evidence to corroborate the under the influence charge and as possible evidence of driving with a prohibited blood alcohol content. Neither officer opted to take the arrestees to a hospital to have the blood drawn, even though a hospital was not far away and even though both arrestees presented risk factors for the drawing of blood. Blood was instead drawn out in the field by officers who had been trained in the procedures of drawing blood and venipuncture.

In the case of *State v. Jimenez*, the arrestee had exhibited signs of possible alcohol intoxication. He was described as having almost fallen when he exited his vehicle and as staggering when walking. After an investigation, Mr. Jimenez was arrested for driving under the influence. The arresting officer then directed Mr. Jimenez to stand at the rear of the patrol car, to lean over the trunk with knees slightly bent and to place his arm across the trunk to have blood drawn as evidence. The deputy first sanitized the trunk and took other precautionary steps to protect himself from possible contamination. The deputy then proceeded to insert a needle into a vein in Mr. Jimenez' arm. The deputy used an evacuative tube system to draw the blood. When the deputy inserted the needle into Mr. Jimenez' arm, Mr. Jimenez leaned back or straightened himself, causing his arm to move and the needle to pull out of his arm.

The deputy again instructed the defendant how to place his arm, and the deputy attempted for a second time to draw blood. When defendant saw blood entering the syringe, he flinched, apparently jerking his arm. That caused the needle to pull out of his arm again, and only a partial vial of blood was obtained. Mr. Jimenez refused to allow the deputy a desired third attempt to obtain an additional blood sample for independent testing.

In the *State v. Jungers* case, the arresting officer drove defendant from the site of her arrest for DUI to a parking lot at the Pima County Sheriff's Department at 1750 E. Benson Highway, very close to Kino Hospital. They were met there by another deputy who was certified to conduct blood draws. Ms. Jungers informed the deputies that she had a broken foot and that she was on numerous medications, including a blood thinner.

A blood sample was drawn in much the same manner as was done in the Jimenez case. The deputy had Ms. Jungers stand to the rear and side of the patrol car and place her arm onto the trunk of the vehicle. The deputy did not remember sanitizing the trunk area. In her case, the needle was inserted into a vein on the back of her hand instead of in her arm. After the draw, the deputy held gauze over the needle entry point for about 30 seconds to stop the bleeding.

The deputies who drew the blood evidence in both cases had attended a two-day course on phlebotomy at Phoenix Community College. The course was designed for law enforcement and is significantly shorter and less demanding than is phlebotomy training for medical practitioners. The officers had to perform 100 supervised blood draws at medical facilities before being allowed to draw blood on their own for law enforcement purposes. In all the draws done by arresting officers during their training, the subject was always seated in a phlebotomy chair with the arm supported as required by medical standards and protocol.

It was uncontroverted that the officers were instructed during their training that blood draws should never be done on subjects who are standing. The training manual used by the officers also taught that persons having blood drawn must be seated and that their arms must be supported. Expert witnesses at the hearing all agreed that blood should never be taken from a person who is standing and whose arm is not supported because of the obvious danger of the person becoming dizzy, fainting, falling, or experiencing a sudden drop in blood pressure leading to a convulsion. They also testified that in cases where a patient is taking certain medications or blood thinners, pressure should be applied for a minimum of sixty seconds, and not thirty seconds as was done with Ms. Jungers. Defendants listed in their briefs numerous cases in which blood draws that were improperly done resulted in serious and sometimes permanent injuries to the subjects and in costly lawsuits to the hospital or governmental entity.

## CONCLUSION

The experts testified that the overriding medical concern in performing blood draws is that everything possible should be done to ensure that no harm is done to the patient/suspect. Even under the best of medical conditions and in a medical setting where a person is seated in a phlebotomy chair with arms supported, unexpected problems can occur. If a problem does occur in a clinical

setting, there are persons present who are trained to deal with medical emergencies and there is medical equipment close at hand that can be employed as needed.

The inherent risk of mishap is increased in a field setting where environmental factors such as poor lighting, noise, dust, passing traffic, wind and other things can cause the subject to jerk or move. That risk is compounded if the subject is made to stand and the arm is not supported and secured. Subjects are at risk of pain and serious injury if they become dizzy, faint, experience a sudden drop in blood pressure, or have other medical problems. With the evacuative tube method, the needle may draw in air. The suspect may be injured hitting his or her head on the ground or by the needle being torn out of the vein. Or the needle could hit a nerve, puncture the other side of the vein, or cause other damage.

There are sound reasons for the strict protocol that requires that precautions be employed in the drawing of blood, including the requirements that subjects be seated and that their arms be supported. It is to minimize the potential for harm to the subject. Some suspects present an obvious risk, such as a very unsteady subject like Mr. Jimenez, and others may present more subtle risk due to, for example, fear of needles, epilepsy, or hemophilia, while others may present minimal risk. But whatever the risk factor, the need or desire to obtain blood evidence should not outweigh the need to minimize the risk of pain or injury to suspects. It would indeed be a terrible and unnecessary tragedy for someone to suffer injury or even death on the street or in a parking lot because the state has failed to follow basic, common-sense precautions and standards.

In the cases at bar, it would have caused minimum delay to transport the subjects, who had known risk factors, to nearby Kino Hospital to have their draws done under medically approved procedures. In other cases where minimum risk is presented, it would be equally easy for the officers to have in the trunk of the patrol car a folding chair with arm supports to utilize as a phlebotomy chair.

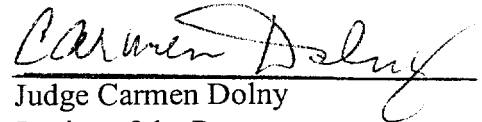
Everyone would agree that it is necessary and essential for the safety of our society and to our system of laws that officers be able to obtain evidence of suspected offenses while the evidence is still viable and available. Certainly evidence of alcohol consumption is of a fleeting nature and must be gathered speedily. But when the government seeks to gather evidence *that requires invading the body itself*, then the means utilized by the state should as much as is reasonably possible ensure the physical safety of the suspect.

In both the cases at bar, the arresting officers were aware of specific physical conditions that could compromise the health and safety of the arrestees. The officers could easily have taken the subjects to a hospital but they chose not to. Moreover, the manner in which these two blood draws were done did not meet the prevailing standard of care and they put the suspects at unnecessary and unreasonable risk. Officers ignored and violated important guidelines that were taught in all the training the officers received.

Because of that, and because there were other simple, expedient and safe alternatives, it is the opinion of the undersigned that the taking of evidence in these two cases was not reasonable and was

therefore in violation of defendants' Fourth Amendment rights and violative of their Fourteenth Amendment rights to due process. Therefore, defendant's motions to suppress is granted and all evidence obtained in violation of defendants' rights is hereby ordered suppressed.

It is so ordered this 29<sup>th</sup> day of October, 2004.

  
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Judge Carmen Dolny  
Justice of the Peace

cc: \_\_\_ Plaintiff (atty) \_\_\_ Defendant (atty)