



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. PATRICK NISSLEY
CR-15-0393-PR**

PARTIES:

Petitioner: Patrick Nissley

Respondent: State of Arizona

Amicus Curiae: Arizona Attorneys for Criminal Justice

FACTS:

While driving his car, Mr. Nissley was involved in a collision that injured four people in the other car and killed a pedestrian. Law enforcement obtained a portion of a blood sample medical personnel drew from Mr. Nissley at a hospital less than an hour later. Mr. Nissley was charged with second degree murder, possession or use of narcotic drugs, and four counts of endangerment. Before trial, Mr. Nissley moved to suppress the blood test results, asserting the blood sample was obtained without a warrant or probable cause and that he expressly refused medical treatment. At an evidentiary hearing, the trial court heard testimony from four police officers and two paramedics, and listened to an audio tape recorded at the hospital. The court denied the motion to suppress, finding that law enforcement secured the blood sample in accordance with A.R.S. § 28-1388(E) and Mr. Nissley did not expressly refuse medical treatment.

A jury found Mr. Nissley guilty of the lesser-included offense of reckless manslaughter, possession or use of narcotic drugs, and four counts of endangerment. Mr. Nissley appealed, challenging the trial court's denial of his motion to suppress. The Court of Appeals affirmed Mr. Nissley's convictions and sentences. Mr. Nissley filed a petition for review by the Arizona Supreme Court.

Arizona Revised Statutes § 28-1388(E) provides: "Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated § 28-1381 and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes."

ISSUES:

"A. Finding that blood evidence obtained without a warrant was admissible because it was drawn for medical purposes, the Court of Appeals presumed Nissley consented to medical treatment, incorrectly placing the burden on Nissley to show that he 'expressly and unequivocally' refused medical treatment."

“B. Even if the Court of Appeals did not err in shifting the burden to Nissley to show that he refused medical treatment, Nissley’s refusal of medical treatment was unequivocal [and] therefore not within the warrantless seizure exception of ARS § 28-1388.”

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.