

ISSUE

If DUI suspect fails or refuses to complete a breath test, under what circumstances may officers compel him to submit to a blood test?

FACTS

A CHP officer in Ventura County made a traffic stop on a car driven by Sugarman after he clocked him at 79 m.p.h. in a 55 m.p.h. zone. Having detected an odor of alcohol on Sugarman's breath, the officer asked him to take five field sobriety tests which he was unable to complete. Sugarman was then arrested for DUI.

Sugarman initially refused to take any chemical test but later said he'd take a breath test. Shortly after Sugarman started blowing into the machine, however, it became apparent he was playing games. As the court explained, "He blew air out the side of his mouth and not into the tube. The air he blew into the machine was not of sufficient volume for it to properly register a result. [The officer] reinstructed him, to no avail. Sugarman did not follow the instructions and, after 10 unsuccessful attempts, the device did not record a valid BAC reading."

At that point, the officer decided to take Sugarman to a nearby hospital to have his blood drawn for blood-alcohol testing. Sugarman said he did not want to take a blood test but the officer took him anyway. At the hospital, Sugarman did not physically resist the test, although the officer "placed one hand on Sugarman's arm and with the other rolled up Sugarman's sleeve." The blood was drawn by nurse. The result was .25.

DISCUSSION

Sugarman contended the blood test results should have been suppressed because the officer did not have a warrant. The court ruled, however, that requiring a driver to submit to a warrantless blood test is lawful if the following requirements are met:

- (1) **Probable cause:** There was probable cause to believe the driver was operating a vehicle while under the influence of drugs, alcohol, or both.
- (2) **Medically approved manner:** The test was conducted in a medically approved manner.
- (3) **Need:** There was a need for the test.¹

¹ See *Nelson v. City of Irvine* (9th Cir. 1998) 143 F.3d 1196, 1207 [no need for test when officers compelled a driver to submit to a blood test after the driver had agreed to take a breath test]. **NOTE:** Apart from the need for obtaining a test result, there must be a need for a *warrantless* test. As a practical matter, this need always exists because, as the court in *Sugarman* pointed out, alcohol in the bloodstream is constantly being eliminated. There is, therefore, no time to obtain a warrant.

(4) **Reasonable force:** If force was used to obtain the sample, it was reasonably necessary.

Applying these requirements to the facts, the court ruled as follows: First, there was probable cause because the officer “smelled alcohol when he stopped the car and Sugarman failed five field sobriety tests.” Second, the blood sample was taken by a nurse and in a medically approved manner. Third, there was an obvious need for the test because Sugarman was not cooperating in the officer’s efforts to obtain a breath sample. The court pointed out that such a need would not have existed if Sugarman had successfully completed the breath test,² but that was not the case. Fourth, the amount of force that was used was reasonably necessary.

Consequently, the court ruled the blood test results were admissible, and Sugarman’s conviction was affirmed.

² Citing *People v. Fiscalini* (1991) 228 Cal.App.3d 1639, 1644.