

Ruling may affect DWI cases

A N.J. appeals court said suspects have a right to question the nurses who draw blood.

By Jeffrey Gold
Associated Press

NEWARK, N.J. - A state appellate court ruled yesterday that accused drunken drivers have the right to question nurses who take blood samples.

The decision would affect perhaps several hundred of the 30,000 DWI cases brought annually in New Jersey, said Evan M. Levow, a lawyer for the Gloucester County man whose arrest led to the ruling.

Most of the remaining DWI cases rely on evidence from a breath test.

Levow praised the ruling, asserting that "because there are so many variables and factors for contamination of the blood sample, the defendant must have the right to confront all of the witnesses in the chain of the blood evidence."

"People generally don't challenge blood cases because they figure there's nothing to challenge and that it is accurate," said Levow, a Cherry Hill lawyer whose practice is devoted to drunken-driving defense.

An expert for the defense testified that errors in drawing blood could inflate the blood alcohol content, including using an alcohol swab instead of a betadine swab to sterilize the suspect's skin before inserting a needle. Other mistakes include improperly prepared or sealed vials, which could allow fermentation to occur and create alcohol, the expert said.

State law allows for prosecutors to introduce a certification from the nurse that the blood was taken in a "medically acceptable manner."

But the appellate panel, in a 3-0 ruling, said the inability to cross-examine the nurse violated the defendant's right to confront witnesses under the Sixth Amendment of the U.S. Constitution and Article I of the New Jersey Constitution.

It reversed the man's conviction and sent the case back for a new trial.

The state Attorney General's Office had no immediate comment on the decision.

The Gloucester County Prosecutor's Office, which handled the case, has made no decision on whether to appeal, said Bernie Weisenfeld, an office spokesman.

The case stems from the arrest of Robert Renshaw at 2:17 a.m. Aug. 19, 2004, in Franklin Township.

Renshaw, 33, of Elk Township, was found behind the wheel of a Ford Explorer that rammed a tree on the lawn of a house. A mailbox and signs had been hit, and a utility pole was left hanging by wires.

A police officer said Renshaw appeared disoriented, could not provide identification, and had alcohol on his breath.

Renshaw was taken to a hospital where blood was taken. His blood alcohol content was found to be 0.1416 percent in one vial, and 0.1403 percent in a second. Both readings are nearly double the legal limit of 0.08 percent.

Levow said his client maintains he was not drunk.