

State v. Modlin (PFR)

Case Number

S-14-0590

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May 27, 2015

Court Number

Hall

Case Summary

S-14-0590 State v. Nathan A. Modlin (Cross-Appellant/Appellee)

Hall County District Court, Judge Teresa K. Luther

Attorneys: Nathan A. Liss (Attorney General's Office) --- David W. Jorgensen (Nye, Hervert, Jorgensen & Watson, P.C.) (Appellant)

Criminal: DUI; motion to suppress

Proceedings below: Appellant was convicted in county court. The district court affirmed on appeal. The Court of Appeals affirmed on appeal. Appellant filed a Petition for Further Review which was granted by the Nebraska Supreme Court.

Issues on Review: 1) The Court of Appeals erred in determining that Appellant consented to the withdrawal of his blood for purposes of determining alcohol content. 2) The Court of Appeals erred in determining that the withdrawal of the Appellant's blood for purposes of alcohol testing, without first obtaining a search warrant violated his rights secured by the Fourth Amendment to the United States Constitution because it was an illegal search and seizure. 3) The Trial Court erred in determining that Missouri v. McNeely, ___ U.S. ___, 133 S.Ct. 1552, 185 L. Ed. 2d 696 (2013) was not applicable in the instant case. 4) The Trial Court erred in affirming the decision by the Trial Court to receive Appellant's alcohol content test result over objection, on the basis that the seizure of his blood was a violation of a right secured by the Fourth Amendment to the United States Constitution. 5) The Trial Court erred in determining that the Appellant was required to subject himself to greater penalties in order to preserve his rights secured by the Fourth Amendment to the United States Constitution.
