



DPS TRAINING BULLETIN

LEGAL BULLETIN No. 122
July 1, 1988

FAILURE TO OBTAIN INDEPENDENT BLOOD TEST
AS REQUESTED BY OMVI DEFENDANT

Reference: Joe Q. Ward
v.
State of Alaska

Alaska Supreme Court
Opinion No. 3347
P.2d
June 17, 1988

FACTS:

Ward was arrested for driving while under the influence. He was surprised by the intoximeter reading of .225 and, when advised of his right by Alaska Statute 28.35.033(4)(e) to obtain an independent blood test by a person or entity of his choosing, he requested to be taken to Alaska Native Medical Center (ANMC). Enroute to ANMC, the officer was instructed by radio not to honor Ward's request because the State did not have a contract for blood testing with ANMC. Ward declined offers to be transported to any of the other hospitals which had such State contracts.

ISSUE:

Did Ward have the right to have a blood test performed by a qualified person of his own choosing at ANMC?

HELD: Yes.

REASONING:

1. The statute says nothing about contractual relationships between the State and qualified facilities for blood tests. It states only that the arrestee has the right to an additional test by a person of his or her own choosing (emphasis added).
2. Because Ward was denied the opportunity to obtain a blood test by the facility of his choice, the .225 results of his breathalyzer test must be excluded.

NOTES:

This case does not involve the seizure of blood incident to arrest as in Anchorage v. Buffington, Legal Bulletin No. 21, but rather involves a statutory right--AS 28.35.033(4)(e)--guaranteed to a person arrested for driving while under the influence. If the person is denied his request to be transported to a facility of his choice for an independent blood test, the results of the breathalyzer test obtained by police will be suppressed.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section Q on Page 14 of your "Contents" and to Q-2 of "Text". File Legal Bulletin No. 122 numerically under Section R of the manual.