



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 190  
July 2, 1995

## EXCLUSION OF EVIDENCE BECAUSE OF CORRECTIONS OFFICER'S IMPROPER CONDUCT

Reference: Gary L. Lau  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1413  
P.2d \_\_\_\_\_  
June 9, 1995

### FACTS:

Soldotna Police Officer Davis arrested Lau for driving while intoxicated. Lau was transported to the detention facility where he submitted to breath testing. His breath alcohol level was measured at 0.201. Davis informed Lau that he could also have an independent test administered at his own expense. Lau indicated that he did want his blood drawn. Corrections Sergeant Wood, who was on duty and in the booking room, was present when Davis told Lau about the independent test. Sergeant Wood was a personal friend of Lau.

Davis left the room to summons a nurse to draw Lau's blood. When the nurse arrived several minutes later, Lau had changed his mind and told Davis he did not want the test.

At trial, Lau testified that the reason he did not take the independent test was because his friend, Sergeant Wood, had discouraged him from doing so. Lau testified that Sergeant Wood told him after Davis left the room that the State could use results of the blood test, which were more accurate than results of a breath test, against him.

During direct examination by the prosecutor, Sergeant Wood denied encouraging or discouraging Lau to take the blood test. During cross examination, the defense attorney played a tape-recorded telephone conversation Lau had with Sergeant Wood sometime after the arrest. On the tape, Wood accepted Lau's thanks for telling him not to take the blood test with the comment, "What are friends for?" Sergeant Wood also remarked that a blood test, "...would have killed you...you can't beat it...it will nail you."

Lau moved to have the results of the breath test suppressed. He stated he would have taken the independent blood test had it not been for Sergeant Wood advising him against doing so.

ISSUE:

Was Wood acting as an agent for the police or the State when he dissuaded Lau from taking the independent test and should the results of the breath test be suppressed?

HELD: Yes.

REASONING:

1. Wood was an on-duty, uniformed corrections officer guarding Lau as part of his duties at the pretrial facility.

2. While Lau was in Wood's sole custody, Wood actively dissuaded Lau from seeking a blood test. This conduct cannot be distinguished on the grounds that Wood was a corrections Officer rather than a police officer.

3. Even if Wood was subjectively motivated by friendship for Lau and his belief that Lau's interests would be best served if Lau declined a blood test, the fact remains that Wood dissuaded Lau from exercising his rights. (emphasis added)

4. Suppressing Lau's breath test result is the proper remedy for Wood's conduct.

5. The deterrent policy of the exclusionary rule similarly applies to the conduct of State corrections officers guarding arrested persons. (emphasis added)

NOTES:

This case demonstrates the need to separate your duty as a police officer with the natural emotions you may feel when confronted with a friend being arrested. In this case, the friend tape-recorded the telephone conversation with the corrections officer, which was played for the judge at trial. When you are "on shift" and "on duty," you are clearly an agent of the State. Should you receive communication from a friend while "off duty" who wants to discuss "his case," you should inform your friend that any discussion could come back to haunt him at his subsequent trial.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section N, "Warrantless Searches Conducted by Probation Officers or Private Persons," of your Contents and Text. File Legal Bulletin No. 190 numerically under Section R of the manual.