



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 142
April 24, 1990

RIGHT TO CONTACT RELATIVE PRIOR TO ADMINISTRATION OF BREATH TEST

Reference: Nani Zsupnik
v.
State of Alaska

Alaska Supreme Court
Opinion No. 3581
P.2d
April 6, 1990

FACTS:

Zsupnik was arrested for DWI. Upon her arrest, she repeatedly requested the opportunity to contact her uncle. Police told Zsupnik that she would not be allowed to call her uncle until she had completed the process of taking the Intoximeter test. Zsupnik took the test; it revealed a score in excess of the legal limit. Zsupnik had made four separate requests to telephone her uncle, all of which were denied. Zsupnik's fourth request was specific--she wanted to call her uncle to ask for his advice about "what to do."

Zsupnik moved to suppress results of the breath test, asserting a violation of Alaska Statute 12.125.150(b). This Statute sets forth rights of prisoners after arrest, in part as follows:

"Immediately after an arrest, a prisoner shall have the right to telephone or otherwise communicate with the prisoner's attorney and any relative or friend..."
(emphasis added)

ISSUE:

Did Zsupnik have the right to contact her uncle prior to taking the breath test?

HELD: Yes.

REASONING:

1. The Statute is definitely not ambiguous--"Immediately after an arrest, a prisoner shall have the right to telephone or otherwise communicate with...any relative or friend..."
2. The Statute is intended to serve, among other things, the broad goal of preventing suspects from being held incommunicado.
3. The arrestee has no right to unreasonably delay contacting someone so as to impair breath testing--contact with an attorney or relative/friend could be made during a 20-minute period of observation.

4. At the end of a "reasonable time," police may insist that the breath test proceed, regardless of who the arrestee wants to talk to.

5. The State is no more prejudiced if the arrestee calls a relative or friend instead of a lawyer during the 20-minute observation period.

NOTES:

In this case, as in those listed below, the court states that a defendant has an absolute right to contact an attorney, relative or friend to ask for advice. Again, in the case of a DWI arrest, the arrestee can make a call during the 20-minute observation period. Persons charged with other criminal violations are afforded this same right under our Statutes.

Review of the following cases is recommended:

Copelin v. State, Legal Bulletin No. 64--defendant has right to consult with attorney prior to breath test--can be done during observation period.

Farrell v. State, Legal Bulletin No. 84--defendant not allowed to speak "privately" with his attorney prior to breath test; results suppressed.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section P, page 15, of your Contents and to Section P, page 5, of Text. File Legal Bulletin No. 142 numerically under Section R of the manual.