



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 213
February 17, 1997

OMVI DEFENDANT'S RIGHT TO
INDEPENDENT BLOOD TEST

Reference: Dennis Snyder
v.
State of Alaska

Alaska Supreme Court
Opinion No. 4451
P.2d
December 27, 1996

FACTS:

Dennis Snyder was arrested for driving while intoxicated (DWI). While enroute to the police station, Snyder asked the arresting officer to take him to a nearby hospital for a blood test for his alcohol level. The officer refused this request, believing that an arrestee was required to submit to a breath test before a blood test could be administered.

At the police station, Snyder made four attempts to blow into the Intoximeter machine. Snyder was unable to provide an adequate breath sample. The officer told Snyder, "...we'll just charge you with refusal." Snyder objected, stating "...It's your fault...The machine don't work...I blowed in; I did everything you asked." Snyder offered to try one more time, but the officer had already shut the Intoximeter machine down. Snyder again requested a blood test; the officer again denied his request.

Snyder was charged with and convicted for DWI and refusal to submit to a breath test.

ISSUE:

Did the State's failure to honor Snyder's request for an independent blood test violate his right to the due process of law guaranteed him by the Alaska Constitution (Article I, Section 7)?

HELD: Yes.

REASONING:

1. Due process requires the police to gather and preserve breath samples in order that an accused may challenge the results of a

police-administered breath test. (Lauderdale v. State, 548 P.2d 376)

2. If obtaining an independent test is impracticable or exceedingly burdensome, as may be the case, for example, if the accused is arrested in a community without the capability of providing a blood test, no test would be constitutionally required.

3. The State should have provided Snyder with the opportunity to obtain an independent test of his blood alcohol content. (emphasis added)

4. As is true of other constitutional rights (for example, Miranda or warrantless searches), the right to an independent test can be knowingly and intelligently waived. (emphasis added)

NOTES:

Review of the following cases is recommended:

Copelin/Miller v. State, Legal Bulletin No. 64--right to counsel prior to submitting to breathalyzer;

Zsupnik v. State, Legal Bulletin No. 142--right to contact a relative prior to taking a breath test;

Gunderson v. Municipality of Anchorage, Legal Bulletin No. 143--right to independent blood test for DWI defendant; and

Reekie v. State, Legal Bulletin No. 150--defendant's right to speak privately by telephone with attorney prior to breath test.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section Q, "Miscellaneous Cases of Interest," of your Contents and Text. File Legal Bulletin No. 213 numerically under Section R of the manual.