



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 143
September 16, 1990

OMVI DEFENDANT'S RIGHT TO
INDEPENDENT BLOOD TEST

Reference: Dale M. Gundersen
v.
Municipality of
Anchorage

Alaska Supreme Court
Opinion No. 3610
P.2d
June 15, 1990

FACTS:

Gundersen was arrested for driving while intoxicated and being in violation of Anchorage Municipal Code (AMC) 9.28.020. A chemical test of Gundersen's breath taken on the Intoximeter 3000 machine registered a reading of .264 grams of alcohol per 210 liters of breath. No sample of Gundersen's breath was taken or preserved.

After the test, the officer read him the "Notice of Right to an Independent Test" statement. Gundersen acknowledged the statement and declined to take the independent test. The statement advised Gundersen that he had a right to be transported to a hospital where a blood sample would be drawn at no charge to him. The hospital would store his blood for 60 days. However, it would be his responsibility to pay for an independent test analysis.

Gundersen appealed his OMVI conviction, alleging the results of the blood test should have been suppressed.

ISSUE:

Since the State failed to preserve a breath sample, should the test results from the intoximeter have been suppressed?

HELD: No.

REASONING:

1. Due process requires that the defendant be given an opportunity to challenge the reliability of the evidence in the simplest and most effective way possible--such as the opportunity for an independent test. (emphasis added)
2. It is not necessary to preserve a breath sample in order to provide a defendant with a reasonable opportunity to obtain an independent test. While the State may provide this opportunity by preserving the defendant's breath sample for later independent testing, it may also provide this opportunity by notifying a defendant of his right to an independent test and assisting the defendant in obtaining one. (emphasis added)

3. A defendant's waiver of this due process right (independent test) essential to a fair trial is valid only if it is knowingly and intelligently made.

NOTES:

Review of the following case is recommended:

Ward v. State, Legal Bulletin No. 122--case dismissed due to police failure to transport defendant to a hospital of his choice for independent testing.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section Q of your Contents and Text. File Legal Bulletin No. 143 numerically under Section R of the manual.