



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 278

February 29, 2004

**WARRANTLESS SEARCH OF DRIVER'S BREATH
WITHOUT ARREST AND FOLLOWING FATAL ACCIDENT
IS A VALID EXIGENT CIRCUMSTANCE**

Reference: State of Alaska
v.
Laura A. Blank

Alaska Supreme Court
Opinion No. 5783
P.3d
February 27, 2004

FACTS:

In September 1994 (this case has been going for ten years), a vehicle struck and killed a pedestrian on a Palmer residential street. The suspect vehicle left the scene of the accident. While State Troopers were on the scene investigating the accident, they were contacted by Greg Blank who told them his wife might have been involved in the accident.

Trooper Bill Tyler and two other officers went to Blank's residence. Trooper Tyler interviewed Laura Blank in his patrol car. Laura admitted to having two beers at a friend's home just prior to the accident. Without obtaining a warrant, Trooper Tyler asked her to submit to a preliminary breath test. Blank submitted and the test registered .082. Blank also agreed to accompany Trooper Tyler to a hospital for a blood test, but she refused consent at the hospital. Blank was charged with manslaughter and leaving the scene of an accident.

The Superior Court held that Blank did not make a "knowing, voluntary and intelligent choice" to submit to the breath test. Consent was not argued before the Court of Appeals and the State Supreme Court is not addressing that issue in this opinion.

The State Court of Appeals, following Layland v. State, 535 P.2d 1043 (Alaska 1975), ruled that because Blank was not under arrest when Trooper Tyler obtained the breath sample, the seizure could not be allowed as "incident to arrest." The State appealed to the Supreme Court asking that Layland be overruled.

ISSUE NO. 1:

Should Layland be overruled insofar as it required a substantially contemporaneous arrest to justify an exigent circumstances search of a driver's blood alcohol content?

HELD: Yes.

ISSUE NO. 2:

Is a warrantless search of a driver's breath following a fatal accident a valid exigent circumstances search even though the driver was not arrested substantially contemporaneously with the search?

HELD: Yes--arrest is not a prerequisite to a valid exigent circumstances warrantless breath test.

REASONING:

1. Trooper Tyler's search of Blank's breath is constitutional if the three explicit Schmerber v. California (384 US 768) requirements are satisfied:

- (a) Probable cause to arrest and to believe that a blood alcohol test would produce evidence of the crime.
- (b) The officer might reasonably have believed he was confronted with an emergency in which the delay necessary to obtain a warrant might result in the destruction of evidence.
- (c) The blood draw (breath test in this case) was performed in a reasonable manner.

2. AS 28.35.031(g)--accident causing death or serious physical injury to another--is construed to be constitutional in context of warrantless searches for breath or blood in accident cases involving death or serious physical injury when probable cause to search

exists and the search falls within a recognized exception to the warrant requirement.

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I M P O R T A N T N O T I C E

The Cover Page, Acknowledgments, Foreword, Table of Contents, Text and Case Law Citations Index of the Alaska Legal Briefs Manual have been revised/updated as of February 29, 2004. Updates may be reviewed and printed from the Alaska Police Standards Council website:

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