

ALBUQUERQUE CRIMINAL LAWYER BLOG

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DWI Officers Must Strictly Follow Guidelines in Breath Alcohol Testing

Officers in DWI investigations must follow the guidelines established by the New Mexico Scientific Laboratory Division (SLD) in the administration of the breath alcohol tests. Failure to strictly adhere to the guidelines will invalidate the breath alcohol scores.

In *State v. Ybarra*, the New Mexico Court of Appeals addressed a situation where the officer failed to obtain 2 breath alcohol samples despite the defendant's willingness to provide the samples. The defendant was having a difficult time completing the test as a result of his asthma. The officer actually held an asthma inhaler for the defendant as the defendant was handcuffed. The officer then decided to terminate the breath alcohol test determining that the defendant was unable to provide a second breath sample.

The Court ruled that the circumstances of the case did not justify termination of the breath alcohol test stating, "Terminating a breath test and using the result from the single completed sample must be based on more than a police officer's belief that the willing test subject has physical difficulties blowing into the machine." The court made it clear that DWI officers must comply SLD mandated two breath samples. The only exception to this requirement is when the defendant is physically incapable or refuses to consent to the second test.

Failure to obtain two breath alcohol samples in the absence of incapacity or refusal will result in the suppression of the breath score. The prosecutor cited the 2005 case of *State v. Vaughan* to suggest that DWI officer's may exercise discretion in terminating the tests. The court recognized that a officer might terminate the test where the defendant intentionally gives a bad sample as in *Vaughan*. However, the court determined that there was no such evidence of an intentionally bad sample by defendant. Instead, the defendant attempted to give the sample even as the officer held his asthma inhaler for him while he was handcuffed.

The court further cited the 1998 case of *State v. Gardner* for the proposition strict compliance with the SLD regulations is required. Good faith attempts at compliance are not enough. *Gardner* involved a case where the officer had failed to observe the defendant for the SLD required 20 minute observation period when the defendant was allowed to go to the bathroom. Despite the apparent good faith of the officer, the breath alcohol scores were suppressed for failure to adhere to the SLD regulations.

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The court in its rulings recognizes the importance of standardized guidelines in the administration of the breath alcohol tests to insure legitimate and accurate tests results. Perhaps in this case, the officer did exercise good faith in terminating the tests. However, the absence of strict guidelines could lead to any number of possible abuses in the administration of the tests. After all, how is good faith to be measured in the absence of rules?

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