

NMDPS - DWI - (REFUSAL)

After failing field sobriety tests, Defendant was taken to the Bernalillo County Detention Center. Upon taking his first test, and seeing a score of .16, Defendant began having second thoughts. For the next test, he took a deep breath and pretended to blow into the machine. This resulted in readings of “insufficient sample” and “no sample” introduced. His behavior on the second test led to a charge of Aggravated DWI.

The result of his first test was introduced as evidence at trial. He was also charged – and convicted – of Aggravated DWI for refusal to take the second test. Defendant argued that once his breath score for the first test was introduced into evidence, it was contrary to logic to find him guilty of Aggravated DWI for refusing to take a breath test.

Court of Appeals disagreed, noting that state statutes and regulations require multiple tests. The Implied Consent Act provides that any driver in the state has consented to “chemical tests of his breath or blood or both.” NMSA 1978, Section 66-8-107. In addition, SLD regulations say the breath test operator should make a good faith attempt to collect and analyze at least two (2) samples of breath.

In upholding Defendant’s conviction, it is helpful to look at the rationale of the Court of Appeals. The court noted that while two samples are preferable, one sample is sufficient to charge and convict someone of DWI. This will permit effective prosecution of those drunk drivers who provide only one sample. But if a person refuses to take a second test, that person will not be rewarded and can properly be charged with Aggravated DWI. State v. Vaughn (2005) - - - ADA Elliott

