

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD LEROY FAULKNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39556

FILED

OCT 08 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribich*
CLERK DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of third-offense driving under the influence (DUI). The district court sentenced appellant to a prison term of 12 to 32 months, and ordered appellant to pay a fine in the amount of \$2,000.00.

Appellant's sole contention is that the district court erred by denying appellant's motion to suppress the results of his blood test. Specifically, appellant argues that he was denied access to an independent person to draw samples of his blood for testing. Appellant relies on NRS 484.391(1) which provides, in part, that a person arrested for DUI must be permitted "reasonable opportunity to have a qualified person of his own choosing administer a chemical test or tests to determine: (a) The concentration of alcohol in his blood or breath."

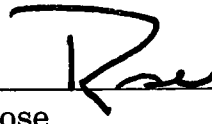
In this case, the phlebotomist who drew the blood obtained two samples at each draw, and one sample was sent to an independent laboratory at appellant's request. We conclude that the requirement of NRS 484.391(1) was satisfied. Contrary to appellant's argument, we do not read the statute to require an independent phlebotomist to draw blood, only that the blood be tested by an independent laboratory.


Moreover, appellant has failed even to argue that, had an independent party drawn his blood, the result of the test would have been

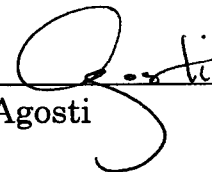
different. Appellant has therefore failed to show that he was prejudiced by the inability to have an independent party perform the blood draw.

Finally, NRS 484.391(2) specifically provides that the failure to obtain a test by an independent party "does not preclude the admission of evidence . . . relating to a test taken upon the request of a police officer." We therefore conclude that the district court did not err by denying appellant's motion to suppress, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Brent T. Adams, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk