

# Circumstantial evidence can challenge breathalyzer

The Associated Press

The state Court of Appeals has ordered a new trial for an Anchorage woman and warned that people charged with drunken driving offenses must be allowed to present circumstantial evidence to challenge the accuracy of breathalyzer tests.

The court recently ordered a new trial for Marcia Denison, who was convicted of driving with a blood alcohol level in excess of .10 percent, a violation of a municipal ordinance.

At trial, the city prosecutor relied on the result of a breath-

alyzer test that showed Denison had a blood alcohol level of .13 percent. For her defense, Denison sought to present a videotape made by police after her arrest and to call on testimony from witnesses concerning the amount of liquor she had consumed before her arrest.

Anchorage District Court Judge William Avery refused to permit her to offer the evidence unless she also presented technical evidence that the breathalyzer machine was inaccurate. His decision was upheld by Anchorage Superior Court Judge Ralph Moody.

But the Court of Appeals, in a unanimous decision, reversed the lower court rulings and ordered a new trial. The court said rules of evidence allow for admission of all relevant evidence unless it is made inadmissible by the constitution, law or a specific rule. The court found Denison's evidence was relevant to the issue of accuracy of the breathalyzer test.

"Denison offered relevant circumstantial evidence tending to indicate a potential for error in the breathalyzer test which was administered to her; no legiti-

mate reason has been advanced for exclusion of this evidence, which could well have been crucial in enabling Denison to establish a reasonable doubt as to the accuracy of the test.

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