

Section V.A.

PRE-TRIAL PRACTICE

SECTION V. A.

DWI DETECTION CUES - PHASES ONE AND TWO

PHASE ONE: VEHICLE IN MOTION

The following driving actions have been shown to be highly associated with alcohol/drug impairment:

- turning with wide radius;
- straddling center or lane marker;
- appearing to be drunk;
- almost striking object or vehicle;
- weaving;
- driving on other than designated roadway; swerving;
- slow speed (more than 10 MPH below limit);
- stopping (without cause) in traffic lane;
- following too closely;
- drifting;
- tires on center or lane marker;
- braking erratically;
- driving into opposing or crossing traffic;
- signaling inconsistent with driving actions;
- slow response to traffic signals;
- stopping inappropriately;
- turning abruptly or illegally;
- accelerating or decelerating rapidly; and headlights off.

During the stopping sequence the impaired driver may:

- attempt to flee;
- fail to respond to the stop command;
- respond slowly to the stop command;
- swerve abruptly;
- stop suddenly;
- strike the curb or another object.

PHASE TWO: PERSONAL CONTACT

During the face to face observation and interview of the driver, the officer may observe additional cues to impairment.

The officer might see:

- bloodshot eyes;
- soiled clothing;
- fumbling fingers;
- alcohol container;
- drugs or drug paraphernalia;
- bruises, bumps or scratches;
- unusual actions

The officer might hear:

- slurred speech;
- admission of drinking;
- inconsistent responses;

- abusive language;
- unusual statements;

The officer might smell:

- alcoholic beverages;
- marijuana;
- "cover up" odors like breath sprays;
- unusual odors.

During the exit and walk from the vehicle the impaired driver may:

- show angry or unusual reaction;
- fail to follow instructions;
- be unable to open the door;
- leave the vehicle in gear;
- "climb" out of the vehicle, using both hands for balance;
- lean against the vehicle;
- keep hands on vehicle for balance.

ANTICIPATING THE DEFENSE

Prosecutors and witnesses should anticipate an attack by the defendant on possible weaknesses in the State's case, and be prepared to answer them either on direct examination or through the use of other witnesses. The following are a few of the most common issues raised by the defense in attacking these cases:

- whether there was probable cause to stop the vehicle;
- whether arrest occurred outside the officer's jurisdiction;
- whether the defendant was actually driving or operating a motor vehicle;
- identification of the driver;
- chemical test results;
- chain of custody of the blood sample;
- presumption of intoxication;
- constitutionality of illegal per se statutes;
- whether prescribed procedures in administration of the chemical test were followed;
- whether administration of chemical test occurred too soon;
- after defendant's last drink or ingestion of other substance or beyond statutory time limit;
- validity of field sobriety tests;
- certification of technician to administer the chemical test;
- if a blood test was administered, the conditions where the test was taken and the certification of the person administering the test;
- officer's opinion as to the intoxication of the defendant;
- medical condition other than intoxication affecting the defendant's test performance;
- odor of alcohol, or other indications of intoxication were the result of injury, illness, medication, or fatigue;
- rate of absorption of alcohol differs in the defendant from the average;
- voluntariness of the defendant's statements;
- accuracy of breath testing instruments;
- suppression of test result where the test ampoule or breath was not preserved;
- suppression of test result where the defendant has not been permitted to consult with an attorney prior to DWI testing;
- suppression of test results due to illegal stop, arrest or failure to give or to explain without confusion the implied consent warning;
- Miranda warning.

DWI CASE PREPARATION

QUALIFYING THE OFFICER

- Name
- Occupation
- Rank
- Experience
- Present assignment

INTRODUCTORY QUESTIONING

- Were you on duty at approximately _____?
- Did you see the defendant at this time?
- What was the defendant doing?
- What brought your attention to the defendant?
- Describe the exact location where this occurred.

OBSERVATION OF DEFENDANT'S DRIVING PERFORMANCE

- How was the defendant's vehicle being operated?
- What did you observe with regard to weaving, swerving, speed, etc. of the vehicle?
- Draw a diagram of driving pattern you observed.
- Based upon these observations, what action did you take?

INITIAL STOP AND OBSERVATION

- At the time you stopped the defendant, what did you say to him/her?
- What was his/her response?
- Describe the manner in which the defendant responded.
- What did the defendant do in response to your request for licensed and registration information?
- Describe in detail your observations of the defendant at the time of his initial encounter.
- Odor of alcoholic beverage.
- Swaying, staggering, falling.
- Blood-shot eyes.
- Soiled clothing.
- What else was unusual about defendant's actions that night?
crying; singing; vomiting; other

ADMINISTRATION OF PREARREST TEST

- What, if any, field sobriety tests were given?
- Describe physical condition of testing area.
- gravel, pavement; lighted; level; any other conditions which could affect test performance.
- Did you demonstrate how to perform each test before you asked the defendant to take it?
- Describe in detail how the defendant performed each test.
- Did the defendant offer any explanation for his/her poor test performance?
- Did the defendant indicate he/she was suffering from any specific medical condition or handicap?

DECISION TO CHARGE

- Based upon these observations what, if any, additional tests did you ask the defendant to perform (PBT where permissible)? Based upon these observations what, if any, charges were placed against the defendant?
- Was the defendant advised of the state implied consent statute?

- Following the administration of this test, or its refusal by the defendant, did you further interview the defendant?
- Was the defendant advised of his/her Miranda rights at that time?
- What, if any, additional comments were made by the defendant at this time?

ADMINISTRATION OF BREATH TEST

- Qualify the officer administering test.
- What type of testing instrument was used?
- Have you been trained and certified by the appropriate state agency to perform tests utilizing this instrument?
- Was this instrument certified in accordance with required state procedures.
- Was a simulator test run to verify test results?
- Introduce appropriate documentation of these above facts.
- Did you or the arresting officer constantly observe and have the defendant within your sight at all times, for the required period prior to the administration of the test?
- Did the defendant take anything by mouth, vomit, smoke or place anything in his/her mouth during the period?
- Did you follow a checklist while administering the test?
- How many steps are on the list? Did you perform all of them and check each step off as you performed it?
- Offer the checklist into evidence.
- What was the result of the test? (Answer should be in "percent of blood alcohol by weight" or appropriate statutory language of your state.)