

DEFENDING A DUI CHARGE

I. Is the ticket sufficient?

A. Did the officer fail to mark at least one of the boxes on the ticket?

1. The “ticket” is the affidavit by which the Court has jurisdiction.
2. If no boxes are marked then no crime is alleged therefore no jurisdiction.
3. Wait until the prosecutor rests his case and move for dismissal.

- jeopardy has attached

B. Did the officer sign the ticket?

- If not = no jurisdiction

C. Did the clerk sign the ticket properly?
i.e. did she/he put the term “clerk” or D/C
(deputy clerk) after their signature?

D. Does the ticket comply with the requirements of 63-9-21 MCA, the uniform traffic statute?

II. Was the stop valid?

A. Anonymous tip/telephone call cannot be the basis for a stop.

- Cook v. State, 159 so.2d 534

B. Stopping officer differs from charging officer...

- (If stopping officer is not present then it is a 6th amendment violation of right to confront witness.)

C. Officer must observe some type of violation of the law.

D. Tail light out....

- Only 1 tail light required. (63-9-21 MCA)

E. Improper lane change

- (no turn signal used)
- Turn signal not required to change lanes, only course of direction.

III. Were the “tests” conducted and scored properly?

A. Get the “DUI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING MANUAL and LEARN IT!”

B. HGN

1. Clues (6 clues total)

- a. Lack of smooth pursuit
- b. Distinct & sustained nystagmus at maximum deviation
- c. Onset of nystagmus prior to 45°

2. The decision point is 4 clues

C. Walk & Turn

1. Clues: (8 clues total)

Instruction stage

- a. Can't balance during instructions
- b. Starts too soon

Walking stage

- c. Stops while walking
- d. Misses heel to toe
- e. Steps off line
- f. Uses arms to balance
- g. Improper turn
- h. Wrong # steps

2. The decision point is 2 clues.

D. One Leg Stand

1. Clues: (4 clues total)

- a. Swaying – distinct/noticeable
- b. Using arms to balance
(6 inches or more)
- c. Hopping
- d. Putting foot down before 30 seconds

2. The decision point is 2 clues.

NOTE: Have officer agree his opinion as to the impairment is based on the SFST^s he gave.

Use the book to impeach!

Tests give indication of BAC level .10 not impairment.

Impeach officer with the training he received at the school.

“NHTSA” – Definition

“STORM” – Definition

Practice sessions – because they kept “failing” the test even though they were sober.

IV. Timing of arrest

-Arrest on scene for DUI or suspicion of DUI?

1. DUI:

- offer intoxilyzer at station
- why?
- If less than .08 would release?
 - Yes – no belief of impairment
 - No – why give test if no credit for result

2. Suspicion of DUI:

- not enough evidence to charge with DUI
- waiting to get more evidence through Intoxilyzer 8000
- no further field sobriety tests
- no additional evidence
- no breath sample
- no blood/urine sample
- How do you justify the DUI charge?

V. Felony DUI

- Look at prior convictions
 - Was defendant represented by Counsel, or:
 - Did defendant sign a waiver acknowledging enhancement possibility and waiving representation by counsel?
 - Were any convictions “In Absentia”?
 - make sure a hearing was conducted
 - sworn testimony must be taken to justify “Guilty in Absentia”

VI. DUI Causing Death/Injury

1. Can they prove your client was “operating / driving” the vehicle?
2. The State must prove impairment at the time of the wreck.
 - When did wreck occur?
 - Did your client consume alcohol after the wreck but before the cops arrived?
 - How long from the time of wreck until the officers arrived?
 - Did your client suffer injuries?
3. The State must prove your client committed a negligent act which caused the death/injury.
 - being drunk cannot be the negligent act
 - get accident reconstructionist

VII. Use the Intoxilyzer 8000 printout to your advantage

- determine if the BAC level is rising or falling
- if it is rising... then argue retrograde extrapolation
- look at the time of the wreck versus the time of the sample

VIII. Blood Test

1. Was the blood draw legal?

a. Consent

- Was the Defendant able to give valid consent?
- if too impaired the consent is no good
- look at the BAC level and/or drug level
- look at Defendant's signature on consent form

IX. Urine Test

- Most experts agree that any substance in the urine is not causing impairment as it has been metabolized by the body.

Time of stop: 00:47

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY

OPERATOR MUST READ THE FOLLOWING TO THE SUBJECT:

"Mr. (Mrs. or Ms.) [redacted] you have the right to refuse the Intoxilyzer test which is being offered to determine your breath alcohol content. Should you elect to refuse, your driver's license and/or driving privilege to operate a motor vehicle upon the public streets and highways of this state shall be suspended for ninety (90) days if it is the first offense, or for one (1) year if you have been previously convicted of a violation of Section 63-11-30, Mississippi Code of 1972."
WARNING GIVEN: Y

Time of Observation Start: 00:57 Test Date: 07/07/2011 Start Test Time: 01:25

Intoxilyzer - Alcohol Analyzer Model 8000 DPS#: 36927 SN: 80-000658
Instrument Location: Gulfport P.D. Location Number: 038
Standard Lot #: AG112601 Standard Expiration: 05/06/2013

Sub Name: [redacted]
Address: [redacted]
City: MOBILE State: AL Zip Code: 36695
Sub DOB: [redacted] Sub Sex: F
Driver License Number: [redacted] SSN: [redacted]

Operator's Name: RHODES, PAUL, M

Table with 3 columns: Test, BrAC(g/210L), Time. Rows include Air Blank, Diagnostics, Cal Check, and Subject Test at various times.



BrAC g/210L
[redacted] 0.12

Calibration of instrument certified to meet acceptable standards of accuracy. This certificate approved by the Mississippi State Crime Laboratory pursuant to Implied Consent Act, Sec. 63-11-19, Mississippi Code of 1972, Annotated.

OPERATOR MUST READ THE FOLLOWING TO THE SUBJECT:

"You have the right to make a telephone call for legal or medical assistance after being booked."

Driver: Y Accident: N Violation: Y
Enforcement Agency: GULFPORT PD
County and City where violation occurred: HARRISON, GULFPORT
Judge / Clerk: WALKER CITY MUNICIPAL COURT
Address: 2218 15TH ST
Committed to: HARRISON COUNTY

Operator's Signature: [Signature] Citation/Ticket No: 1064507
RHODES, PAUL, M

Approved by: Mississippi Crime Laboratory & Commissioner of Public Safety