

Questions for Arresting Officer

Current occupation

- How long peace officer
- Job duties in current position
- Training and experience that qualifies you for your current job position

Training and experience related to DUI investigations

- How do you evaluate whether someone is under the influence of alcohol / drugs
- How many DUI investigations completed
 - o How many DUI arrests resulted from those investigations
 - o Not all were arrested → why not?

Working on the date and time of the offense?

- Location first observed the defendant
- COUNTY OF VENTURA
- Marked patrol vehicle
- Uniform or not
- With a partner – who?
- Is that an area you typically patrol

Circumstances of Traffic Stop

- Dispatched to a location?
 - o Concern from 911-caller that driver was under the influence of drugs / alcohol
- Observe a vehicle that drew your attention?
- Driving Pattern
 - o DETAIL EVERYTHING THAT SHOWS IMPAIRMENT
 - o Consistent with someone possibly impaired by drugs or alcohol
- If driving NOT observed → circumstantial evidence of driving
 - o D admitted driving
 - o D identified as driver by witnesses
 - o Hood of the car warm

- Keys in the defendant's possession
- Position of the seat – consistent with the height of the defendant
- No one else around

- Check for alcohol in / around the car – open containers, etc.
 - Why did you check for alcohol containers in/around the car?

Initial Contact with Driver of Vehicle

- IDENTIFY THE DEFENDANT

- Trained to make observations regarding individuals that you contact in the field
 - Looking for – signs of impairment, etc.

- Odor of alcohol / drugs
- Objective signs and symptoms of impairment
 - Red/watery eyes
 - Slurred speech
 - Lack of coordination
 - Nystagmus

- Observations made regarding the defendant → indicated he/she might be impaired or under the influence of alcohol / drugs

Exiting the Vehicle

- Objective signs/symptoms of impairment
 - Lack of coordination
 - Walking / sitting / etc.

- Consistent with impairment / being under the influence of drugs / alcohol

Field Sobriety Tests

- Training and experience regarding having individuals perform FST's
- How many tests conducted
- Followed training and experience in this case

- Preliminary Questions Asked of the Defendant
 - Why do you ask these questions

- Go through the Pre-FST sheet for questions
 - USE THE PRE-FST SHEET
 - ASK EVERY QUESTION ON THE PAGE
 - Last ate, drank, slept
 - Last consumed alcohol
 - Driving the vehicle → Etc.
 - Height, weight, age of defendant
- What are FST's
- Pass/fail test
 - How can a person's performance on FST's assist you in determining whether DUI
 - How do you ensure the tests are administered correctly
 - Location of the performance of the FSTs
 - Did you explain each test to driver before having him/her perform the test
 - Did he/she tell you understood each test before performing the test
- Horizontal Gaze Nystagmus (6 clues – 3 in each eye)
- What is HGN
 - How is the test performed
 - Looking for 6 clues during the performance of this test → 3 in each eye
 - Lack of smooth pursuit
 - Distinct and sustained nystagmus
 - Onset of nystagmus prior to 45 degrees
 - Explained this test to D prior to having him/her perform it
 - D appeared to understand your instructions
 - Observations during D's performance of the HGN test
 -
 - How many clues did you observe during D's performance of this FST
 - Based on your training and experience, observations of the D's performance on the HGN test were consistent with drug / alcohol impairment

- Walk and Turn (8 clues)
 - Describe the Walk and Turn FST
 - How is the test performed → what are your instructions regarding the test
 - Instructed the D in this same manner
 - Looking for 8 clues during the performance of this test
 - Cannot keep balance (during instructions)
 - Started too soon
 - Stopped walking
 - Missed heel to toe
 - Stepped off the line
 - Raised arms
 - Wrong number of steps
 - Improper turn
 - Explained this test to D prior to having him/her perform it
 - D appeared to understand your instructions
 - Observations during D's performance of the Walk and Turn test
 -
 - How many clues did you observe during D's performance of this FST
 - Based on your training and experience, observations of the D's performance on the Walk and Turn test were consistent with drug / alcohol impairment

- One Leg Stand (4 clues)
 - Describe the One Leg Stand FST
 - How is the test performed → what are your instructions regarding the test
 - Instructed the D in this same manner
 - Looking for 4 clues during the performance of this test
 - Swaying while balancing
 - Using arms to balance
 - Hopping
 - Putting foot down
 - Explained this test to D prior to having him/her perform it
 - D appeared to understand your instructions

- Observations during D's performance of the One Leg Stand test
 -
 - How many clues did you observe during D's performance of this FST
- Based on your training and experience, observations of the D's performance on the One Leg Stand test were consistent with drug / alcohol impairment

- (Modified) Rhomberg
 - Describe the Rhomberg FST
 - How is the test performed → what are your instructions regarding the test
 - Instructed the D in this same manner
 - Looking for clues during the performance of this test
 - Observation of D's balance and perception of time
 - Whether D is standing still with feet together
 - Body tremors
 - Eyelid tremors
 - Sway
 - Estimated # of seconds
 - Explained this test to D prior to having him/her perform it
 - D appeared to understand your instructions
 - Observations during D's performance of the Rhomberg test
 -
 - How many clues did you observe during D's performance of this FST
 - Based on your training and experience, observations of the D's performance on the Rhomberg test were consistent with drug / alcohol impairment

- Finger to Nose
 - IF ADMINISTERED
 - Explain this test and how it is performed

- Clues looking for during this exercise
 - Whether D's fingertips touch nose or other part of the face
 - Sway
 - Body and eyelid tremors
 - Statements or sounds made by D during test
- Observations during D's performance of the Finger to Nose exercise
- Based on your training and experience, observations of the D's performance on the Finger to Nose exercise were consistent with drug / alcohol impairment
- Was the driver able to follow instructions during the FST's?
 - Why important → driving involves divided attention
 - Failure to follow instructions related to FSTs and failure to follow instructions

PAS (Preliminary Alcohol Screening) device

- Training and experience related to the use of the instrument
- How many times have you had a suspect use a PAS device
- Followed training and experience in this case
- 15 minute waiting period prior to use
 - Check for vomiting, regurgitation, no food or drink, etc.
 - Why do you do this?
- PAS Device used in this case
 - Instrument Number
 - Aware of calibration
 - Checked to ensure device was working properly before using it on this date
- Results of the PAS device in this case
 - 1st sample → XX % at XX:XX time
 - 2nd sample → XX % at XX:XX time

OPINION THAT D WAS IMPAIRED FOR PURPOSES OF DRIVING AND UNDER THE INFLUENCE OF DRUGS / ALCOHOL

- At that point during your investigation → formed an opinion regarding the D's impairment and that D was under the influence of drugs / alcohol
- Factors that were taken into consideration in reaching that opinion
 - o Totality of circumstances
 - o Driving pattern, objective signs/symptoms, FSTs, PAS, EPAS, Blood test results

ARRESTED the defendant

- Arrest based on what
 - o Totality of circumstances → driving, objective signs/symptoms, FSTs, PAS results, etc.
- Advised D of implied consent
 - o Explain what implied consent is
 - o Law in CA that person driving in CA has impliedly consented to provide blood or breath test once determined to be driving under the influence of drugs / alcohol
- D chose to submit to blood / breath test

Blood / Breath Test

- If Breath → Evidential Breath Test
 - o Training and experience
 - o Results of the sample
 - o Introduce printout into evidence
- If Blood
 - o Took D to hospital
 - o Blood drawn by a nurse at the hospital
 - o Based on training and experience, nurse drew blood properly
 - o Admit Blood Consent Form
 - Ensure the information on blood consent form is accurate
 - o Admit the SDT records from the blood draw
 - Business record under Evidence Code 1271

REBUTTAL

- Acknowledge there are other potential reasons for red/watery eyes, poor performance on FST's
 - o Took that into consideration in reaching opinion/conclusions regarding impairment
 - o Based on totality of the circumstances
 - Cannot take just one of those factors alone – must take all

Arresting Officer Questions (Short Form)

Current occupation

Training and experience related to DUI investigations

- How do you evaluate whether someone is under the influence of alcohol / drugs
- How many DUI investigations completed

Working on the date and time of the offense?

- Location first observed the defendant
- COUNTY OF VENTURA

Circumstances of Traffic Stop

- Dispatched to a location?
- Observe a vehicle that drew your attention?
 - o Driving Pattern → DETAIL EVERYTHING THAT SHOWS IMPAIRMENT
 - o Consistent with someone possibly impaired by drugs or alcohol
- If driving NOT observed → circumstantial evidence of driving

Initial Contact with Driver of Vehicle

- IDENTIFY THE DEFENDANT
- Trained to make observations regarding individuals that you contact in the field
- Objective signs and symptoms of impairment
 - o Odor of alcohol, Red/watery eyes, Slurred speech, Lack of coordination, HGN

Exiting the Vehicle

- Objective signs/symptoms of impairment → Lack of coordination, etc.

Field Sobriety Tests

- Training and experience regarding having individuals perform FST's
- Preliminary Questions Asked of the Defendant
 - o Why do you ask these questions
 - o Go through the Pre-FST sheet for questions
- Height, weight, age of defendant
- Horizontal Gaze Nystagmus (6 clues – 3 in each eye)
 - o Looking for 6 clues during the performance of this test → 3 in each eye
 - Lack of smooth pursuit
 - Distinct and sustained nystagmus
 - Onset of nystagmus prior to 45 degrees
 - o Explained this test to D prior to having him/her perform it
 - o Observations during D's performance of the HGN test

- Based on your training and experience, observations of the D's performance on the HGN test were consistent with drug / alcohol impairment
- Walk and Turn (8 clues)
 - Looking for 8 clues during the performance of this test
 - Cannot keep balance (during instructions)
 - Started too soon
 - Stopped walking
 - Missed heel to toe
 - Stepped off the line
 - Raised arms
 - Wrong number of steps
 - Improper turn
 - Explained this test to D prior to having him/her perform it
 - Observations during D's performance of the Walk and Turn test
 - Based on your training and experience, observations of the D's performance on the Walk and Turn test were consistent with drug / alcohol impairment
- One Leg Stand (4 clues)
 - Looking for 4 clues during the performance of this test
 - Swaying while balancing
 - Using arms to balance
 - Hopping
 - Putting foot down
 - Explained this test to D prior to having him/her perform it
 - Observations during D's performance of the One Leg Stand test
 - Based on your training and experience, observations of the D's performance on the One Leg Stand test were consistent with drug / alcohol impairment
- (Modified) Rhomberg
 - Looking for clues during the performance of this test
 - Observation of D's balance and perception of time
 - Whether D is standing still with feet together
 - Body tremors
 - Eyelid tremors
 - Sway
 - Estimated # of seconds
 - Explained this test to D prior to having him/her perform it
 - Observations during D's performance of the Rhomberg test
 - Based on your training and experience, observations of the D's performance on the Rhomberg test were consistent with drug / alcohol impairment

- Finger to Nose
 - o IF ADMINISTERED
 - o Clues looking for during this exercise
 - Whether D's fingertips touch nose or other part of the face
 - Sway
 - Body and eyelid tremors
 - Statements or sounds made by D during test
 - o Observations during D's performance of the Finger to Nose exercise
 - o Based on your training and experience, observations of the D's performance on the Finger to Nose exercise were consistent with drug / alcohol impairment

- Was the driver able to follow instructions during the FST's?
 - o Why important → driving involves divided attention

PAS (Preliminary Alcohol Screening) device

- Training and experience related to the use of the instrument
- 15 minute waiting period prior to use
- PAS Device used in this case
 - o Instrument Number
- Results of the PAS device in this case

OPINION THAT D WAS IMPAIRED FOR PURPOSES OF DRIVING AND UNDER THE INFLUENCE OF DRUGS / ALCOHOL

- At that point during your investigation → formed an opinion regarding the D's impairment and that D was under the influence of drugs / alcohol
- Factors that were taken into consideration in reaching that opinion (Totality of Circs)
 - o Driving pattern, objective signs/symptoms, FSTs, PAS, EPAS, Blood test results

ARRESTED the defendant

- Advised D of implied consent
 - o Law in CA that person driving in CA has impliedly consented to provide blood or breath test once determined to be driving under the influence of drugs / alcohol
- D chose to submit to blood / breath test

Blood / Breath Test

- If Breath → EPAS
- If Blood → Based on training and experience, nurse at hospital drew blood properly

- Admit EPAS or Blood Consent Form
 - o Admit the SDT records from the blood draw (Evidence Code 1271)

Arresting Officer Questions (Outline)

Current occupation

Training and experience related to DUI investigations

- How do you evaluate whether someone is under the influence of alcohol / drugs
- How many DUI investigations completed

Working on the date and time of the offense?

- Location first observed the defendant
- COUNTY OF VENTURA

Circumstances of Traffic Stop

- Dispatched to a location?
- Driving Pattern → DETAIL EVERYTHING THAT SHOWS IMPAIRMENT
 - o Consistent with someone possibly impaired by drugs or alcohol
- If driving NOT observed → circumstantial evidence of driving

Initial Contact with Driver of Vehicle

- IDENTIFY THE DEFENDANT
- Trained to make observations regarding individuals that you contact in the field
- Objective signs/symptoms → Alcohol, Red/watery eyes, Slurred speech, Lack of coord., HGN

Exiting the Vehicle → Objective signs/symptoms of impairment → Lack of coordination, etc.

Field Sobriety Tests

- Training and experience regarding having individuals perform FST's
 - o Preliminary Questions Asked of the Defendant → Why do you ask these questions
 - o Height, weight, age of defendant
- Horizontal Gaze Nystagmus (6 clues – 3 in each eye)
 - o Lack of smooth pursuit; Distinct & sustained nystagmus; Onset of nystagmus prior to 45 deg
 - o Explained test; Observations of D's performance → BTE – performance = impairment
- Walk and Turn (8 clues)
 - o Cannot keep balance (during instructions); Started too soon; Stopped walking; Missed heel to toe; Stepped off the line; Raised arms; Wrong number of steps; Improper turn
 - o Explained test; Observations of D's performance → BTE – performance = impairment
- One Leg Stand (4 clues)
 - o Looking for 4 clues during the performance of this test
 - Swaying while balancing; Using arms to balance; Hopping ; Putting foot down
 - o Explained test; Observations of D's performance → BTE – performance = impairment

- (Modified) Rhomberg
 - o Observation of D's balance and perception of time; Whether D is standing; still with feet together; Body tremors; Eyelid tremors; Sway; Estimated # of seconds
 - o Explained test; Observations of D's performance → BTE – performance = impairment

- Finger to Nose
 - o IF ADMINISTERED → Whether D's fingertips touch nose or other part of the face; Sway; Body and eyelid tremors; Statements or sounds made by D during test;
 - o Explained test; Observations of D's performance → BTE – performance = impairment

- Was the driver able to follow instructions during the FST's?
 - o Why important → driving involves divided attention

PAS (Preliminary Alcohol Screening) device

- BTE → 15 minute waiting period prior to use
 - o PAS Device used in this case - Instrument Number → RESULTS

OPINION THAT D WAS IMPAIRED FOR PURPOSES OF DRIVING AND UNDER THE INFLUENCE OF DRUGS / ALCOHOL → Factors that were taken into consideration in reaching that opinion (Totality of Circs) = Driving pattern, objective signs/symptoms, FSTs, PAS, EPAS, Blood test results

ARRESTED the defendant - Advised D of implied consent → BLOOD or BREATH test

- If Breath → Evidentiary Breath Test
- If Blood → Based on training and experience, nurse at hospital drew blood properly
 - o Admit EPAS or Blood Consent Form
 - Admit the SDT records from the blood draw (Evidence Code 1271)

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the MCLE Provider

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: DUI Cases: Pre-trial Motions & Direct Exam of A/O

Date(s) of Activity: October 5, 2016

Time of Activity: 2:00 - 4:00 pm

Location of Activity (City, State): HOJ: Room 308 Ventura, CA

Total California MCLE Credit Hours for the above activity are 2.00, including the following sub-field credits:

- Legal Ethics _____
- Elimination of Bias in the Legal Profession _____
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 2.00, including the following sub-field credits

Legal Ethics _____

Elimination of Bias in the Legal Profession _____

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence _____

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name _____

Your California State Bar Number _____

Signature _____

* partial participation hours must be pro-rated

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print)

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

Title of Activity: DUI Cases: Pre-trial motions & Direct of A/O

Date(s) of Activity: October 5, 2016

Time of Activity: 2:00 - 4:00 pm

Location of Activity: HOJ: Room 308 Ventura, CA

Please indicate your evaluation of this course by completing the table below

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

Please rate the instructor(s) of the course below

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Taylor Waters, Deputy District Attorney	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

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Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

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	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—