

How to Prosecute a DUI

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Successful Prosecution of DUI Cases

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Basic Alcohol Physiology

- Phases
 - Consumption
 - Absorption
 - Distribution
 - Elimination

Consumption

A few ways:

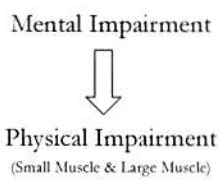
- (1) Mouth
- (2) Alternative....

Absorption



Elimination

Impairment



Charging

Vehicle/Penal Code Sections

- VC 23152 (misdemeanor DUI)
 - (a) – under the influence of alcohol
 - (b) – 0.08%
 - (c) – addicted to drug
 - (d) – 0.04 commercial vehicle
 - (e) – Commencing 07/01/2018 – 0.04 commercial passenger vehicle, “The Uber Section”
 - (f) – under the influence of drugs
 - (g) – under combined influence drugs/ETOH

Vehicle/Penal Code Sections

- VC 23153 (wobbler DUI causing injury)
 - Same subsections as VC 23152
- VC 23152/23550 (wobbler – “super deuce”)
- VC 23152/23550.5 (wobbler – felony for prior felony DUI)
- VC 23153/23556 (felony DUI w/ 2 prior convictions)

Vehicle/Penal Code Sections

- **PC 191.5 (DUI manslaughter)**
 - (a) – gross vehicular
 - (b) – ordinary
 - (d) – gross vehicular w/ prior DUI (Courtney's Law)
- **PC 187 (2nd degree murder)**
 - Implied malice

5. I understand that during under the influence of narcotics or drugs or both renders my ability to safely operate a motor vehicle. Therefore it is extremely dangerous to me, much to the detriment of others under the influence of alcohol or drugs or both. I continue to drive while under the influence of alcohol or drugs or both and as a result of my driving someone is killed or is charged with murder.

[illegible]

Enhancements

- VC 23152 priors (w/in 10 years)
- VC 23582 (reckless driving)
- VC 23578
 - HBA (0.15+)
 - Refusal
- VC 23558 (multiple victims)
- VC 23572 (passenger < 15 YO)
- VC 42009 (construction zone)
- PC 12022.7 (GBI)

Other Considerations

IID
14601
Open container
11550
647(f)
23140

Charging

Trial Preparation

What do you order

- | | |
|--------------------------|---|
| (1) PAS Logs | (9) Medical Records (AMR, hospital, jail) |
| (2) PEBT Logs | (10) Bank records/receipts |
| (3) Blood Results | (11) Jail Calls |
| (4) Blood packet | (12) Social Media |
| (5) Chain of custody log | (13) CPS Records |
| (6) Surveillance | (14) Insurance Records |
| (7) Prior Reports | (15) Demonstrative Evidence |
| (8) LPR | |

Trial Preparation

■ SDT's

<http://www.search.org/resources/isp-list/>

Trial Preparation: Defense Expert

What To Do

- (1) CV
- (2) Westlaw
- (3) Transcripts
- (4) Prior Work History
- (5) Google
- (6) Studies
- (7) Make a ridiculous looking binder

Trial Prep: Rookie Mistakes

- (1) Not speaking to or prepping your officer
- (2) Not speaking to or prepping your expert
- (3) Not bringing evidence or properly releasing it
- (4) Assuming it's a slam dunk because you have (1) high BAC (2) admissions

Meeting with the Officer

- Speak to them about their experience
- Speak to them about what to review
- Make sure you two are on the same page as your theme
- Inform them of the defense so they understand why you are asking certain questions
- Ask them the studies you will ask them about (example: correlation studies)
- Watch the AV with them!

Meeting with your expert

- Review their CV
- Make sure you are using the appropriate terms
- Ensure that their opinion has not changed
- Speak to them about the defense
- Provide them with any studies you intend to ask them about, but ONLY if it assists with their opinion

Trial Time!

Motions In Limine

- (1) 1101(b)
- (2) Impeachment
- (3) Judicial Notice
 - GPS (EC 452(h))
 - Priors (EC 452(d) or 452.5)
- (4) Certified Documents
- (5) Kelley-Frye
- (6) Study Citations (EC 721)
- (7) Improper Hypotheticals

EC 721

(b) If a witness testifying as an expert testifies in the form of an opinion, he or she may not be cross-examined in regard to the content or tenor of any scientific, technical, or professional text, treatise, journal, or similar publication unless any of the following occurs:

EC 721

- (1) The witness referred to, considered, or relied upon such publication in forming their opinion
OR
- (2) Publication has been admitted into evidence
OR
- (3) The publication has been established as a reliable authority

Voir Dire

Voir Dire: Key Words

- Impairment
- Divided attention
- Totality of circumstances
- Objective signs
- Dangerous
- Collision

Voir Dire: Areas

- (1) Impairment
- (2) Dangerous
- (3) Experiences
- (4) Lying
- (5) Circumstantial Evidence
- (6) Burden of Proof

Voir Dire: Impairment

- Driving when below 0.08
 - Grandma Example
- Prescription Drugs
 - Bottle
 - Follow the law
- OSIs

Voir Dire: Dangerous

- Operating vehicle/divided attention
- The next day
- No bad driving

Experiences

- Drink
- Family History
- DUI
 - Arrested/Prosecuted
 - You, family, or friend
 - FSTs
 - Ever performed
 - Trip
 - Breath Test
 - Reliable
 - Call one in or suspect

Voir Dire: Lying

- Motives
- Refusals

Voir Dire: Circumstantial Evidence

- Grocery store or red light example

Voir Dire: BRD

- Impairment
- Not 100%

Direct: Officer

- (1) Expertise
- (2) Facts
- (3) Questions
- (4) FSTs
- (5) Arrest
- (6) Chain of Custody
- (7) Totality of Circumstance

DX of Officer: Training and Experience

- Training
 - Classes
 - Course curriculum
 - Who taught the course
- Experience
 - DUI stops
 - DUI arrests
 - Not everyone is arrested
- Other
 - Culture immersion
 - Articles read

DX of Officer: Traffic Stop

- Bad driving= focus on consistent with DUI
- No bad driving= focus on time followed

DX of Officer: Signs of Use

- Do red eyes equal impairment?
- Signs of use are useful to help establish that use was recent!

Use
demonstrative
evidence

DX of Officer: Preliminary Questions

- What is their purpose?

DX of Officer: Divided Attention Tests

- Know the clues and be able articulate why those are important
 - Mental Impairment
 - Physical Impairment
- Know the guidelines for administration
- Review the dash camera
- Alcohol correlation studies
- Again what is the purpose of these

DX of Officer: Opinion

- DA: Do you have an opinion as to whether or not D was able to operate a motor vehicle with the same care and caution of the ordinary sober person?
- Officer: No
- DA: Why?
- Officer: Well because of...

Direct: PAS Coordinator

- How does it work
- How do you make sure it is accurate
- How you make sure it is working properly
- Looking at these logs can you form an opinion as to whether it was in proper working order on DATE?

Direct: Criminalist

- (1) Expertise
 - Siquelate?
- (2) Sample or logs
- (3) Alcohol physiology
 - Phases
 - Impairment
- (4) FSTs
 - Divided attention
 - Clues
- (5) Retrograde/drink amount

DX of Expert: Exclusion of Sample

- What does not result in exclusion of a blood sample:
 - Everyone in the chain
 - Unknown persons in the chain
 - Bare speculation of tampering
 - Only a reasonable certainty that there was no alteration
 - Mistakes
 - Non Title 17 compliance

DUI Formulas For Dummies

BAC AT TIME OF DRIVE

Step 1

$0.018 \times \text{Hours passed bt/w last drink and stop} = X$

Step 2

$X + \text{Known BAC} = Y$

DUI Formulas For Dummies

NUMBER OF DRINKS

Step 1

$2.6 / (0.68)(\text{weight}) = X$

Step 2

$\text{BAC} / X = \text{Drinks}$

Cross-Examination: Defendant

- Get in and get out
- Ideas on areas to hit:

Cross-Examination: Expert

- Gun for hire
- Hypocritical
- How did they prepare
- Expert battle

Exhibits

- (1) AV
- (2) CAD Log
- (3) Sample or Logs
- (4) Maps
- (5) Physical Evidence
- (6) Chain of Custody
- (7) Certified Documents
- (8) Demonstrative

What can be demonstrative?

- Lists
- Pictures
- Recreations
- Alcohol
- Fake items

Arguments

- Open
 - Do not oversell
- Close
 - First Close
 - Elements
 - TOC (Dse if BS)
 - Rebuttal
 - Take control
 - Fog of war
 - Have fun

DUID

Seven Major Categories

- (1) Depressants
- (2) Stimulants
- (3) Hallucinogens
- (4) Dissociative Anesthetics
- (5) Narcotic Analgesics
- (6) Inhalants
- (7) Cannabis

A Few Key Differences

- (1) Jurors hate these cases
 - Political vs. legal
 - Defendant is the victim
 - No warm & fuzzy level
- (2) They take longer!
- (3) Defense will almost always put on a case
- (4) The defenses are different
- (5) Most police officers do not have the same understanding of the science
- (6) DOJ usually is not of much help

Trial Preparation: DUID

- (1) Blood sample will take much longer to obtain
- (2) Have THC content tested
- (3) Need to know studies backwards and forwards
- (4) Need to know opinion of expert well in advance
- (5) Consider retaining outside expert

Voir Dire on Drug DUIs

- If marijuana
 - Start with buzzed driving (beginning having people equate it to alcohol)
 - Ask who smoked weed if college
 - Choose older juror and ask how did it make them feel?
 - If they refuse to admit that they weren't even mentally impaired ask if they would drive their kids
 - Ask the entire box who has smoked in their life and work forward in time
 - Ask what people are hoping to get out of marijuana smoking
 - Ask why people drink alcohol
 - Point out that people are doing it for the mental effects. Ask if people are safe to drive after smoking?
 - If yes, then follow up with tolerance and potency then follow up with signs to look for (again tying it back with alcohol)
 - As person again who said it was ok if they would drive their kids immediately after smoking
 - What are signs you see right after smoking
 - Would you get on your plane if you saw those signs on your pilot?
 - Make sure to emphasize at some point this is not a political attack but a case about someone who shouldn't have been behind a wheel just like alcohol

■ If prescription pills:

- (1) Why are some prescription pills over the counters vs. prescribed?
- (2) If a person doesn't have a prescription what do you think their purpose is in taking the pills?
- (3) Does anybody here take any prescription medication like Soma, Ambien, Xanax?
- (4) Why do you take those, what are the effects?
- (5) Does the bottle warn you about driving?
- (6) Do you think about how you're feeling before you drive on those or plan out when you're going to take it if you know you're going somewhere that day?

■ If illicit drug focus on:

- (1) People's experiences with them (i.e. family, friends, the user in the park who yelled at them)
 - Always end this part with the bad experience
- (2) Why is the person taking those drug (meaning what effects are they after)?
- (3) What makes those people unsafe to drive a vehicle?

Direct Examination

■ Using your DRE effectively

- CV
- DRE school
- Evaluation Purpose (impairment, medical, category of drug)
- Evaluation Details

https://www.youtube.com/watch?v=owEf0TSzL_g

Questions

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