

DUI PROSECUTION




DEPUTY DISTRICT ATTORNEY

THE CHARGES

Most common charges:

- 23152(a): driving under the influence of alcohol.
- 23152(b): driving with a blood alcohol level of 0.08% or higher.
- 23152(f): driving under the influence of drugs.
- 23152(g): driving under the influence of a combination of drugs and alcohol.

THE CHARGES

Related Charges:

- ▣ 14601.1: driving on suspended license
- ▣ 14601.2: driving on suspended license because of a prior DUI conviction
- ▣ 23140: .05 BAC, driver under 21
- ▣ 23154: .01 BAC by a person on probation for a DUI
- ▣ 20002(a)

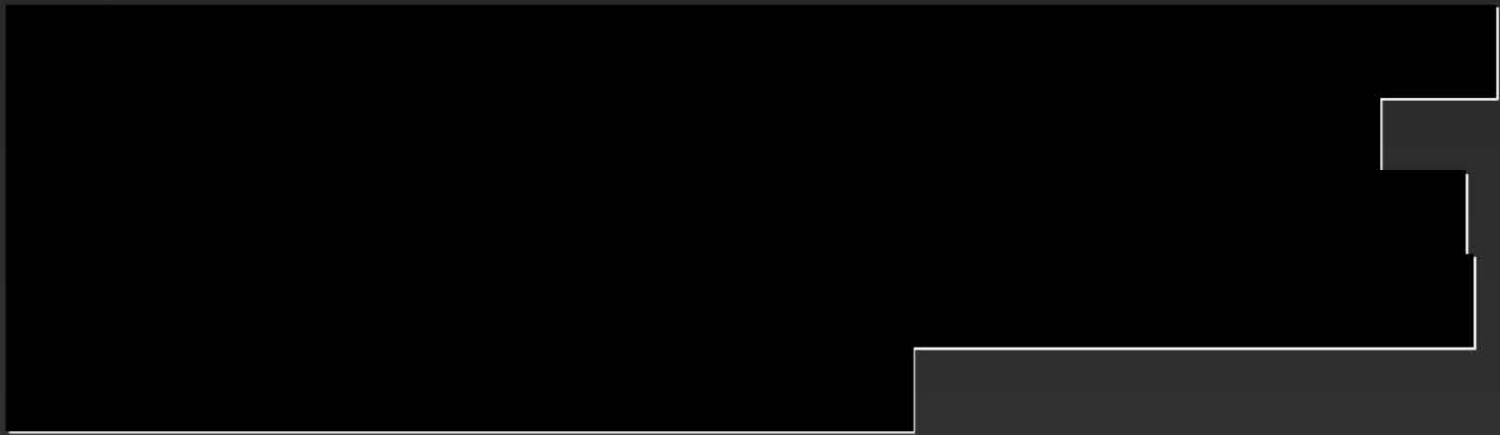
THE CHARGES

Regarding 14601.2's:

- The charge is not 654 to driving under the influence. (*People v. Martinez* (2007) 156 Cal.App.4th 851.)
- The fact that the suspension is based upon a prior conviction for driving under the influence is an element of the offense. This means no bifurcation. (*People v. Profitt* (2017) 8 Cal.App.5th 1255.)

WHAT TO PROVE?

- Driving
- Under the Influence (and/or a specific BAC level).



DRIVING

Proving driving (CalCrim 2241):



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]

DRIVING



(collisions)?

DRIVING



- CALCRIM 2110: The manner in which a person drives is not enough by itself to establish whether the person is or is not under the influence of _____. However, it is a factor to be considered, in light of all the surrounding circumstances, in deciding whether the person was under the influence.

UNDER THE INFLUENCE

- Definition (CalCrim 2110, for example)
 - “A person is under the influence if, as a result of [drinking or taking drugs] his mental or physical abilities are so impaired that he is no longer able to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances.”

UNDER THE INFLUENCE

□ Shift the narrative:



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PSYCHOPHYSICAL TESTS



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PSYCHOPHYSICAL TESTS

- Standardized Tests:

- Horizontal Gaze Nystagmus

Horizontal Gaze Nystagmus Test



Walk-and-Turn Test

- Walk and Turn

- One Leg Stand



One-leg Stand Test

PSYCHOPHYSICAL TESTS

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- Officer trained in HGN can use results of HGN test as basis for opinion on impairment without additional expert testimony. (*People v. Randolph* (2018) 28 Cal.App.5th 602.)

PSYCHOPHYSICAL TESTS



PSYCHOPHYSICAL TESTS



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]

PSYCHOPHYSICAL TESTS



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PSYCHOPHYSICAL TESTS



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PSYCHOPHYSICAL TESTS



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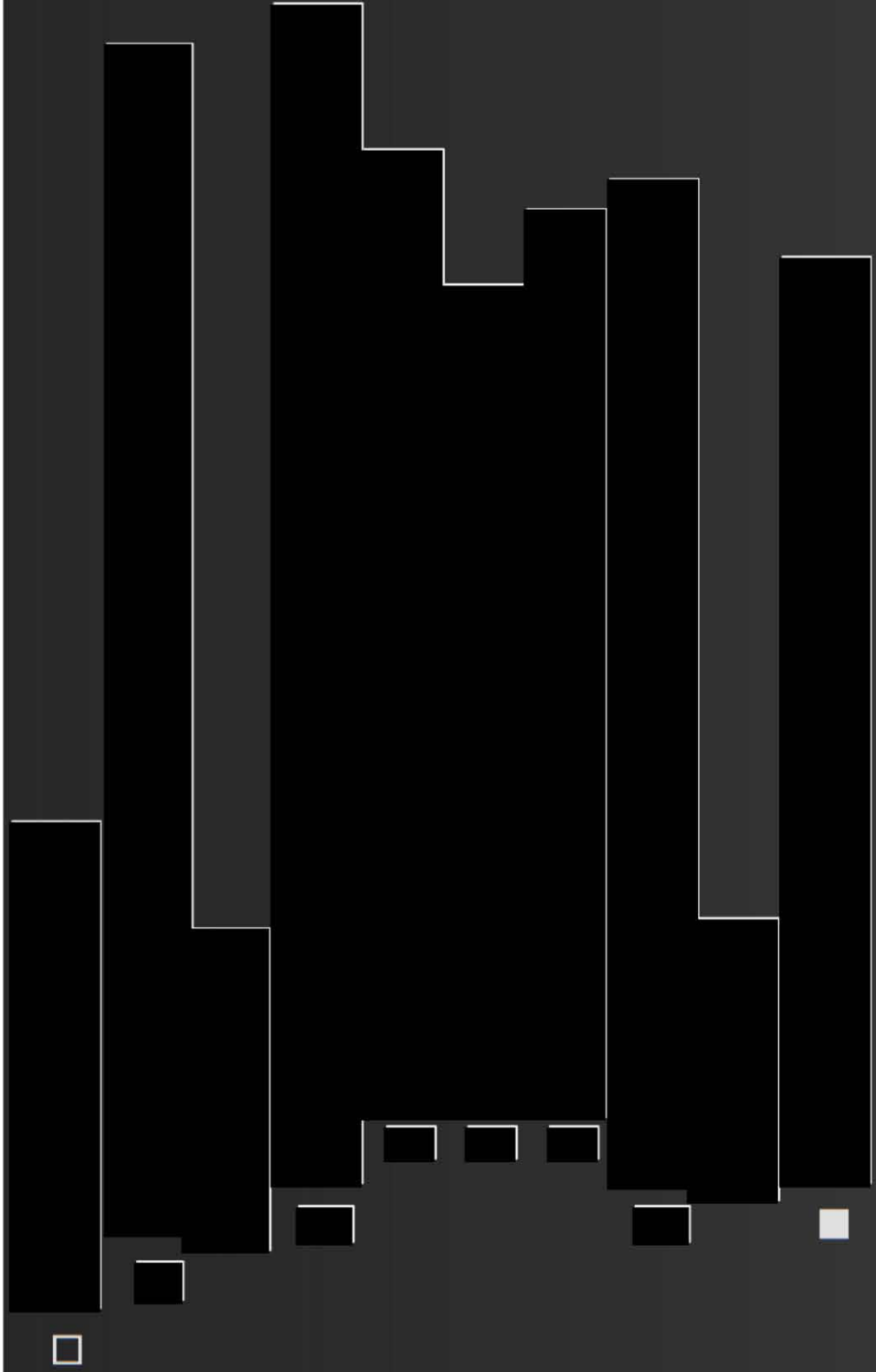
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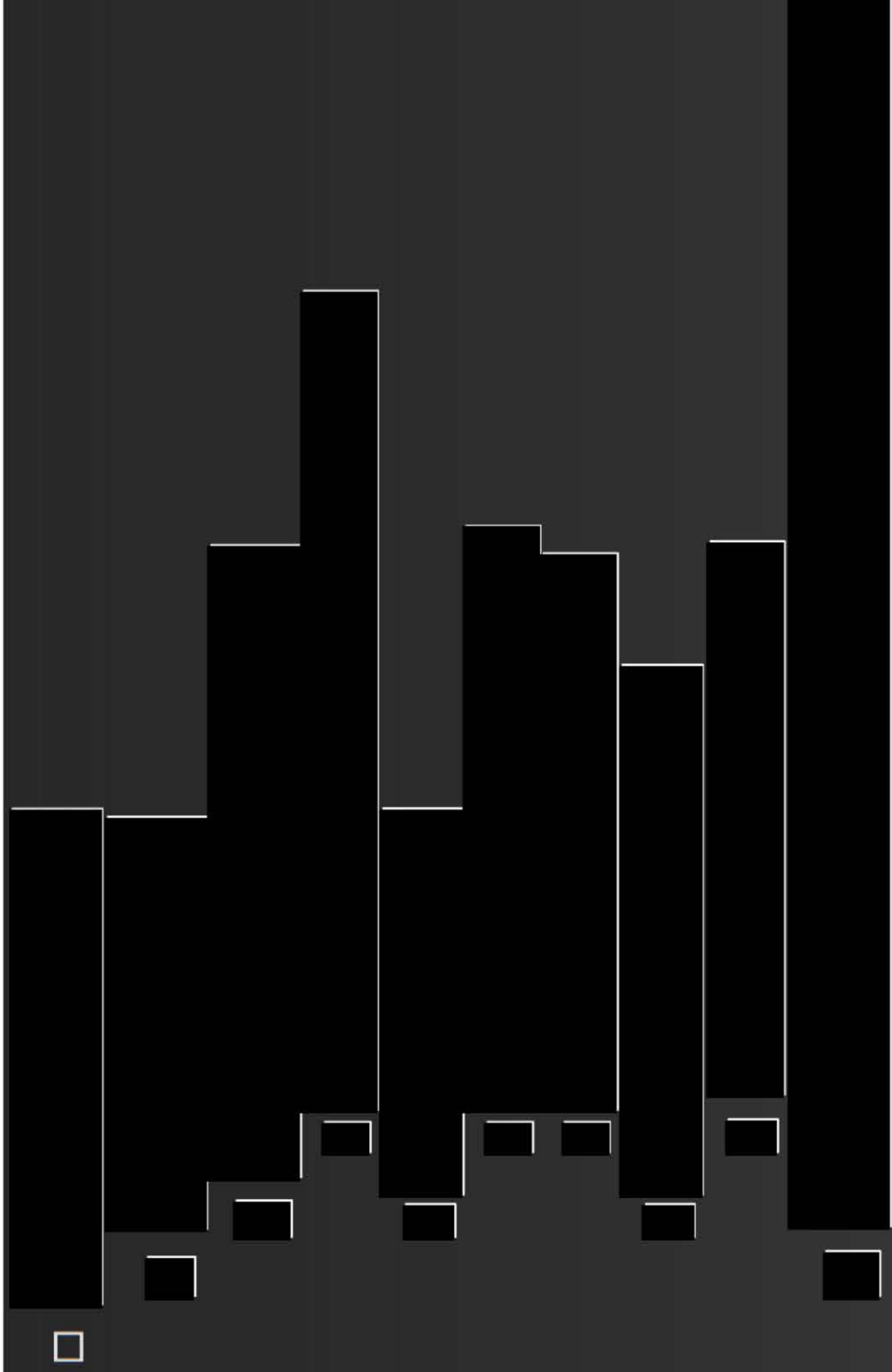
DRUGS



Drugs



Drugs



COMMON DEFENSES



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]

[REDACTED]



[REDACTED]



[REDACTED]



[REDACTED]

COMMON DEFENSES



COMMON DEFENSES

□ Necessity



■ *People v. Pena* (1983) 149 Cal.App.3d Supp. 14

- 1) Act charged as criminal must have been to prevent a significant evil
- 2) No adequate alternative to the commission of the act
- 3) Harm caused by the act must not be disproportionate to the harm avoided
- 4) Accused must enter entertain a good-faith belief that his act was necessary to prevent the greater harm
- 5) Such belief is objectively reasonable under the circumstances; and
- 6) The accused must not have substantially contributed to the creation of the emergency

COMMON DEFENSES

□ Necessity

- *People v. Patrick* (1981) 126 Cal.App.3d 952, 960:
 - “The commission of a crime cannot be countenanced where there exists the possibility of some alternate means to alleviate the threatened greater harm.”
- *People v. Slack* (1989) 210 Cal.App.3d 937
 - Dine and dash from Mexico, angry bouncers, US Customs stops him at border entry – no necessity
- *United States v. Bailey* (1980) 444 U.S. 394, 410
 - Whether identified as necessity or duress, “[under] any definition of these defenses one principle remains constant: if there was a reasonable, legal alternative to violating the law . . . the defenses will fail.”

COMMON DEFENSES

□ Necessity

■ *People v. Morris* (1987) 191 Cal.App.3d Supp. 8

- Claim that girlfriend was miscarrying
- “In the present case, rather than ‘[driving like a crazy man]’ with the unacceptable risk of human carnage and property damage strewn in his wake, appellant had a legal alternative to violating the law.”
- “That is to say, in this modern age of telecommunication, appellant, by the simple use of a telephone, could have summoned police, fire, rescue, and medical aid [. . .].”
- “Public policy and common sense compel the conclusion that this legal, reasonable and viable alternative [. . .] eviscerates the necessity defense here tendered.”

PREPARING YOUR CASE

BLOOD DRAWS

- *People v. Cuevas* (2013) 218 Cal. App. 4th 1278
 - Officers can testify about blood draws and whether they were performed in a reasonable manner under the 4th Amendment.
 - Def was given implied consent admonishment
 - Def consented
 - Blood draw performed by someone the officer believed to be a phlebotomist or blood tech.
 - Def did not appear to be in pain/discomfort
 - Blood draw was routine based on officer's training and experience.
 - Site was cleaned in advance of blood draw
 - Clean needle was used.

BLOOD DRAWS

- *People v. Fish* (2018) 29 Cal.App.5th 462
 - Valid arrest for DUI
 - Defendant refused to submit to testing, officer got a blood warrant
 - Draw performed at a hospital where officer observed (no testimony regarding manner)
 - Court relies on official duty presumption (Evid. Code 664) and presumption of validity
 - Burden of proving unconstitutional blood draw rested upon the defendant under these facts

CURRENT CASES IN DUI

- *Missouri v. McNeeley* (2013) 133 S. Ct. 1552
 - *Birchfield v. North Dakota* (2016) 136 S. Ct. 2160
 - Breath tests without a warrant → search incident to arrest.
- *People v. Toure* (2015) 232 Cal. App. 4th 1096
 - *People v. Meza* (2018) 23 Cal. App. 5th 604
- *People v. Vannesse* (2018) 23 Cal. App. 5th 440
- *People v. Gutierrez* (2018) 27 Cal. App. 5th 1155
- *Mitchell v. Wisconsin* (2019) 588 U.S. _____
- *People v. Cruz* (2019) 34 Cal.App.5th 764
- *People v. Lopez* (2020) (3rd DCA C080065 3/11/20)

DUI PROSECUTION

THANK YOU FOR JOINING US!



FEEL FREE TO COME AND CHAT CASES WITH US AT ANY TIME!