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Hi, my name is Adam Murray, I'm a deputy district attorney with the ector. County District Attorney's office here in Odessa, Texas, sign a 358 District Court. I previously served as the first assistant district attorney for the 63rd Judicial District and as Assistant Attorney General, for the Office of Special Investigations. Prior to that, I was a police officer for a number of years before I was injured. So my perspective on DDB is kind of runs the gamut from having been a police officer making these arrests in the field to prosecuting those cases up to the felony level. And that's really what my background comes from. First of all, I want to talk about what a DWI is and and what it isn't. And those types of things. A lot of times you hear DWI, or you'll hear DUI, it's different in different jurisdictions, what it's called some jurisdictions, it's driving while intoxicated, other jurisdictions, it's driving under the influence. But generally speaking, it's the it's the same offense in Texas DUI is actually separate from DWI. DWI is driving while intoxicated, why DUI is driving under the influence. It's only applicable to those drivers who are under the age of 21. And they can be arrested and charged with a Class C misdemeanor. if they have any detectable amount of alcohol on their breath, and they're operating a vehicle. The elements of the offense, were DWI. First of all, it's operating a motor vehicle. Now a lot of times we hear motor vehicle these think of a car but it's not just cars be a car, it could be a motorcycle, anything it's motorized is purpose of transportation. I've seen a couple of cases Believe it or not. One was a an elderly gentleman who had one of those hover round electric carts, and he was arrested for DWI. Now the reason he was arrested for DWI is because this guy every Saturday night would take this hover around four or five miles into town driving down the centerline of the highway get flustered, drunk and drive back all over the road. And the officers would warn him time and time again. And finally they arrested him for driving while intoxicated. Now it ultimately is dropped down to pi. But that's particular charge. And unfortunately, there was another case I saw where it was a handicapped young lady who was a student at the University. And she was in a motorized wheelchair, and going down the center of the highway, again, five lane highway and she was highly intoxicated and

almost caused a crash. And she was charged with DWI. But later it was dropped a PII but it's not just a car truck, it could be a four wheeler, motorcycle, even a golf cart, as long as it's a motor vehicle operated in a public place. And that's the second portion is public place. It's not just a roadway. It's not just a highway. But it's any place that the a substantial portion of the public that has access to it can be it's found to have been a public place if it's inside military base, even though it's not open to the general public. And we know without being identified and and secure. common areas of apartment complexes even though they have gates, a lot of different types of things at one particular case, in fact, as is the only case I've ever had, where I was a defense attorney was for a friend of mine whose son was arrested. And he was found driving inside the secure area of the airport. And I was able to get the case successfully dismissed. Because that secure the airport was not a public place, even though he was found to be intoxicated. Now, intoxicated is usually where most of the litigation happens, where most of the fighting takes place as determining whether or not somebody is intoxicated, there's a huge difference between being intoxicated and being drunk. Being intoxicated for the purposes of law, this means that your mental or physical faculties are impaired, and that you're not able to operate at the highest level, it does not mean that you're full down drunk. And that's a lot of things that most of the the time that you spend in trials, is spent convincing jurors or educating jurors, or trying to convince jurors on what it really means to be intoxicated. And what those elements of intoxication the signs of intoxication are, because it's not just you know, if you know it when you see it, and if somebody is, you know, falling down drunk, it's if they're impaired, and a lot of times it's a very fine line between whether or not somebody is impaired, or they're not. There's two different ways one is a pyramid of mental or physical faculties, or other way and the taxes the level is point O eight, which is blood alcohol content of point O eight or higher. Some states it's point one Oh, different levels or different areas. But that's that's what the standard is in Texas and in most states.

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And the first step in having a evolvement of a do DWI is the original stop or the come into contact with the impaired driver with a police officer. There's never different ways where that could happen. One could be the driving behavior. Or traffic violation. Sometimes the most effective courtroom evidence will be the police officer, with his in car video system, falling behind a driver who's weaving all over the road, or who's speeding up and slowing down or hitting the brakes too often, or running a stop sign, or driving too slow. All those different types of things indicate impaired driving. And there's actually been a great deal of research done by the National Highway Traffic Safety Administration, which breaks down each of these categories of offense of these traffic violations. And if done a statistical research to show that these violations are indicia of intoxication or impairment, you know, based on the driving behavior of the individual, especially if they're a lot of those in conjunction, so he's weaving Plus, he's going faster than slow Plus, he's hitting the brakes a lot. Plus, all those different things added together for a long period of time show that impaired driving, they usually initiate the traffic stop and the officers involved

with the individual. Another way to have interaction at the beginning of this DWI investigation is if there's a collision or an accident, unfortunately, those those added quite a bit. And that's a reason why institutions are groups such as Mothers Against Drunk drivers have worked so hard to increase the penalties for driving while intoxicated offenders. And so a lot of times the officer will show up to the collision of the accident. And sometimes that can make it difficult to establish whether or not the person was offering the vehicle. A lot of times, by the time they get there, the person is outside of the vehicle. Or they might be in they might have fled, or they might be in the ditch. Or they might have switch seats. You know, there's all those different types of things. But that's one other way where someone gets involved. In others, whenever there's a phone call, sometimes people report the bad driving behavior. Or they might report Hey, I'm at a bar, this guy just left, he's highly intoxicated he got in a car. I've seen it when I was a police officer with an airport where a gentleman had gotten very intoxicated on the airplane flying in and was causing lots of problems. And people saw him walk into the parking lot and get in a car and say immediately called us, we stopped him and he was heavily intoxicated. And finally, there could be either a voluntary encounter or welfare concern. You know, sometimes Believe it or not drunk, so drive up to a cop and ask for directions. And then that starts to concern or there could be that they passed out at a Wendy's parking lot or at a stop sign. And that creates people's concern about whether or not they're, they're healthy, or there's some type of problem. So that's the first step is is the initial stop and a lot of evidence that goes into evaluating it. And sometimes, based on the nature, that can be the most persuasive evidence in a DWI case, especially if there's an accident and the person you know, drove across a median and hit the opposite lane of traffic, those types of driving behaviors, which tend to show it's more than just a simple accident. Now, once the officers become engaged

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with

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the offender, the driver, there's different things that you look for different clues or to detect that impairment prior to beginning or asking for those field sobriety test. First is the eyes. Whenever someone's been drinking, a lot of times your eyes become glassy, which you know, highly reflective whenever they're in the light, or a lot of times are bloodshot. Or you can see that there's a strange dilation of pupils. And that's one of those indications. Also the odor. Obviously, alcohol is a very strong odor, and a very distinct odor. And a lot of times you can tell if someone's been drinking when you make that stop. Whether or not the driver responds with slurred speech. If he has a hard time, enunciating and slurred speech, and seems discombobulated all those different types of things can indicate intoxication, or if he's in district oriented, and not really sure where he is or where he's going. Or she, if you've asked him to step out of the car, and if they have unsteady

balance, they are leaning into the car to walk back to where you are, those types of things. Also, whenever you ask him for documents for their driver's license with a proof of insurance, I've had times when I was an officer or asked for a driver's license, the guy gave me a footlocker discount card. And he asked for his driver's license, he took the discount card, put it back in his wallet, searched a little bit longer pulled out the same discount card and gave it back to me. Those different types of things, not just the unable inability to identify the documents, but you know, being able to use their fine motor skills to manipulate to pull it out to be able to find the insurance card or the registration card and ability to fold it. All those different things are signs of impairment, that hopefully to the officer who believe that sobriety testing is required. Now sometimes if you have an officer who is very well trained in in D DWI or DUI detection, who actually theories in car video system, he'll be taking notes of these different observations. Over his camera. And so, as the individual is doing what they're doing, he'll be he or she, the officer will be speaking into the mic and saying that individuals has glassy eyes, this individual, I detect a certain strong odor of alcohol, that's usually pretty effective for the jury to see so they can see, okay, these clues weren't just made up after the fact. But at the time, it's the presence and suppression of what the officer officer observed. And he was recording for the purposes of evidence. The next step is the determination that the officer has that the individual may be intoxicated or impaired. At that point, they initiate the standardized field sobriety test. Now, there's a number of sobriety tests that are out there. But generally, there's only the three tests that are recognized and standardized. And those were conducted by a after a long period of research through Southern California Research Institute, and the National Highway Traffic Safety Administration. And they determined that there was three tests that are to be the standardized test, and those have been adopted pretty much in every jurisdiction, and I record throughout the throughout the country. The first of those is the hgn, the horizontal gaze nystagmus. And, and I'll go into further detail on each of these. The next is the one like Stan and the final is the walk and turn test. Each of these tests, with the exception of HTN, these tests are divided attention test, which means they require the person to exercise both their mental and physical faculties, they have to think about what the instructions are at the time that they're performing the test. These have been proven scientifically to research to establish a high indicia of intoxication. And again, the first test that is conducted is a horizontal gaze nystagmus test. Now, if you look in the presentation that I've included, in your materials, you'll see a link to a YouTube video. In addition to that, you'll find other research further down. And it demonstrates what hgn is, because think, frankly, it's it's very difficult to understand unless you see it. Basically what it is, is whenever your eyes, they generally are steady in most people unless they've had a head trauma, or resting status. But whenever there's an introduction of alcohol into the system, because of the it throws off the equilibrium, because a weight difference between the alcohol in the blood, and it causes the eyes to have an involuntary jerking. And whenever you see it on the camera or on the videotape, it'll be you'll be able to understand how clear it is. Some people don't unless you have a lot of experience in dealing with it such as police officers, you don't recognize how effective it is. But most police officers who are trained, believe it's the most effective way to determine intoxication. When I was a police officer, I mean,

there was one year where I made

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88 DWI arrest. And I got very good at doing hdn. And I was at the point where I could tell you, within point oh one, what somebody was going to blow or bleed on the test just based off of HTN because of the amount of the jerking and those eyes and the research has shown that a lot of officers proficient officers are able to do that. For first step in the hgn is to check that the pupils are of equal size. And you're asked to check for resting assignments. This is not part of the test that requires the clues. But this is a part of the test that basically establishes the person's a good candidate for the hgn test, they can wear their glasses, or they can take the glasses off the current classes or contacts. Neither one make a difference in the validity of the test. Then see check the pupils equal size you check to see the eyes are tracking equally, then you start looking for the clues. And the first loan you look for is a lack of smooth pursuit, which basically what you do is you have a stimulus usually it's the tip of a pencil or the tip of a finger. And a lot of times the officer is shining the light at the chest of the subject rather than his face. And I definitely ideally, you'll also have the subject not facing into the light bar because the strobes on a light bar of a police car can cause it involuntary jerky, you can throw off the validity of the test. So you should have a place that does not have those types of like distractions. And then the author uses that stimulus, that tip of the finger tip of the pencil and he moves it back and forth over across the persons that twist six and 12 inches I'm sorry, twin 12 and 18 inches in front of the person's face from side to side and you look to see if there's if a lie if there's lack of smooth pursuit, which basically what you'll see on the videos that the guys actually have a jerking as it going back and forth. And it's it's clearly discernible. The thing which will next thing I look for is distinct and sustained misstatements and maximum deviation, which means that whenever the person looks at the far side, you'll see that the eye starts twitching Like this at the maximum deviation. And there's two clues because there's two eyes. So you first look for lack of smooth pursuit in the left eye, and lack of smooth pursuit at the right. You look for Distinguished Atmos and maximum deviation in the left and then in the right. And finally, you look at the onset of Mustangs prior to 45 degrees, which means that as you're going slightly out before you get to that 45 degrees, you're starting to see an A stagnates. Now, there's a total of six clues. And what the science and the research has shown is that there's a 68% probability of predicting a person's intoxication, I love point one Oh, if they have at least foreclose on the hgn, that's part of the sfst is going to be the walk and turn test. As the, as the officer explains it to the driver, what he's going to have him do is stand with his right foot in front of his left and his hand down to the sides. Now the purpose of this is the first clue to see whether or not the person maintains that position and maintains his balance during the instructions. A lot of times, it's good for the officer to show that he can maintain that position throughout the entire instructions. So there's not the argument that because of the environment, or the road, or the the wind or things like that, that a person couldn't do it, and that the person was set up for failure. So as the officer is explaining the the test, he's

going to maintain the same position that the offender's has been obtained, and then he's gonna explain it in the following manner. Did the walk and turn test you're going to stand with your feet, right foot in front of your left in your hands down your side, you're going to maintain this position, and did not begin the test until I begin to the test. After I tell you to begin the test, what you have to do is take a series of nine steps down the imaginary line extending from your front foot to my patrol car, your look at your front foot and your kennel out each step and following manner, stepping heel to toe, and keeping your hands to your sides. 1234 I only went to four but you're going to go tonight. On your ninth step, you're going to plant your front foot, you can take a series of small steps around, you can pre plant your foot and continue going back counting each step allowed. 1234 again, only went to four but you're going to go tonight. That's time the officer asked Do you have any questions? Do you understand the instructions? Okay, begin while the officer is maintaining position is going to be looking to see that the person both maintained his balance, and that he didn't start a lot of times you'll see that impaired individuals, whenever they see the officer start taking the sample test, they too will start taking the sample number of steps. Also, their offer demonstrates four, but he tells them nine now most people instinctively want to go to 10 because it tends a nice round number, where they see the Austrian we did four and so they'll want to stop at four. Again, these are divided attention test. So the purpose is to see if they can pay attention to the instructions, follow the instructions and also physically performing.

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The next test after the walk in turn, is going to be the one like stand. The individual is supposed to stand with both feet down to both feet together in his hands down to the sides during the instructions, the officer gives instructions in the following manner. Let me have you do is raise your foot either foot your choice, approximately six inches off the ground. And you can stare at your front foot and kenneally on the following manner 1001 1002 1003 and so on until I tell you to stop. If for any reason you lose your balance and place your foot down Millie stop laser foot and continue counting from where you left off. Again, make sure to keep your hands down to your sides. And count out as I explained. Do you have any questions? Do you understand the instructions? Okay, since you could be understanding instructions, go ahead and begin. And at that point, you'll look for the individual to either place of birth down to raise their hands up from their sides to fail to count different things such as that the closer we'll discuss in a second. Again, another thing to look for on this test is individual repeatedly putting their foot down their individual starting too soon. Different things like that high degree of swaying. It's also good whenever the author sets up these tests that he do it in such an environment to be ideal for the person as possible for the side of the road. So for example, level portion of the road, if there's actually a line that they can use, it could use it having the overhead lights turned off. So the person doesn't have flashing lights in their in their eyes. If there's a parking lot close by, that they can go into that's flat and level and they can perform the test. Again, all those things are good for being able to perform the individual, so they have the absolute best chance to pass as possible.

Another thing to consider on this is that the testing has not been found to be valid for two different categories of individuals, one, those who are elderly, or to those that are obese. Some of us fall into both of those categories. Additionally, it's important to ask the individual if he has had any type of injuries prior to the administer the test as he had a knee problem back problem anything like that. That's going to keep them from being able to perform. Now all these different tests and questions are permissible without Miranda in Till the point in which the officer is established enough probable cause to make an arrest. And the courts have found that this is perfectly fine for evaluation during a temporary detention. But after the officer has made made it his, his or her mind up that enough probable cause exists to make an arrest for driving while intoxicated. Then prior to any further question, it will be necessary to memoranda. And a lot of times you'll see this done prior to the statutory warnings. And prior to their quest for the broader flutter brass busman, or those other questions. They go down the typical checklist. It's funny what you'll hear from some people, when it comes to those questions. I actually had an individual that I asked, Well, are you medically impaired? He said, Yes. So what's your problem? He said, I'm an alcoholic, I asked him how he had a drink. He said he lost count at 20 beers. I mean, he was thinking he was drunk, or he was drunk, he thought was really funny. But he was made for really good evidence for the tape. So as you've seen on the demonstration, there's the different elements to walk in turn. And basically, there's eight validated clues that are looked for. The first clues are doing the instruction, and one that he could not he or she cannot keep their balance during the instructions. So that's the first clue. And second is if they start too soon, because oftentimes, they'll take a step, or two, whenever they see the author taking a step or two during the demonstration, rather than listening to the instructions and waiting to take those steps. Then during the test, there's six more clues, stops while walking, steps offline, takes the wrong number of steps, misses heel to toe, uses the arms to balance and often this is if the hands come, you know six inches off the side that's considered using the arms to balance or makes an improper turn. And that's usually one that happens quite a bit. As well, it's quite seen that some of those clothes are somewhat nitpicky. That's why it's important for the officer during the test, to make sure and establish that the person understands the instructions that they accept the instructions before performing it. And for the one next turn test, there's four clues, whether an individual sways while balancing, whether they use their arms to balance whether they hop during the one leg stand, or whether they put their foot down. And sometimes it might seem that, you know, it takes a while maybe they don't put their foot down until 10 seconds or 15

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seconds. The it's 30 seconds. That's how long they have to keep their foot up. If it puts down any time prior to that it's considered a clue to more clues indicate, again, a 68% likelihood that the individual is above a point one Oh, sometimes whenever you have the officers, you know, they'll do things to make sure to make the video more valuable to the jury. So for example, on swaying, they might line the individual up with a point of reference to the backgrounds inches or the side of

a building or a light pole, so that you can see the person swaying back and forth. And in comparison to that point of reference. Now there are other tests that some officers will use on a DWI. I think they're still valid, they're still probative, they're just not don't fall into that category being standardized and being proved up by the National Highway Traffic Safety Administration. First, those tests I want to talk about as Romberg test. And generally what you'll do is have the individual tilt their head all the way back, as far as I can tell, it's standing with their feet together, hands to their side, and then keeping their head back for what they believe to be 30 seconds. And this tests a couple of different things, one, drill a level of swaying and again, especially if you have the point of reference in the background, you'll be able to see the individual swaying very heavily from side to side to it goes to the the introduction of alcohol throws off a person's ability to evaluate how much time has passed. I've had some people put their head down and said it's been 30 seconds when it's really been two minutes that their heads been back. And they just have no concept of time. The next is a fingertip count. And you've probably seen this one before, but it's 12344321 just have them do that three times. And finally, the alphabet. And it's not just a typical alphabet, but you'll usually have the person start with a particular letter and it was one particular letter and I say we'll start with the letter F and go to letter T. And a lot of times they'll keep on going all the way to Z. And it's the ability again to be able to have that divided attention and be able to accurately perform the required test. Now something else that you probably can look at both from the defense side and from the prosecution side is other indications of guilt or innocence. And that's these things can either be present or absent and can be used to show either guilt or innocence by their presence or absence. One would be open containers in a vehicle. And you know, did the officer noticed if there is any open containers of beer or alcohol in the vehicle, and did he record the quantity, the temperature whether the cans towed to the touch or was it just 40 Okay. That the guy recycles in the bed of the truck, those types of things. Also looking at the individual and his physical condition. And obviously, we talked about those physical condition before there's indications of intoxication and sobriety tests. But what I mean by this is different things that help to show outside of the norm outside of the normal SF STS. For example, if there was an accident, and the person sitting on the side of the road, but he's claiming that he was not involved in the accident, he was not the driver, well, then you can look at things like, Is there a bruising or a red mark across his chest from where the seatbelt was, and the direction of the seatbelt mark will show whether or not he was in the driver's seat or whether or not he was in the passenger seat. Additionally, if there was an airbag that went off, a lot of times, then airbag goes off and my bus, the nose or slobber things like that different types of DNA that you can get off the bag. And you can match the DNA to the driver to share that, or to the suspect to show that he was actually driving the vehicle, the time of the collision, of the things that you can look at from the individual. A lot of bars have stamps that they put into the rest to show that the guy had gone to the bar, if he said No, I haven't been to the bar haven't been drinking, but he has two or three stamps from different bars that he went to, that's a pretty good indication that he's being dishonest and that he's been out drinking. Other things you're looking at or to determine the evidence is the physical condition of the vehicle, such as, are there crash marks, or rub marks on

the wheels, showing a data hit up against the curb, the seat settings, you know, sometimes again, you might have a

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larger driver of a vehicle who's intoxicated and a passenger who's not. And they'll switch and say that the passenger was driving Well, for example, I'm six foot four, and my wife is five foot four. And if I tried to sit in a seat that she had adjusted, I never get my knees under the dash. And by the same token, if she said my seat, you'd never be able to reach the pedals. So if the person is five foot four, and yet the seat is all the way back, that's a pretty good indication that that somebody else was driving the car. fingerprints on the steering wheel or on the door, blood spatter again on the window or on the door frame or on the dash can again show who was sitting where there's other things you can look at as well, such as the inspection sticker, you know, if the person client, hey, I was driving down the road, and then the the steering motors went out or the brakes went out, and I really didn't really it wasn't my fault. Well, you can look at the inspection and go back to a port, if there's a recent inspection, you can show that the vehicle was checked in was in good working order, at least in recent time to kind of undermines that. Also, you can look at the registration because if a person claims Hey, saw my car, but it's registered in their name, again, it's good indication that's their vehicle, and they had control of it. A real treasure trove of information for DWI cases, and something that people don't really tap into as much as they should, is insurance statements. A lot of times people when making a statement soon after an accident to an insurance company. They'll tell them Oh, well, you know, john was drinking and if they're a passenger, and they're making a statement, though a lot of times be honest, became to the bar, he'd had a few drinks, he drove into the wrong lane. He nodded off different things like that. All those statements are made, even though they're made to the insurance companies are still admissible and can be used to prove up or it could be able to substantiate for the defense showing that the passenger is admitted. That person was sober, that's a particular person with driving. And so other things that are very valuable in looking for guilt and innocence is is the interviews, passengers, you can ask them, a lot of times they'll be more forthcoming if whether or not the driver is drinking. Because there are this often is not a complete bond between these people where they'll be going from bar to bar, they might barely even know the driver. They're not willing to lie on their behalf. Especially if they're angry because they were in an accident, they were injured. And so a lot of times the passengers can tell you what happened. Witnesses oftentimes may be the one that called into 911. Or it might be a 911 phone call. They might describe the behavior described the person who is driving, all those different types of things can be able to help additional evidence to look at different types of videos that you can use. There's obviously the in car video, and different police cars are designed different ways. Some only have the dashcam that gets upset on the car, but some of them have the cam that actually shows the backseat. And to me, a lot of times for the jury. That's the most convincing evidence is that backseat camera and when I was a patrolman, we only had the front cameras but I take it and

spin around to show that backseat because a lot of times the defendant you can just look in his face and tell it he's drunk or he goes or he or she goes to sleep on the way to the jail or They're being belligerent and arguing and yelling and cussing at the police officer and slurring their speeches, they do it. Sometimes you'll have an individual, especially if they're a repeat offender, and they've had multiple DWI violations, they're going to refuse to perform the sssts. Because they know that that's what their previous attorney told them to do. And then maybe they behave themselves in the backseat of the car. A lot of times you don't think about what happens once they get down in the jail once you get down to the jail. They're drunk and belligerent. I would, whenever I was an officer and I had that situation, I had a particular square that I would use, because I knew that the local cameras would sign there, and that there's a line in the wall behind them. And I tell him stay in that square, do not leave that square. And you'd see him sway back and forth, step out of it. He slumped shoulders, you can just tell by their mannerisms that they were under the influence. And so those different tasks and things can be effective. And finally, one of the best things for the prosecution and something to look out for from the defense and preparing your defense is the jailhouse phone calls. A lot of times when somebody is arrested for DWI, they're idiots. And so they get on the jailhouse phone. And even though the jailhouse phone says, everything's being recorded, they'll call up their buddy and say, Yeah, I got hammered man, and the cop busted me and I'd had 12 beers and blah, blah, blah, blah, blah. And they put it all in there on the recording. And that's a complete confession. And it's completely admissible, because there's no protection about being stupid.

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Now, in most cases, there's going to be that an individual's arrested, there's going to be a request from the officer, that the person either provide a specimen of their blood or their breath. In Texas, it's up to the officer to decide whether or not they want a sample of breath or blood. It's not up to the person to choose what type of sample they want to give. There is a provision in the Texas code in most states that an individual automatically consents to giving of a breath or blood specimen, as part of their conditions have of having a driver's license, if they're arrested for DWI. And if they do refuse to give a specimen, and their license is suspended, I can go through and hlr license revocation hearing. There was a provision a statute for a couple of years, that's real recently been ruled unconstitutional, through the Texas Court of Criminal Appeals based off a finding in Missouri versus be nearly a Supreme Court case. But mandatory blood draws, and we'll go to those a little bit more detail in a little bit. And so the ostracon asked for a blood sample or a breast sample. Generally speaking, a portable breathalyzer test, even though they're often often used out in the field, those results are not admissible. It's really just a tool to help the officer make the decision on whether or not to make an arrest, but it's not admissible within court. In order to have an intoxilyzer, typically, in a jail, you'll or in a police station, you'll have to have a certified intoxilyzer operator who's been through the courses, they'll have to go through all the steps to make sure that the proper calibrations and the machine the clearing out of the breath chamber

has been done before their breath test is given. Typically what happens, and a lot of times this is videotaped, is the defendant will be sitting in a chair, but they get very deep breath. And I'll be required to blow into the machine, you have to be able to blow for a certain period of time. The reason for that is because in order for the test, to be administered properly, it has to be deep, long air that goes into the system for the spectroscopy to be able to do its job. And so if the person tries to cheat it, if they give a small breath that they don't blow hard enough, that it won't give a valid result. And that will that will show up. And improper result. Usually, there's two different tests that are given. So you start off there, there's a sample where there's blood clear out through the system and do tests that clearer than their individual gives two samples of his breath, his or her breath. In those samples, there used to be admitted in court, and it's accepted in pretty much every court in the United States. In addition to the intoxilyzer operator, you also have a technical supervisor, who's in charge of a particular district and maintains those machines. That's the person who shows that those machines have been recently calibrated. They have all their factory checks that they're in good working order. And they also make sure that all the intoxilyzer operators have kept up with their training. They look not only at their training, but they also look at their actual results and how how consistent the results are with one with the other. And so that's those two individuals are you're going to see as experts what's funny about DWI law is the DWI is is a result of a lot of the lobbyist efforts. I carry a whole lot more penalties, both civil and societal, a lot of other crimes. And as a result, a lot of individuals who are trying to escape those punishments have invested a lot of money into DWI defense. As a result, a lot more evidence has come out, scientific evidence has come out on a DWI. In fact, most of time, you'll have more data via more scientific expert evidence admitted in a DWI case than you ever would in in a murder and aggravated assault. So at least two experts that you're going to see from the prosecution in almost every DWI with a breath test has been given is going to be the intoxilyzer operator and the technical supervisor. And they're going to be able to speak not only to those tests, but also other, they're generally experts in other areas of DWI, enforcement as well. Now on reserve versus Meneely, basically, there was a lot of state statutes, which stated that a person gives consent as if they as a result of having a driver's license, and that that consent is not vocable, not revocable. So

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basically, individuals, even if they were given the option of giving blood or breath, if they refused, well, then they were forcibly taking into a hospital and a needle put in their arm and the blood was drawn whether they wanted to or not. And this was done without a warrant, based on that implied consent statute. And what McNeely said was, you know, that's not enough. It's not enough just to say because blood alcohol dissipates, and somebody has a driver's license, he can forcibly take a sample, it's got to be more than that. And as a result, even though the law This is still being litigated in Texas recently have said, it's just a dead deal. It takes a quarter Colonel pills based came out and said it's a violation of the Fourth Amendment, and in every case, and that you're never gonna be able to forcibly take this without a warrant. But for law enforcement warrants are

easy enough to get a lot of jurisdictions nowadays, not only do they have fax machine warrants that they'll get from officers now, when from judges, they'll actually get tablet based warrants and they'll have a warrant template on an iPad or tablet, they'll check the boxes of the clues or writing a few others that establish the probable cause, texted or email it to the judge the judge docu signs electronically and sends it back. And within, you know, five minutes, you can have a warrant to pull somebody's blood for a DWI offense.

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Now, there's a lot of different enhancements having to do with the DWI statutes, they've evolved a lot over the course of the last decade or 15 years. So in addition to basic DWI, which least in Texas, a Class B misdemeanor, you also have heightened offenses based on the circumstances. So for example, if there's a child passenger, which in Texas is considered anybody 15 years of age or younger, well, then instead of being a Class B misdemeanor, it automatically elevates it to a state jail felony, much more serious offense. If it's an individual who gives a breath or blood sample, and that breath of blood sample shows both point one five was a little bit less than double the legal limit, then that individuals face in class a misdemeanor, as opposed to a class B much higher level of pot, it's actually a double level of punishment. For every subsequent arrest, and conviction, the level of the offense increases. So after the first DWI, it's a Class B after the second it's a class a third DDI bi jumps up to a third degree felony. And once it becomes a third degree felony, it can be enhanced with subsequent DWI prosecutions. So by the time you have five DWI, you can be actually prosecuted and serve life in prison for DWI. Additionally, if you had those prior convictions, and you've previously been convicted of a felony DWI, and you're involved in a collision where kill someone, then you're looking at felony murder, and you can actually be tried for murder based on DWI collision. In addition to felony murder, you also have intoxication manslaughter, which could be your very first time that you have a DWI accident. If you're involved in a collision and kill somebody, you're then facing intoxication manslaughter. Now one of the things that we've neglected to talk about so far is the methods of intoxication. It's not just alcohol. It's not just beer or wine or whiskey. It's also drugs and there's really little in the law that distinguishes between drugs or alcohol. In fact, in the statute, it says, alcohol or other dangerous drugs, it doesn't have to be illegal drugs, it could be prescription. You know, if you're reading your prescription label on your vikan it says not to operate a vehicle and yet you go out and operate that vehicle and in a way and your faculties are impaired. You can be arrested and charged with driving while intoxicated. Obviously, if you're abusing other types of drugs, then marijuana, cocaine, etc, anything that you put into your system that's going to cause you to be impaired. And you can pretty much be prosecuted for, however, the manner of proving that is going to change dramatically. The standardized field sobriety test number two, and three, the walk and turn the one leg stand, are still valid for establishing the impairment. But the HTN is different. Because other drugs besides alcohol do not affect hgn in the same way. Instead, what they have. And there's very few of these, but there you have what you'd call drug recognition experts. And these

are a number of police officers who've gone through very extensive training, and they'll sit down within the offender in a jail, usually after the person has been arrested. And they'll check different things. They're the dilation of pupils, their response to light, there's a number of different drugs that they have reference for, and the look for different indications of the drugs based on that. And of course, the best indication of what type of drug the individual beyond will be found in the car or on the scene or in the person's pocket or by asking, because a lot of times, they'll be honest and say, Yeah, I smoked, I smoke weed, or I did this or I did that. Also that olfactory smell of the marijuana can indicate. Also, there's other things that have a known very clear, distinct smell. A lot of people like recently had a case where a guy had been huffing with dust off, and is a very strong, very unique chemical smell, that the both the officer and other witnesses in the stand me other witnesses at the same could identify. And so that's a pretty good indication of that drug. You can't take blood test for drugs, but honestly, they're not super effective. Usually they can show that there's a presence of drugs or not. But it can't really show how how close in reference to the driving had happened. So yes, it shows that they use cocaine sometime in the last few days. But not necessarily that they were high at the time that they're driving still, it's probative. And it's better than than nothing for the prosecution, but still gives grounds for the defense to attack, say, Hey, you know, even though it shows they had drugs, fine, but it's from days before

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breath test doesn't really show, you know, and unfortunately for prosecution, most labs do not have the ability to test for the synthetic marijuana that's been kind of hitting the streets and been very pervasive lately. synthetic marijuana is very difficult to test for, as a lot of the inhalants that are out there. But still, somebody that has been engaged in error is impaired with by drugs, I can be the same as, as with alcohol. Now, before we talked about how there's a lot of scientific evidence that goes into DWI, and DUI litigation, do your research both on your experts and on their experts. It's become a cottage industry where a lot of former police officers are making a good living being testifying for the defense or to testifying for the prosecution. And a lot of some of these guys will just say whatever they get paid to say. So it'd be good to be able to research them and say, okay, of the 45 different cases, you know, because there's a lot of forums where different lawyers can go on and talk about what they you know, their experience with different experts, you can look at their professional history and say, okay, the 45 particular cases, that you've been hired on the defense, you've found error in the way that the officer admitted the test and all 45 you know, the different types of things like that, to undermine It could also undermine their technical skills. I mean, just because somebody was patrolling for 30 years doesn't mean they're necessarily an expert. You can use that to attack their credentials, whether or not they're really the experts that you have think of, but also review your own guys, because you don't want them to get up on standard you've torn apart for their own lack of credibility. A lot of times, what you'll see is that those experts, they're going to attack the author's performance of this field sobriety test. And let me nitpicking so well, you know, he was 19 inches away instead of 1218. So

then it's no longer effective. Or, you know, he he held 31 seconds when it should have been 30, things like that and say, well, the evidence is no longer valid because he didn't strictly adhere to the the methodology of the standardized field sobriety test. But one way to combat that is make sure your officers do know the manual from National Highway Traffic Safety Administration, and they follow it they do a good job, or if your defense attorney that you know the manual know how to pick it apart, but to is realize that everything in the DWI is cumulative. And it's all probative. There's nothing that says that if there's small factors, case law supporting that if there's small deviations, In a manner that whenever it's administered, it's still effective.

45:09

Another thing about experts is I think it's very effective to build your own expert. And what I mean this is is you'll have an officer in your community, or if you're a defense attorney, you'll have somebody in your community as an investigator, who's been, who in some way has some type of expertise in there based on the training they've been through, or the number of arrests they've made. And if you can prove them up as experts, a lot of times they're much more effective, because they're not simply seen as a hired gun by the jury. And a lot of times would be a lot less expensive for you to get them to cooperate, and they're gonna be much more responsive to being able to be there on time. So it's always a good idea, if possible, to build your own. And finally, there's a lot of literature out there on DWI, there's tons of websites that I've included as resources that you can use, and you can use the literature out there to either bolster or attack. The experts. It's it's, it's not rocket science, it's kind of thing that you can review and look and determine for yourself. And there's a lot of resources on both sides. I gave you the links to the Texas district and county Attorneys Association website where they have a lot of DWI information, including a lot of really good videos having to do the field sobriety test. In addition, with the National Highway Traffic Safety Administration, they also have a lot of good information. They have a pamphlet called cross examination for prosecutors of DWI cases. And they also have a lot of really good information. And there's also the natural National College of drugs, defensive driving, attorneys. And if you look at that website, again, they have a lot of really good information. This is only a nutshell, you can spend three or four days studying DWI law and the best ways and pros and cons to present or defend a DWI case. But this is a I think, pretty good primer, hopefully gave you some good resources of where to go to, so you can find out for more information. Again, my name is Anna Marie. My email is in the information and my phone number. Feel free to give me a call if you have additional questions. Thanks. Of course, everything we've discussed here today, and is what applies here in Texas. And more specifically in Odessa. Every state's different every jurisdiction is different. And my opinions may not be the opinions of my boss. So take everything with a grain of salt and apply what works for you in your local jurisdiction and your local justices and in your local courts. Thank you