DWI in a Nutshell

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DWI In A Nutshell

Presenter

- Adam Muery, DDA Ector County
  - Medically Retired Master Texas Peace Officer
  - Special Investigations Counsel, Office Of the Attorney General of Texas (2005-2007)
  - Chief Inspector General, Directorate of Interior Affairs – Baghdad Iraq (2007-2008)
  - B.S. Texas A&M University 2001
  - J.D. University of Texas 2004

DWI In A Nutshell

Elements of the Offense

- Operate a motor vehicle
  - Not Just a Car
- In a public place
  - Substantial portion of the public has access
- While intoxicated
  - Impairment of mental or physical faculties or
  - Blood Alcohol Content of .08 or higher
    - ***Texas Penal Code Section 49***

DWI In A Nutshell

Step 1: The Stop

- Driving Behavior / Traffic Violation
- Collission/Accident
- DWI Checkpoint (none in Texas)
- Voluntary Encounter/ Welfare Concern

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Step 2: Detection of Impairment

- Glassy / Blood Shot Eyes
- Odor – Alcohol or Drugs
- Slurred Speech
- Disorientation
- Unsteady Balance
- Difficulty retrieving documents

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Step 3: Standardized Field Sobriety Tests

- HGN (Horizontal Gaze Nystagmus)
- One Leg Stand
- Walk and Turn

Divided attention test that requires person to concentrate on multiple tasks at same time. Measures persons mental and physical faculties to operate care safely.

- National Highway Traffic Safety Administration - NHTSA

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Step 3: Standardized Field Sobriety Tests

- HGN (Horizontal Gaze Nystagmus)
  - https://www.youtube.com/watch?v=selZ9WrD7ac
  1. Check Pupils are of equal size and check for resting nystagmus
  2. Check to see eyes are tracking equally
  3. 6 Clues: 3 for each eye
     1. Lack of Smooth Pursuit
     2. Distinct and Sustained Nystagmus at Maximum Deviation
     3. Onset of Nystagmus Prior to 45 degrees

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Step 3: Standardized Field Sobriety Tests

- Walk and Turn
  - Heel-to-toe stance, hold arms down at sides, and tell driver not to begin until told to begin.
  - Officer Demonstrates
  - 8 validated clues
  - 2 or more clues indicates 68% likelihood BAC is greater than .10

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Step 3: Standardized Field Sobriety Tests

- Walk and Turn 8 validated clues
  - During Instructions
    - Cannot keep balance
    - Starts too soon
  - During Test
    - Stops walking
    - Steps off line
    - Wrong number of steps
    - Misses heel to toe
    - Uses arms to balance
    - Turns improperly

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Step 3: Standardized Field Sobriety Tests

- One Leg Stand
  - Sways while balancing
  - Uses arms to balance
  - Hopping
  - Puts foot down

  - 2 or more clues indicate a 68 percent likelihood that BAC is greater than .10

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Step 3: Non - Standardized Field Sobriety Tests

- Rhomberg
- Fingertip Count
- Alphabet

  – These test are probative to determining impairment but not standardized

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Other Indicia of Guilt/Innocence

- Open containers in vehicle
  - Quantity, temperature, location
- Physical Condition of Defendant
  - If accident
    - DNA from airbag or windshield
    - Seatbelt strap marks
  - Bar Stamps
- Physical condition of automobile
  - Damage to wheels
  - Seat settings (large person or small person)
  - Fingerprints/ Blood Spatter
  - Inspection Sticker
  - Registration
- Insurance Information - statements

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Other Indicia of Guilt/Innocence

- Passengers/Witnesses
- VIDEO
  - In Car
  - In Jail/Booking
- Phone Calls from Jail

DWI In A Nutshell

- Blow or Bleed?
  - Officer's Choice
- PBT Generally Not Admissible
- Intoxilyzer Operator
- Technical Supervisor
  - Retrograde Extrapolation
- Consent is condition of Driver's License
  - Suspension
- *Missouri v. McNeely*, 133 S. Ct. 1552 (2013);
  - Death of mandatory blood draw in most states
- Warrants for Blood Draw

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- DWI vs. DUI
- Enhancements
  - Child Passenger
  - Subsequent Arrests
  - BAC over .15
- Deadly Weapon Finding
- Intoxication Manslaughter
- Felony Murder

DWI In A Nutshell

- Drugs
  - Prescription
  - Marijuana
  - DRE (Drug Recognition Expert)
  - SFST
  - No HGN
  - Blood Tests
  - No Breath

DWI In A Nutshell

- Experts
  - Research their background
  - Build your own
  - Literature is out there for the taking
- Resources
  - http://www.tdcaa.com/dwi/index.html
  - http://www.nhtsa.gov/Impaired
  - https://www.ncdd.com/

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What Every Attorney Should Know About Traffic Stops

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