

THE TERRIBLE PRICE OF A DUI/DUAC CONVICTION

**AND DEFENSES YOU
MIGHT NOT KNOW ABOUT**



ROB USRY

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ROB USRY, ATTORNEY AT LAW

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A LITTLE MORE ABOUT ROB USRY



I've been defending DUI/DUAC cases from almost the time I started practicing law in 2001, including repeat offenses and felony DUI. I've tried many DUI cases to jury verdict, and had even more cases dismissed by pre-trial motion. These cases form a major part of my practice, and I'm proud to help people charged with these offenses.

In the years I've defended folks charged with DUI/DUAC, I've realized many, if not most, of these charges are an officer's opinion someone committed the offense. I am deeply thankful for effective police work - it keeps us all safe. But we all know about opinions- some of them are mistaken. Sometimes you can have all the facts and reach the wrong conclusion.

I'm like everyone else- I want the roads safe for my family and friends and you. I do not endorse driving under the influence. But convicting a person based on an officer's mistaken opinion is convicting that person of a crime he didn't commit. And that doesn't make anyone safer. It makes us all more vulnerable to an officer's unjustified opinion that carries an extremely high price for folks charged with these crimes.

A LITTLE MORE ABOUT THE OTHER LAWYERS AT HOLLAND & USRY

I'm not the only lawyer at our firm who handles DUI/DUAC cases.



Bob Holland is the founder of our firm. He started practicing law in Spartanburg in 1975. In that time, he's handled hundreds of DUI cases, from DUI/DUAC 1st to repeat offenses to felony DUI. Over the course of his long career, he's tried well over 100 of these cases to verdict and had many more dismissed before trial or reduced by agreement of the State.

John Holland has been a lawyer since 2007. He also handles these cases.



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AN IMPORTANT NOTE FROM ROB USRY

The aim of this book is to provide basic information about South Carolina DUI and DUAC penalties, which may stretch even further than you thought, and describe some defenses you might not know existed. If you're already charged with one, you're starting in the right place- trying to learn about what you face. It's important you remember you need to act fast to preserve your rights- **legal deadlines are fast approaching that could cost you the ability to fight the charge**, forcing you to suffer consequences you might have avoided. If you're charged with a South Carolina DUI or DUAC, call me at Holland & Usry right now for a free meeting to discuss your case at 864.582.0416 or toll free at 888.230.1841.

I hope this book gives you hope and encourages you not to give up. That said, not every case is winnable, even with a lawyer. Some DUI/DUAC cases end up as guilty pleas. A lawyer who tells you he guarantees a win is one you should walk away from. The law is like life- there are no guarantees. But I've found in my career that the complexities of DUI law and the ways an experienced DUI trial lawyer can cross-examine officers can dramatically increase the chances of success. If you're charged with a DUI/DUAC, you owe it

to yourself to discuss your case with an experienced DUI/DUAC trial lawyer. I'll meet with you for free to talk about your case, your rights, and what our firm can do to help you. Call us right now to schedule it at 864.582.0416 or toll free at 888.230.1841.

While I tried to be as comprehensive as possible about some of the basic issues that come up in these cases, I do not pretend to address every possible question that might arise in DUI/DUAC cases- if I did, this book would be hundreds of pages! As always, if you have a question that's not answered here, I will be delighted to talk to you on the phone or meet with you to discuss your case. Call us at 864.582.0416 or toll free at 888.230.1841.

This book concerns only South Carolina DUI/DUACs. Like all lawyers at Holland & Usry, I am licensed to practice law in South Carolina only. Any statements made about the law or procedure concern only South Carolina law. Crossing another state's line is sometimes like crossing into a foreign country – the laws may be totally different. If you got charged outside South Carolina, you need to find a lawyer in that state. Feel free to call us to see if we can put you in touch with one.

This book is not intended to create, and does not create, an attorney-client relationship.

The only purpose of this book is to give some basic information. The content of this book is not legal advice. The authors and publisher make no warranties, express or implied, and accept no responsibility or liability about the accuracy or completeness of the content, especially as it relates to the

reader's specific legal situation. The content does not give, and is not intended to give, a general solution for all apparently similar legal situations, since slight changes in facts may require totally different action or create a totally different outcome. Every case involves different facts, and those facts determine the outcome more than anything else. A single different fact can change everything. Think about it like this- the difference between 12 A.M. (midnight) and 12 P.M. (noon) is the difference between night and day.

For advice on your legal situation, you should personally consult a lawyer. I'd be delighted to talk to you. Call me today at 864.582.0416 or toll free at 888.230.1841 to schedule your consultation. Check our firm out on the web at www.bhollandlawfirm.com.

CHAPTER 1

DUAC-DEBUNKING THE MYTH

DUAC (Driving with an Unlawful Alcohol Concentration) is a relatively new charge in South Carolina. Before discussing what it is, it's important to understand what it is **not**. You might be charged with DUAC originally, or the officer might offer it as a plea bargain for a DUI. Before you even consider pleading guilty – which you should not, without the advice of an experienced DUAC lawyer – you need to understand the truth behind two myths about DUAC:

1. **DUAC goes on your permanent, public criminal record.** It is like any other criminal charge, just like DUI. It goes on both your criminal record and your driving record. Anyone who tells you different is mistaken.
2. **DUAC carries the same penalties and problems as a DUI.** You face the same exposure to fines, jail time, license suspension, SR-22 insurance, and all the other high costs of a DUI mentioned later in this book.

What DUAC is: DUAC is driving with an unlawful alcohol concentration of .08 or more. **BUT JUST BECAUSE YOU**

BLEW OVER .08 DOES NOT MEAN YOU ARE AUTOMATICALLY GUILTY. The State still has to prove your guilt beyond reasonable doubt to a jury at trial, and most importantly, **you have the right to have the jury consider the virtually the same defenses you would if you were charged with DUI.**

DUAC, in my experience, is not necessarily the open-and-shut case the State would have you believe. You may have defenses that could get the case dismissed before trial, or get evidence thrown out resulting in an acquittal or a reduction of the charge, or earn an acquittal at trial. To further discuss your DUAC charge for no cost and explore your potential defenses, call me at Holland & Usry at 864.582.0416 or toll free 888.230.1841.

CHAPTER 2

CRIMINAL PENALTIES OF DUI/DUAC

The following are the range of criminal sentences you can face for various DUI or DUAC convictions as of January 1, 2014. The legislature often changes the penalties, so to find out exactly what you're facing, feel free to call me at Holland & Usry at 864.582.0416 or toll free 888.230.1841. **These are just the criminal penalties** - read further to learn about a potential double license suspension, higher insurance rates, and the other costs of conviction. If you have a DUI/DUAC charge, you owe it to yourself to discuss your case, your defenses, and your options with an experienced DUI/DUAC lawyer. I'll do this for you at no cost. To explore your potential defenses, call me.

DUI/DUAC sentences are based on your blood or breath alcohol test result. The amount set by law for fines is misleading because court costs and assessments get added, which usually **more than doubles the fine amount**. That's why I give a more accurate estimate of the amount you'll actually pay the court for each charge.

DUI/DUAC 1st Offense Criminal Sentences

- **Refusal or .09 or less:** \$400 fine, **meaning around \$1,025** OR jail from 48 hours up to 30 days. The judge can order 48 hours of community service instead of the minimum jail term.
- **.10 - .15:-** \$500 fine, **meaning around \$1,250** OR jail from 72 hours up to 30 days. The judge can order 72 hours of community service instead of the minimum jail term.
- **.16 and up:** \$1,000 fine, **meaning around \$2,270** OR jail from 30 - 90 days. The judge can order 30 days of community service instead of the minimum jail term.

Repeat Offenses-

What They Mean and How They're Measured

Another reason to fight the first DUI/DUAC charge is to prevent exposure to a repeat offense. Repeat offenses mean harsher sentences- and longer license suspensions. If you are convicted of DUI/DUAC, you are subject to a potential repeat offense for DUI/DUAC charges occurring **within 10 years of the date you got arrested for that offense**. For example, say you got arrested for DUI 1st on June 1, 2012. You get convicted in 2013. After your conviction, if you get arrested for another DUI/DUAC on or before June 1, 2022, it will be a second offense. And it doesn't matter what the charge is for a repeat offense- if you get convicted of DUI 1st, a DUAC charge within the 10 year limit will be a second offense.

DUI/DUAC 2nd Offense Criminal Sentences

- **Refusal or .09 or less:** \$2,100 - \$5,100 fine, **meaning around \$4,200 - \$10,200 – with a mandatory minimum of at least \$2,200- AND mandatory minimum of 5 days in jail**, up to a year. There is no community service option.
- **.10 - .15:** \$2,500 - \$5,500 fine, **meaning around \$5,000 - \$11,000 – with a mandatory minimum of at least \$2,200 AND mandatory minimum of 30 days in jail**, up to 2 years. There is no community service option.
- **.16 and up:** \$3,500 - \$6,500 fine, **meaning around \$7,000 - \$13,000 – with a mandatory minimum of at least \$2,200 AND mandatory minimum of 90 days in jail**, up to 3 years. There is no community service option.

DUI/DUAC 3rd Offense Criminal Sentences

- **Refusal or .09 or less:** \$3,800 - \$6,300 fine, **meaning around \$7,600 - \$12,600 – with a mandatory minimum of at least \$4,200 AND mandatory minimum of 60 days in jail**, up to 3 years. There is no community service option.
- **.10 - .15:** \$5,000 - \$7,500 fine, **meaning around \$10,000 - \$15,000 – with a mandatory minimum of at least \$4,200 AND mandatory minimum of 90 days in jail**, up to 4 years. There is no community service option.

- **.16 and up:** \$7,500 - \$10,000 fine, **meaning around \$15,000 - \$20,000 – with a mandatory minimum of at least \$4,200 AND mandatory minimum of 6 months in jail**, up to 5 years. There is no community service option.

DUI/DUAC 4th Offense and Up Criminal Sentences

- **Refusal or .09 or less:** Prison, a mandatory minimum of 1 year up to 5 years.
- **.10 - .15:** Prison, a mandatory minimum of 2 years up to 6 years.
- **.16 and up:** Prison, a mandatory minimum of 3 years up to 7 years.

Repeat offenses are handled in General Sessions court– the highest trial court where the most serious offenses are handled. This is not the place to go it alone. You need an experienced DUI/DUAC trial lawyer who knows the law, can properly evaluate your case and prepare your defense, and even if the case cannot be won at trial, can work to convince the State to agree recommending the most lenient sentence to the judge at a guilty plea. If you have a repeat offense, it won't cost you anything to discuss your case with me, but if you risk going at it alone without an experienced DUI/DUAC lawyer, you could lose even more than you bargained for. Call me for a free meeting at 864.582.0416 or toll free at 888.230.1841.

CHAPTER 3

OTHER PROBLEMS CAUSED BY A DUI/DUAC CONVICTION

Often the worst problem with a DUI/DUAC conviction is not the criminal sentence. It's everything else that happens as a result of it, which got even worse with Emma's Law requiring ignition interlock for some first time offenders for arrests on or after October 1, 2014. Ignition interlock is discussed below. These other problems include:

1. **Driver license suspension** – for a first conviction, 6 months. **For arrests before October 1, 2014**, you can get a provisional license valid for 6 months from the date on the license, but only after you enroll in ADSAP and get SR-22 insurance- see below.

For arrests on or after October 1, 2014, you can only get a provisional license if you blew less than .15. If you **refused** the breath test, you need costly ignition interlock to end your suspension or you can't drive for 6 months. Even if you serve most of the suspension before getting interlock, you must have interlock at least 3 months. If

you blew **.15 or more**, you must have ignition interlock for 6 months, which ends your suspension.

Repeat offenders are not eligible for provisional licenses. **For arrests before October 1, 2014**, a **second conviction** means your license is suspended a year; for a **third conviction**, 2 years; and for a **fourth conviction and up**, your driver's license is permanently revoked. The length of the suspension is based on DMV records of DUI/DUAC violations, so **pleading to a DUI 1st for a DUI 2nd subjects you to a year-long suspension with no provisional license.**

- **For arrests on or after October 1, 2014**, your license is suspended until you get ignition interlock. Duration of repeat offender interlock is covered in Chapter 4.
2. **Ignition interlock** - a device installed in the ignition system of your car that gives you a breath alcohol test before your car will turn on. Only devices approved by the State can be used. **You pay a monthly fee** for the cost of the system. You can learn more about approved devices and try to find out the cost at http://www.dppps.sc.gov/IIDP_vendor_information.html.

Maintenance and penalties: Ignition interlock is expensive and burdensome. Devices must be inspected regularly, meaning you take the time to take your car for an inspection. Attempting to start the car with alcohol concentrations as low as .02 causes an increasing scale of violation points assessed against you, causing increasing

penalties from extending the length of interlock to requiring an ADSAP assessment and successful completion of any program recommended by ADSAP, up to license suspension.

It is a crime to avoid the device. Driving without the device is a criminal offense punishable under Emma’s Law by up to a year in prison plus an extension of interlock for another 6 months for a first offense, except for certain exceptions. Other criminal offenses arise from trying to avoid the device, like having someone else blow in it, or even asking them to.

Ignition interlock is run by the Department of Probation, Parole and Pardon Services (DPPPS). You can learn more about interlock at: http://www.dppps.sc.gov/IIDP_faq.html.

3. **Alcohol and Drug Safety Action Program (ADSAP)**- This is a State program commonly called “drunk driving classes.” The minimum cost is \$500, but they can charge up to a maximum of \$2,500. If you do not enroll or participate as required by law, state law requires the sentencing court to be notified so you can be brought back into court to possibly be sentenced for contempt of court, which could include jail.
4. **SR-22 Insurance** – Commonly called “drunk driving insurance”, it can cause some auto insurance companies to cancel your coverage, and you can be virtually certain it will cause your premiums to skyrocket. **You are**

required to carry this expensive insurance for 3 years.

5. **Loss of scholarship** - Students on South Carolina Life Scholarships are ineligible for the scholarship until after the expiration of 1 academic year from conviction.
6. **Loss of employment opportunities** - License suspension can create frustration by forcing you to get a ride to work if you cannot obtain a provisional license or ignition interlock. Worse, some employers have an anti-DUI policy, creating the threat of losing a current or future job as a result of a conviction. This can be especially true for anyone requiring a company car and commercial drivers' license (CDL) holders, like truckers.

Anyone charged with a DUI or DUAC has a lot to lose. Don't subject yourself to this without consulting an experienced DUI/DUAC lawyer to explain your rights and explore your potential defenses. Call me for a free meeting at 864.582.0416 or toll free at 888.230.1841.

CHAPTER 4

ADDITIONAL PROBLEMS FOR REPEAT OFFENDERS

The high cost of a repeat DUI/DUAC conviction doesn't end with stiffer fines, mandatory jail time, and longer license suspensions. Repeat offenders also face:

Longer ignition interlock: Ignition interlock is addressed in more detail in Chapter 3. **For arrests before October 1, 2014**, the device is required, starting after the license suspension ends, for a **second offense, 2 years**; for a **third offense, 3 years**; and for a **fourth offense or more, for life**. A fourth or subsequent offender who gets his license reinstated can apply for removal of the device 10 years from the date of the last conviction and every five years after that, but must prove good cause to remove it.

- **“Repeat offender” is defined differently for ignition interlock:** Whether a person qualifies as a repeat offender requiring ignition interlock is based on DMV records of DUI violations, so **pleading to a DUI 1st for a DUI**

2nd and up will probably subject you to ignition interlock.

- **For arrests on or after October 1, 2014**, your license is suspended until you get interlock.

Vehicle immobilization - **For arrests before October 1, 2014**, during your driver's license suspension, your vehicle may be immobilized for 30 days, meaning you have to return all your vehicle registrations and license plates to the DMV so it cannot be driven. An innocent user of the vehicle may be able to use it, but must first get the DMV's permission by filling out a sworn statement.

- **For arrests on or after October 1, 2014**, you can avoid this by getting ignition interlock.

CHAPTER 5

ADMINISTRATIVE LICENSE SUSPENSION

In South Carolina, citizens accused of DUI/DUAC potentially face not one, but TWO separate license suspensions. As Chapter 3 reveals, if you are convicted of DUI/DUAC, you suffer license suspension. But administrative license suspension (ALS) can occur before you are even tried for the charge. Even if you are not a resident of South Carolina, your South Carolina ALS may be reported to your home state's Department of Motor Vehicles and could affect your home state driver's license.

When ALS applies - ALS allows the arresting officer to suspend your South Carolina driver's license (or privilege to drive in South Carolina if you are not a resident) as of the day of your arrest if you refuse the breath test OR take the test and blow .15 or over.

Suspension period - For a DUI/DUAC 1st offense, if you refused the test, your South Carolina license (or privilege to drive in South Carolina if you are not a resident) is suspended

for 6 months. If you blew .15 or over, the suspension is 1 month.

Suspension period longer for repeat offenders - If you have been **convicted of DUI/DUAC in the 10 years prior to your arrest OR had ALS in the 10 years prior to your arrest**, the suspension period for a refusal is 9 months; for .15 or over is 2 months. For a **third offense**, a refusal is 12 months; for .15 or over is 3 months. For a **fourth offense or more**, a refusal is 15 months; for .15 or over is 4 months.

Impact of Emma's Law - For arrests on or after October 1, 2014, you can end this suspension if you get ignition interlock, addressed in more detail in Chapter 3. Interlock is required a minimum of three months, even if less than three months remains on the suspension when you get it.

- You can still request an administrative hearing to contest the suspension and get a temporary alcohol license, as discussed below.

There's hope: ALS hearing and temporary license - You have the right to a hearing to determine whether the officer properly performed certain procedural steps. **THIS HEARING MUST BE REQUESTED IN WRITING WITHIN 30 DAYS OF YOUR ARREST OR YOU LOSE YOUR RIGHT TO IT.** If the hearing is requested in time, you may qualify for a temporary license allowing you to drive without restrictions within South Carolina pending the outcome of the hearing.

If you win the hearing, your license is reinstated. Even if you do not request a hearing or lose at the hearing, you may be

able to obtain a route-restricted license allowing you to drive for work or school purposes, but you will have to enroll in ADSAP first- see Chapter 3 about ADSAP. For arrests on or after October 1, 2014, you can end this suspension if you get ignition interlock.

To find out what the officer needs to prove to win ALS and **how an administrative hearing might help win your trial even if you lose that hearing**, call me right now for a free meeting to discuss your case before it's too late to request the hearing, at 888.230.1841 (toll free) or 864.582.0416.

CHAPTER 6

THE PRIMARY DUI DEFENSE- IT'S ABOUT IMPAIRMENT

Many people equate a DUI case with the reading from the breath test some DUI suspects take. While many refer to this as the “breathalyzer”, the breath test machine used in South Carolina is actually the BAC DataMaster DMT. But a DUI case often involves much more than just a number from a machine (or lack thereof). In fact, citizens accused of DUI have many rights and proving DUI can be harder than the State might have you think.

If you blew, it's important to get beyond that number from that machine. Here's what the law says about the number. In a DUI trial, the jury should be instructed by the judge **the breath test result is just one fact to consider. It is not conclusive evidence of guilt.**

I'll drop a little bombshell here: For DUI cases, there is no “legal limit” in South Carolina. In a DUI case, if you blow .08 or more, the law says only that the jury may infer you were under the influence. Translation: they don't have to.

And the truth is, juries acquit some suspects despite results way higher than .08. But with a test result .08 or more, it's harder to get a jury to acquit without a trial lawyer who can effectively show them the bigger picture.

Here's the bigger picture: To convict you of driving under the influence (DUI), the State must prove **beyond a reasonable doubt** you drove while your mental and physical abilities to drive were materially and appreciably impaired by alcohol or drugs or both. **Most cases come down to that one word- impaired.** As a citizen accused of a crime in America, a DUI suspect has nothing to prove- in fact, you have the right to not testify, and if you invoke it, the judge should instruct the jury they cannot even consider your silence as part of their deliberations. Instead, the State has to prove you guilty beyond a reasonable doubt.

An experienced DUI trial lawyer will be able to show the jury how you weren't impaired-or cast doubt on it- by pointing out how you drove, looked, acted, and did everyday things normally- which does not include field sobriety tests, which we cover in Chapter 9. The officer should've made videos of you at the roadside and breath test, which can be worth their weight in gold as discussed in Chapter 8. A DUI trial lawyer with a trained eye can also detect and effectively present how the officer didn't do his investigation properly or arrived at the wrong conclusion and maybe most importantly, find violations of your rights by the officer that could get your case dismissed or the charge reduced by negotiation with the State.

If you've gotten arrested for DUI 1st, the court date shown on your ticket is not a jury trial- you have to request a jury trial. **IFYOU DON'T HAVE A LAWYER WHO'S TOLD YOU NOT TO APPEAR AT THAT COURT DATE, YOU MUST BE THERE OR YOU'LL BE AUTOMATICALLY FOUND GUILTY.** You owe it to yourself to discuss your case with an experienced DUI trial lawyer before your first court date to avoid missing important legal deadlines that could lead to an uncontested conviction in what might well be a defensible case. To schedule a free meeting to discuss your defenses and protect your rights, call me right now at 888.230.1841 (toll free) or 864.582.0416.

CHAPTER 7

DUAC DEFENSES- THE SONG REMAINS ESSENTIALLY THE SAME

YOU ARE NOT AUTOMATICALLY GUILTY OF DUAC JUST BECAUSE YOU BLEW A .08 OR MORE.

In fact, South Carolina law provides citizens charged with DUAC with very important rights. Citizens charged with DUAC retain the most crucial right of all, the right to a jury trial. In a DUAC trial, just like in a DUI trial, the judge should instruct the jury the breath test result is one fact to consider.

South Carolina law also allows people charged with DUAC to challenge the legality of certain events leading to the charge, from the reason for the traffic stop through the breath test. South Carolina law also allows presentation of evidence casting doubt on the validity of the test result, including your driving, performance of field sobriety tests, and the videotapes made by the officer from the roadside and breath test room. An experienced DUAC trial lawyer will be able to effectively present this evidence. A DUAC trial lawyer with a trained eye can also detect more technical defenses regarding

the operation of the DataMaster machine and violations of your rights by the officer that could get your case dismissed or the charge reduced.

If you've gotten arrested for DUAC 1st, the court date shown on your ticket is not a jury trial- you have to request a jury trial. **IF YOU DON'T HAVE A LAWYER WHO'S TOLD YOU NOT TO APPEAR AT THAT COURT DATE, YOU MUST BE THERE OR YOU'LL BE AUTOMATICALLY FOUND GUILTY.** You owe it to yourself to discuss your case with an experienced DUAC trial lawyer early in the process to avoid missing important legal deadlines that could strip you of your rights. To schedule a free meeting to discuss your defenses and protect your rights, call me right now at 888.230.1841 (toll free) or 864.582.0416.

CHAPTER 8

IT'S OFTEN ALL ABOUT THE VIDEO

South Carolina law requires officers to video record, with very limited exceptions, both the roadside investigation of DUI/DUAC and the breath test, whether you take it or not. These videos are a valuable tool for both protecting your rights and preparing your defense for 2 very basic reasons, because to the trained eye of an experienced DUI/DUAC trial lawyer:

1. They show what you did right, and
2. They show what the officer did wrong.

Videos are often a source of highly technical defenses that can get your case dismissed before trial. This may be one of the most important reasons to hire a lawyer who regularly handles DUI/DUAC cases and is thoroughly knowledgeable about DUI/DUAC laws. Simply put, the South Carolina DUI/DUAC video law requires the videos to contain certain very specific aspects of the investigation. If the videos do not include these items, rulings of the South Carolina Supreme Court require dismissal, regardless of any

other evidence in the case. To make matters more complex, State law also includes certain very specific “excuses” for the officer to avoid these requirements. Your best shot at knowing the excuses and how to combat them will come from a lawyer already familiar with the law and these arguments.

Because these videos are so important to reveal technical defenses and develop more “obvious” trial defenses like non-impairment mentioned in Chapter 6, I typically spend 2 ½ - 3 times the length of the videos in studying and analyzing them. Sometimes I spend almost as many hours preparing pre-trial motions to dismiss as I do preparing for the actual jury trial.

I cannot emphasize how vital a thorough evaluation of your videos by an experienced DUI/DUAC trial lawyer can be – cases can be won or lost before a jury is ever picked based on how complex legal arguments developed from these videos are presented to a judge in a motion to dismiss or exclude evidence. Sometimes these motions can cause the State to offer a plea bargain to a reduced charge you can live with before the motions are ever heard.

If you’ve been charged with a DUI/DUAC, call me right now for a free, detailed discussion on what I look for in these videos and how it can help you, at toll free 888.230.1841 or 864.582.0416.

CHAPTER 9

THE STRANGE, THE BIZARRE, THE UNEXPECTED: FIELD SOBRIETY “TESTS”

If you felt silly doing the field sobriety tests on the side of the road, don't worry- everybody does. How could you not? They're just plain weird.

There are only three field sobriety tests recognized as standardized field sobriety tests, approved by the National Highway Transportation Safety Administration (NHTSA), a federal agency overseeing highway safety. But this does not mean they magically reveal you to be impaired. In my opinion, they don't really test much at all- if they truly evaluate driving ability, why don't we have to take them to get a driver's license?

Any other exercises besides standardized field sobriety tests have never been identified in any study as indicating alcohol impairment. These non-standardized, meaningless tasks include saying your ABC's (which nobody does after kindergarten) and touching all of your fingers to your thumb while counting (which would cause you to crash if you did it while driving).

The first thing you should know about standardized field sobriety tests is, if they are not given absolutely right, they are invalid. The reason they're called "standardized" is they must be given precisely according to the NHTSA manual officers get when they learn how to give them- the manual you did not get before you took them. Your lawyer should have a copy. The manual says the tests are invalid if they are not done exactly the way the manual teaches officers to give them. The trained eye of the experienced DUI/DUAC trial lawyer can detect if tests are given wrong, then develop a solid argument to have the test thrown out by the judge or deemed irrelevant by the jury, which could lead to a dismissal, reduction, or acquittal.

The second thing you should know about standardized field sobriety tests is, even if they are given absolutely right, they can still cause an officer to reach the wrong opinion.

These are the three standardized field sobriety tests:

1. **Horizontal Gaze Nystagmus** – The "follow the light with your eyes" test. This is a test developed by neurologists (brain doctors) to evaluate people for brain injuries. It measures involuntary eye jerking while looking at an object. While I've met some very smart officers, none of them had a medical degree. The test must be performed in a very specific way using a set number of passes across the eyes. In South Carolina, horizontal gaze nystagmus cannot be used alone to justify arrest. If that's the only standardized field sobriety test you get, your case might have a good shot of dismissal.

The last 2 standardized field sobriety tests are called “divided attention” tests. They supposedly test your ability to do more than one thing at once. Ask yourself if you could do any of this while driving.

2. **Walk and Turn** – Also called the “walk the line” test. In it, the officer looks for 8 clues indicating impairment. Two clues supposedly indicates impairment. The first 2 clues can occur before you start walking the line. Yep, you can fail this test before you start!
3. **One Leg Stand** – In this test, the officer looks for 4 clues, all of which relate to you not losing balance while standing for 30 seconds on one foot while counting out loud.

It is vital to have an experienced DUI/DUAC trial lawyer who knows how to attack the field sobriety tests because your performance on these tests is often given as the basis for why the officer arrested you. If it can be shown the officer gave them wrong or the jury can learn how truly unfair and irrelevant they are, the jury can consider your arrest unjustified and find you not guilty.

There is a laundry list of ways an experienced DUI/DUAC lawyer can attack these “tests”. In many cases I’ve found the tough part of attacking the field sobriety tests is just narrowing down all the arguments I have against them to the ones I feel will do the most damage to the State’s case. If you’ve been charged with DUI/DUAC, call me today so we can discuss your defenses against field sobriety tests and your case in general in more detail at 864.582.0416 or toll free 888.230.1841.

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THE TERRIBLE PRICE OF A DUI/DUAC CONVICTION



Rob graduated from Wofford in 1996. He graduated from law school at the University of South Carolina in 2000.

After law school, he worked as a law clerk for a state circuit court judge in Barnwell. After a year there, Rob returned to the Upstate in 2001 to practice law in Easley.

In 2005, Rob joined what's now Holland & Usry. Rob is grateful to practice law in Spartanburg. He is thankful to be part of this community, where he and his wife raise their four children. Rob and his family belong to First Presbyterian Church here in town, where he's been a deacon. Over the years, he's served Spartanburg on the boards of the local Red Cross and TOTAL Ministries, a mission funded by local churches to feed and clothe the less fortunate.

Rob has been honored to be an elected leader within the legal profession as a two-term member of the board of directors for the state criminal defense lawyers association.

For his entire legal career starting in 2001, Rob has worked to defend people accused of DUI, including repeat offenses and felony DUI. He has tried numerous DUI 1st cases to a jury verdict. Rob says, "The best thing about being a lawyer is I get to be a voice for folks who might not otherwise have one. I am very proud of the people I help and the causes I represent."

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