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- ✓ Describe accuracy rate of the DRE evaluation.
- ✓ Ensure DRE testimony strengthens other parts of the case, such as the stop and roadside SFSTs.
- ✓ Explain why the DRE's observations differ from the arresting officer.
- ✓ Explain missing signs or symptoms, including polydrug use and homeostasis, one reason for discrepancy in the time between the arrest and the DRE's evaluation.
- ✓ Demonstrate the use of a pupilometer and how blood pressure is taken, heart rate and temperature.
- ✓ Use visual aids.
  - Chart listing the signs of impairment observed by the DRE, arresting officer, and witnesses.
  - Video of SFSTs at roadside or during the DRE evaluation.
  - Videos of defendant's eye signs (Eyelid tremors, lack of convergence, and rebound dilation).
  - Chart with the 1-step protocol and a chart with the 7- drug categories.
  - Provide prosecutor with copies of booking photos and photos taken in the field depicting the physical condition and appearance of the impaired defendant.

### The Relevance Reveal-Present evidence via direct examination to explain relevance of technical DUI case aspects.

**WHY** Most jurors will not understand the relevance unless it is clearly explained.

- ✓ Explain relevance of ARIDE and/or the DRE Evaluation.
- ✓ Prosecutor must make evidence relevant to case for jurors.
- ✓ Arresting officer should explain the terms in SFSTs (divided attention, psychophysical tasks).
- ✓ Explain why the defendant driver's performance on those tasks is important and how they work together.
- ✓ Prosecutor should present tasks on a presentation slide as the officer testifies (but not before).

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- ✓ Conclude with "All of these driving tasks are divided attention psychophysical tasks as are the Field Sobriety Tests, I administered to the defendant."
- ✓ Discuss the visual difficulties experienced by a driver with lack of convergence and dilated pupils
- ✓ Discuss the effect of altered perception of time with certain Romberg test results.

### Provide Booking Photos and Photocopy of the Driver's License or ID

Arresting officers should provide the prosecutor with copies of booking photos and photos taken in the field when they depict the physical condition and appearance of the impaired defendant.

### Summary Conclusion of Officer's Direct Testimony

**WHY** Summarize the evidence to support the charges filed. This allows the jury to hear a powerful summation from the officer

- ✓ Be prepared to state your opinions on whether or not the defendant could drive safely.
- ✓ Back up your opinion by summarizing all of the evidence piece by piece.

#### QUESTIONS

**Q:** Did you form an opinion of whether the defendant could safely drive?

**A:** Yes

**Q:** What is that opinion?

### Be safe out there!

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 Derived from the DUI/DUID Silver Bullet Presentations

# Law Enforcement DUI Testimony

## SILVER TIPS CHECKLIST



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### Maintain a log of DUI stops and arrests for courtroom testimony

**WHY** It establishes your credibility and fairness

- ✓ Maintain a DUI Enforcement log for all suspected impaired driving stops.
- ✓ Use a simple form like the [NHTSA SFST Manual](#). Update it regularly.
- ✓ Include Wet and Green Lab trainings as a student and instructor.
- ✓ Record all DUI stops even if an arrest is not made to accurately recall prosecutor questions such as, "What is the number of suspects you have arrested for impaired driving versus the total number you have stopped?"
- ✓ Record Standard Field Sobriety Tests (SFST) results, PBT or roadside oral fluid test results, any BACs obtained, and any drugs suspected, discovered in a blood test, or found in possession of the suspect.

### Engage in thorough but non-threatening conversations in your initial approach

**WHY** A friendly conversation promotes safety and can improve your investigation and the interaction

- ✓ When safety and opportunity permit question the suspect at the window of the vehicle.
- ✓ Be respectful and present in a friendly, non-threatening manner.
- ✓ Use a conversational context and tone.
- ✓ Use open-ended questions allowing the suspect to fill-in the blanks, and inform you of reasons for the driving behavior you witnessed.
- ✓ Add to this list of questions or change the order of the questions, and make it part of your routine.

#### REMEMBER

If you find probable cause to investigate further, the friendly, conversational tone should continue if officer safety allows.

## Sample questions:

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- Do you know why I stopped you?
- Don't be alarmed...(this is added to place the suspect at ease) ***I just want to make sure you don't have any health issues that you need assistance with or that are keeping you from safely driving tonight.***
- Do you have any injuries, illnesses, or medical conditions?
- Are you being treated by any doctor for these conditions? (Name of Doctor)
- Are you taking any medications for that problem?
- How many times a day? Did you take any today? When and how much?
- Was there a reason for... (whatever driving behavior you observed)?
- Where are you coming from?
- Have you been drinking alcohol?
- What size of drink? What type? How many?
- Who were you with while you were there?
- Did you have anything to eat? What? Where? When?
- What is your occupation? Physical requirements of that occupation?
- Are you being treated by any doctor for physically limiting conditions? (Name of Doctor)
- Are you taking any medications for that problem?
- How many times a day?
- "How much have you had to drink tonight" What? (beer, whiskey, mixed drinks, etc.)
- What kind? (light, high gravity, etc.)
- How many? What else?
- On a scale of 0 to 10 with 10 being very impaired—0 being totally sober, where would you say you are right now?"

## The Search Process

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### Look for instrumentalities of the crime

**WHY** Under [Arizona vs. Gant](#), a thorough search of the suspect's vehicle can only take place if probable cause has been established or Fourth Amendment exceptions of consent or plain view exist. The pre-arrest conversation described above may lead to the required probable cause.

#### Examples of instrumentalities of the crime:

- Bar receipts indicating the number and types of beverages consumed
- Credit card receipts indicating purchases made and establishing a timeline
- Open alcohol containers
- Cannabis and other drug paraphernalia
- Pills, pill bottles
- Prescription pads

#### EXPERT ADVICE

**!** *If drug-impaired driving is suspected, a DRE should be called in to evaluate the driver AFTER you have completed your investigation. Some cases may lead to larger drug investigations.*

## DUI Trial Tips—A Piece of Cake

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### Qualify Law Enforcement Witnesses

**WHY** Prosecutors who provide the jury with officer training and experience will demonstrate the arresting officer's expertise enhancing credibility.

- ✓ Properly question law enforcement witnesses at the start of their direct examination
- ✓ As a prosecutor, make time to adequately qualify an officer
- ✓ As a law enforcement witness, ensure adequate qualification by sharing your resume

#### Resumes should include:

- ✓ Professional and non-professional background, occupations, hobbies, and volunteer work.
- ✓ Military service and rank.
- ✓ All law enforcement training, experience, and education such as: Wet/green lab participation, instructor experience, course descriptions, all in-service trainings and topics, time on the force and duties
- ✓ DREs should include DRE pre-school, DRE school, evaluations in the presence of instructors, the knowledge exam, performing lifesaving/rule outs, their purpose, and all of their DRE training and experience before and since

### Administer SFSTs In the Standard Format Following the Exact Instructions of the [NHTSA SFST Manual](#).

**WHY** This increases the likelihood of a successful prosecution for impaired driving cases.

- ✓ Refer to your SFST manual at least once a month to review the proper SFST procedures.

#### NOTE

**!** *Jurisdictions should consider conducting [NHTSA SFST Refresher Manual](#) training. This could be done in conjunction with breath alcohol testing recertification training*

## Use Looping Questions and Answers When Establishing Reasonable Suspicion and/or Probable Cause

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**WHY** To allow the jury to better remember and understand your observations of driving and evidence of impairment and DRE observations.

- ✓ Prepare for direct examination with your trial prosecutor ahead of time.
- ✓ Suggest repetition and looping questions. Listen carefully to all questions.
- ✓ Answer only the question posed, then stop and wait for the next question.
- ✓ Answer questions while dash or body cam video (if available) is shown.

### Lay the foundation for DRE testimony

**WHY** A majority of jurors do not know what a DRE is and the expertise they possess

- ✓ Begin with DRE officer qualifications.
- ✓ Explain the drug matrix –
  - why seven drug categories;
  - how the matrix is used;
  - the origin of the standards;
  - provide an example of differing drug categories;
  - explain that not all signs and symptoms are required to find impairment of a particular drug category;
- initial observations of the defendant;
- conversation with the arresting officer; and,
- medical rule out.