

DWI PRESENTATION, HOW TO TRY A DWI CASE IN MUNICIPAL COURT

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Special thanks to the Missouri Office of Prosecution Services for providing information contained in these materials.

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For a digital copy of the current NHSTA manual go to:

https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/sfst_full_participant_manual_2018.pdf

Disclosure by the State

Missouri Supreme Court Rule 25 sets out the requirements and procedures for discovery. There

are many items that the State has to disclose to the defendant without a court order. Remember that

under Rule 25.08, the state has a continuing duty to disclose.

Rule 25.03 states that:

”(A) Except as otherwise provided in these Rules as to protective orders, the state shall, upon

written request of defendant's counsel, disclose to defendant's counsel such part or all of the

following material and information within its possession or control designated in said request:

(1) The names and last known addresses of persons whom the state intends to call as

witnesses at any hearing or at the trial, together with their written or recorded

statements, and existing memoranda, reporting or summarizing part or all of their oral

statements;

(2) Any written or recorded statements and the substance of any oral statements made

by the defendant or by a co-defendant, a list of all witnesses to the making, and a list of

all witnesses to the acknowledgment, of such statements, and the last known addresses

of such witnesses;

(3) Those portions of any existing transcript of grand jury proceedings which relate to

the offense with which defendant is charged, containing testimony of the defendant and

testimony of persons whom the state intends to call as witnesses at a hearing or trial;

(4) Any existing transcript of the preliminary hearing and of any prior trial held in the

defendant's case if the state has such in its possession or if such is available to the state;

(5) Any reports or statements of experts, made in connection with the particular case,

including results of physical or mental examinations and of scientific tests, experiments,

or comparisons;

(6) Any books, papers, documents, photographs, or objects, which the state intends to

introduce into evidence at the hearing or trial or which were obtained from or belong to

the defendant;

(7) Any record of prior criminal convictions of persons the state intends to call as

witnesses at a hearing or the trial;

(8) If there has been any photographic or electronic surveillance (including wiretapping),

relating to the offense with which the defendant is charged, of the defendant or of

conversations to which the defendant was a party or of his premises; this disclosure

shall be in the form of a written statement by counsel for the state briefly setting forth

the facts pertaining to the time, place, and persons making the same;

(9) Any material or information, within the possession or control of the state, which

tends to negate the guilt of the defendant as to the offense charged, mitigate the

degree of the offense charged, or reduce the punishment.”

When preparing for trial, it is important to make sure that all evidence has been disclosed. The following

is a list of typical items in a DWI case:

- Arresting officer’s report
 - Alcohol influence report
 - Names and addresses of all witnesses
 - Video of the traffic stop
 - Any other video or audio recordings
-
- Blood drawer’s credentials (pursuant to 577.029)

Blood Test Cases:

- Lab Report
- Chain of custody paperwork
- Type I permit
- CV/Resume of Type I permit holder

- Breath test ticket

Breath Test Cases:

- Type II or III permit of the LEO that administered test
- Type II or III permit of the LEO that observed the defendant for 15 minutes
- Maintenance report (577.020.6(5))
- Type II permit of the LEO that performed the maintenance of the instrument

- Written/recorded statements of witnesses

Crash Cases:

- Recordings of 911 calls
- Reports from ambulance/fire fighters or other first responders
- Medical records of victims
- Medical records of defendant
- Crash reconstruction report
- CV/resume of crash reconstructionist
- Pictures of scene

Under Rule 25.04, the defense may make a written motion requesting the state to disclose

materials not covered under Rule 25.03. The court shall grant the request as long as it is reasonable,

relevant and material to the defendant's case. However, under 577.020.6, there are limitations as to

what the state is required to produce:

“6. Upon the request of the person who is tested, full information concerning the test

shall be made available to such person. Full information is limited to the following:

- (1) The type of test administered and the procedures followed;
- (2) The time of the collection of the blood, breath, or urine sample analyzed;
- (3) The numerical results of the test indicating the alcohol content of the blood and
breath and urine;

(4) The type and status of any permit which was held by the person who performed the

test;

(5) If the test was administered by means of a breath-testing instrument, the date of the

most recent maintenance of such instrument.

Full information does not include manuals, schematics, or software of the instrument

used to test the person or any other material that is not in the actual possession of the

state. Additionally, full information does not include information in the possession of

the manufacturer of the test instrument.”

Disclosure by the Defendant

Rule 25 also sets out the discovery requirements for the defense.

Typically the witnesses for the

defense will either be passengers in the vehicle at the time of the offense or an expert witness. If you

are preparing for trial and you find that the defense has not responded to your request for discovery,

you may consider filing a motion to compel. An example can be found at the end of this chapter.

The following items are required to be disclosed by the defendant without a court order

pursuant to 25.05:

“(A) Except as otherwise provided in these Rules as to protective orders, and subject to

constitutional limitations, on written request by the state, the defendant shall disclose

to counsel for the state such part or all of the following material or information within

his possession or control designated in such request:

(1) Any reports or statements of experts made in connection with the particular

case, including results of physical or mental examinations and of scientific tests,

experiments, or comparisons, which the defense intends to introduce into evidence at a

hearing or trial, except that those portions of any of the above containing statements

made by the defendant shall not be disclosed;

(2) The names and last known addresses of persons, other than defendant, whom

defendant intends to call as witnesses at any hearing or at the trial, together with their

written or recorded statements, and existing memoranda reporting or summarizing part

or all of their oral statements;

(3) Those parts of any books, papers, documents, photographs, or objects, except

such as contain statements of the defendant, which the defendant intends to introduce

in evidence at a hearing or trial;

(4) If the defendant intends to rely on the defense of mental disease or defect

excluding responsibility, disclosure of such intent shall be in the form of a written

statement by counsel for the defendant;

(5) If the defendant intends to rely on the defense of alibi and the state in its

request specifies the place, date, and time of the crime charged, disclosure shall be in

the form of a written statement by counsel for the defendant, announcing such intent

and giving specific information as to the place at which the defendant claims to have

been at the time of the alleged offense, and, as particularly as is known, the names and

addresses of the witnesses by whom he proposes to establish such alibi.”

Predicate Questions – The Arresting Officer

A. Training and Experience

- Please state your name.
- Where are you employed?
- How long have you been employed by that agency?
- Do you have any other law enforcement experience?
- Where did you receive your initial law enforcement training?
- What year was that?
- During that time did you have any training on the detection of impaired drivers?
- Can you describe that training?
- Have you had any other training in the detection of impaired drivers?
- During this DWI training, have you ever had to pass a proficiency test?
- Approximately how many times have you arrested someone for DWI?
- When you do arrest someone who you believe to be impaired, do you arrest based on one indication of impairment?
- What do you base your arrest on?
- About how many times have you administered field sobriety tests?
- Have you ever administered field sobriety tests and then determined that that person was not impaired?
- About how many times has that happened?
- Other than in DWI enforcement, in your line of work do you ever come into contact with intoxicated people?
- About how often?

B. The Driving

- Were you working on _____ (date of arrest)?
- What were your duties on that date?
- Where were you at _____ (approximate time of offense)?
- Were you alone?
- Were you in uniform?
- At _____ (time) did you stop a vehicle that the defendant was driving?
- What kind of vehicle was it?
- What first brought your attention to the vehicle?
- Where were you when you first saw it?
- Is that location in _____, _____ (county and state)?
- Describe the roadway.
- Where was your vehicle with respect to the defendant's?
- Were you able to clearly view the defendant's vehicle?
- Please describe the lighting conditions at that time and location.

- Will you please describe the defendant's driving that night to the jury?
- Did you activate your emergency equipment and attempt to stop the defendant's car?
- How far did the defendant drive after you activated your emergency equipment?
- Where did he stop the car?
- Why did you stop the car?
- Did you approach the driver after he stopped?
- Did you identify the driver?
- Is he in the courtroom today?
- Please point him out

C. Personal Contact

- Did you ask the defendant for his license and proof of insurance?
- Was the defendant able to produce these items for you?
- Please describe the defendant's actions as he sought these items for you.
- How far away from the defendant were you during this time?
- Were you able to smell any odor?
- What did you smell?
- Where was it coming from?
- During this initial contact, did the defendant say anything to you?
- Can you describe that conversation?
- Will you please describe his speech?
- Could you describe how the defendant's eyes looked at this time?
- How did his face appear?
- Can you describe the state of his clothing?
- Did you notice anything else unusual about the defendant?
- Did you ask the defendant if he had been drinking recently?
- Did you ask him how much?
- Did you ask him where he had been drinking?
- Was the defendant responsive to your questions?
- Did you have to repeat yourself?
- How much did the defendant tell you he drank?
- At some point, did you ask the defendant to get out of the car?
- How did the defendant get out of the car?
- Did you observe the defendant walk?
- Please describe how he walked.

D. Field Sobriety Tests

- Did you ask the defendant to perform field sobriety tests?
- Why?
- What is the purpose of administering field sobriety tests?

- Did the defendant agree to perform the field sobriety tests?
- Did you ask the defendant if he had any injuries or illnesses that would affect his performance on the field sobriety tests?
- What was his response?
- Where did you conduct these tests?
- What was the surface condition in the area where you conducted the tests?
- What were the weather conditions when you conducted the tests?
- Which field sobriety tests did you ask the defendant to perform?

1. Horizontal Gaze Nystagmus

- What is horizontal gaze nystagmus?
- What causes a person's eyes to display this motion?
- Have you had any training with regard to the proper administration and scoring of the horizontal gaze nystagmus test?
- Please describe this training.
- How many hours of training have you had? (need a minimum of 8)
- Did you explain the test to the defendant?
- Did he appear to understand your instructions about how to perform the test?
- Please describe how you instructed the defendant to perform this test.
- How is the HGN test administered?
- What are the 3 clues?
- Can you describe what you are looking for in the "lack of smooth pursuit" clue?
- Did the defendant exhibit this clue in both eyes?
- Can you describe what you are looking for in the "distinct and sustained nystagmus at maximum deviation" clue?
- Did the defendant exhibit this clue in both eyes?
- Can you describe what you are looking for in the "onset of nystagmus prior to 45 degrees?"
- Did the defendant exhibit this clue in both eyes?
- How many total clues are there?
- How many clues did the defendant exhibit?
- What did the results of the test indicate to you with regard to the defendant's impairment?

2. Walk and Turn

- What was the next test you performed?
- Is the Walk and Turn test a divided attention test?
- Can you describe what a divided attention test is?
- Can you describe how a divided attention test relates to driving?
- Did you instruct the defendant how to perform this test?
- Did you also demonstrate the test for the defendant, at least in part?
- Did he indicate whether he understood your instructions?

- Did you ask the defendant whether he believed he was physically capable of performing the test as instructed?
- What did he say?
- Please describe how you instructed the defendant to perform this test?
- Did you observe the defendant perform this test?
- Please describe how the defendant performed this test.
- How many total clues are there?
- How many clues did the defendant exhibit?
- What did the results of this test indicate to you with regard to the defendant's impairment?

3. One Leg Stand

- What was the next test you administered?
- Is this also a divided attention test?
- Did you instruct the defendant how to perform this test?
- Did you also demonstrate this test for the defendant, at least in part?
- Did he indicate whether he understood your instructions?
- Did you ask the defendant whether he believed he was physically capable of performing the test as instructed?
- What did he say?
- Please describe how you instructed the defendant to perform this test.
- Did you observe the defendant perform this test?
- Please describe how the defendant performed this test.
- How many total clues are there?
- How many clues did the defendant exhibit?
- What did the results of this test indicate to you with regard to the defendant's impairment?

4. Other Field Sobriety Tests (repeat for any other tests administered)

- Did you ask the defendant to perform any other tests?
- Which test(s) did you ask him to perform?
- Did you instruct the defendant how to perform this test?
- Please describe how you instructed the defendant to perform this test.
- Did the defendant indicate whether he understood your instructions?
- Did you ask the defendant whether he believed he was physically capable of performing the test as instructed?
- What was his response?
- Did you observe the defendant perform this test?
- Please describe how the defendant performed this test?
- What did the results of this test indicate to you with regard to the defendant's impairment?

D. The Arrest

- Based on your experience and training and your observations of the defendant did you form an opinion as to whether he was too impaired to safely operate a car at the time he was arrested?
- What was your opinion?
- What did you do as a result?
- Did you transport the defendant to the station?
- Did you observe any unusual behaviors by the defendant as you drove him to the station?
- Did you observe any unusual behaviors by the defendant while he was being booked?
- Approximately how long were you with the defendant while at the jail?
- During that time was he still exhibiting the signs of impairment that you saw while on the scene?
- Can you describe those?

E. The Interview

- Did you ask the defendant the interview questions on the AIR form?
- Did you read him his Miranda rights prior to asking those questions?
- Did you ask the defendant if he was operating the vehicle?
- What was his response?
- Did you ask the defendant if he had been drinking and what he had been drinking?
- What was his response?
- Did you ask him what time he started and stopped drinking?
- Did you ask him how much he drank?
- Did you ask him if he was under the influence of an alcoholic beverage?

F. Appearance in Court vs. Night of Arrest

- Have you had the opportunity to observe the defendant at the courthouse today?
- Is there any difference between the way he looks today and the way he looked on the night you arrested him?
- Do his eyes look different, how so?
- Does his face look different?
- Any difference in the way he sounds?
- Is there any difference in his balance?
- Do you notice any other differences?
- Overall, what is the difference between how the defendant looks today and how he looked that night?

Predicate Questions – The Breath Test

The Maintenance Officer

- Please state your name.
- Where are you employed?
- How long have you been employed by that agency?
- Do you hold a Type II permit issued by the Missouri Department of Health?
- Was that permit in effect on _____ (date of maintenance check)?
- I'm handing you what's been marked as State's Exhibit ____, do you recognize it?
- What is it?
- Does that permit enable you to perform maintenance checks on breath testing instruments?
- What instruments does it cover?
- On _____, did you perform any maintenance checks on any breath testing instruments?
- Which instrument?
- Where is it located?
- Please describe the maintenance check procedure.
- Did you use a checklist as part of your maintenance check?
- I'm handing you what has been marked as State's Exhibit ____, do you recognize it?
- What is it?
- Is that the checklist you used in performing the maintenance check on _____ (date of check)?
- Did you complete the steps on the checklist in the order they appear?
- Did you fill out the information on the checklist at or near the time of the check?
- Who supplied the simulator solution used in this check?
- What did your maintenance check of this instrument reveal?
- Was the instrument operating within the prescribed tolerances of the Missouri Department of Health?
- Are you aware of any problems that you or any officers have had with this instrument?
- During the times that you have been in charge of the maintenance, has it ever checked outside the tolerances allowed by the department of health?
- Do you fill out a report every time you do a maintenance check?
- Do you have any reason to believe that this instrument was not operating correctly on _____ (date of test)?
- Does your signature appear at the bottom of the checklist?

OFFER PERMIT AND MAINTENANCE REPORT INTO EVIDENCE

The Testing Officer

- Did you read Missouri's Implied Consent law to the defendant?

- Did he agree to submit to a breath test?
- Have you had any special training in administering breath tests?
- When did you receive that training?
- As a result of that training, did you receive a Type III permit authorizing you to administer breath tests?
- Was that permit in effect on _____ (date of test)?
- What instruments does that permit authorize you to operate?
- I'm handing you what's been marked as State's Exhibit ____, do you recognize it?
- What is it?
- Have you administered breath tests prior to testing the defendant?
- Approximately how many times have you administered breath tests?
- I'm showing you what has been marked as State's Exhibit ____, do you recognize that document? What is it?
- Is that a true and accurate copy of your permit?
- On _____ (date of arrest), did you offer to administer a breath test to the defendant?
- Did he agree to take the test?
- Before administering the test, did you observe the defendant for at least 15 minutes?
- During the time you were observing the defendant, did he put anything in his mouth?
- Did he smoke?
- Did he vomit?
- Did he belch?
- Did he take anything out of his mouth?
- How do you know that the defendant did not do any of these things?
- What instrument did you use to administer the test to the defendant?
- Did you use the required checklist when you administered the test to the defendant?
- Does this checklist conform to the way you were trained to operate the instrument?
- I hand you what's been marked as State's Exhibit ____, do you recognize it?
- What is it?
- Is that the checklist you completed while administering the breath test to the defendant?
- Did anything happen that indicated to you that the instrument was not functioning properly at the time of the test?
- Did you observe the defendant blow into the instrument?
- Did the instrument appear to function normally before, during and after the time he blew into it?
- Did the instrument give a reading after the defendant blew into it?
- What was that reading?

- Did you record that reading on the checklist?
- Did the instrument produce a printout?
- I hand you what has been marked as State's Exhibit ____, do you recognize it?
- What is it?

OFFER PERMIT, CHECKLIST AND BREATH TEST TICKET INTO EVIDENCE

Refusal

- On _____ (date of arrest), did you offer to administer a breath test to the defendant?
- Did he agree to take the test?
- Prior to offering to administer the test to the defendant, did you make him aware of Missouri's Implied Consent law?
- Did you read it directly from the AIR?
- What are the implied consent warnings that you read to the defendant?
- Did you inform the defendant of the potential consequences of refusing to submit to the test?
- Even after being informed of these consequences, did the defendant continue to refuse the test?
- Can you describe how he refused the test?

Predicate Questions – The Blood Test

The Arresting Officer

- Did you arrest the defendant for driving while intoxicated?
- Did you advise him of his rights under the Missouri Implied Consent law?
- Did you ask that he take a blood test?
- Did he agree to take it?
- If not, did you seek a warrant for his blood?
- Did you direct someone to take his blood?
- Who?
- Where was this done?
- Did you observe _____ (name of blood drawer) draw blood from the defendant?
- Did you provide the tube(s) for the blood?
- Was it a grey topped tube?
- What happened to the tube right after the blood was taken?
- Did you or anyone else invert the tube?
- Approximately how many times?
- Can you describe how the tube was labeled?
- Did you add any additional seals or tape to the vial?
- Did you write your initials on the tape?
- What did you do with the vial then?
- How did the vial get to the lab?
- Did you fill out any forms in connection with this blood test?
- What forms did you fill out?
- Was the transmittal slip filled out in the regular course of business?
- Was the transmittal slip filled out at or near the time of the event?
- Did you personally fill out the transmittal slip?
- Did the person who drew the blood fill out any paperwork?
- Did you observe him/her fill out the paperwork?

The Blood Drawer

- Please state your name.
- What is your occupation?
- Where are you employed?
- How long have you held that position?
- Do you have any specialized medical training?
- Please describe that training.
- Were you a _____ (licensed physician, registered nurse, trained medical technician, phlebotomist) in the State of Missouri on _____ (date of blood draw)?
- What were your duties at _____ Hospital?

- On _____ (date of blood draw), did you come into contact with a person who later became known to you as _____ (defendant)?
- Do you see that person in the courtroom today?
- What is he wearing?
- Were you requested by a law enforcement officer to draw blood from the defendant?
- Did you, in fact, draw blood from the defendant?
- What procedure was used to draw the blood?
- Was the procedure that you used to withdraw the blood in strict accord with your training and accepted medical practice?
- Did you use a previously unused and sterile needle?
- Did you put the blood sample into a gray-topped and vacuum sealed tube?
- After the blood was drawn, did you make any marks on the blood tube?
- What marks did you make?
- Did you or anyone else invert the tube?
- What did you do with the tube then?
- Did you fill out any paperwork regarding the blood draw?
- Can you describe that paperwork?
- About how much time did you spend with the defendant that night?
- Can you describe the defendant's appearance that night?
- Can you describe the defendant's behavior that night?
- Did he appear to be intoxicated?

The Chemist or Toxicologist

- Please state your name.
- What is your occupation?
- Where are you employed?
- How long have you held that position?
- Please describe your educational background and training.
- Have you received any specialized training in the testing of blood to determine the alcohol content?
- Please describe that training.
- I'm handing you what has been marked as State's Exhibit ____, is this copy of your CV?
- Do you have a Type I permit from the Missouri Department of Health?
- What does that permit authorize you to do?
- Was that permit valid on _____ (date of test)?
- I hand you what's been marked as State's Exhibit ____, do you recognize it?
- What is it?
- How many times have you conducted tests of blood to determine the alcohol content?
- Have you ever been qualified as an expert in analyzing blood for alcohol content?

- How many times?
- Please describe the process used to test blood for alcohol content.
- What instrument do you use to test blood?
- How does a gas chromatograph work?
- Do you use any control samples in testing blood?
- What is the purpose of the control sample?
- Is the gas chromatograph generally accepted in the scientific community as a reliable method for testing the alcohol content of a blood sample?
- On or about _____ (date of test), did you test a sample of blood taken from _____ (defendant)?
- I'm showing you what has been marked as State's Exhibit ____, do you recognize it?
- How do you recognize it?
- What is it?
- Do you know who that blood was taken from?
- How do you know?
- Whose blood is it?
- How did that blood come into your possession?
- How was it packaged and marked?
- Was it in a sealed container?
- Was the seal intact when you received it?
- Was there any kind of identification on or with the tube of blood when you received it?
- Where was the defendant's blood stored prior to testing it?
- Did you test the defendant's blood using the gas chromatograph?
- Was that instrument working properly?
- How could you tell?
- What did you do with the blood sample when you finished?
- Did you follow the regulations of the Missouri Department of Health in conducting the test?
- Do those regulations require you to fill out a report when you test a blood sample to determine the alcohol content?
- Did you fill out a report when you tested the defendant's blood?
- Was the report filled out at or near the time of the test?
- Are these reports made in the regular course of business?
- I'm handing you what has been marked as State's Exhibit ____, do you recognize it?
- What is it?
- How can you identify that report as the report you filled out with regard to the test of defendant's blood?
- What was the result of the test you performed on defendant's blood?
- Was that result recorded on your report?

- Do you have any training, education or experience in the study of the effects of alcohol on the human body?
- Please describe that training.
- Based upon your experience and training, do you have an opinion to a reasonable degree of scientific certainty whether there is a recognized correlation between the alcohol content of the blood and intoxication?
- Based upon your training and experience, do you have an opinion to a reasonable degree of scientific certainty as to the state of intoxication of an individual with a blood alcohol concentration of ____?
- What is your opinion?
- What does alcohol do to the body?
- Would you describe the depressive effects of alcohol on the central nervous system?
- Would you describe specifically what parts of the brain are affected by alcohol?
- At ____ (defendant's BAC), what are the effects of alcohol in the body?
- Can a person compensate for the invisible effects of alcohol which you have just described?
- How long does alcohol remain in the body?
- At what rate does alcohol dissipate in the body?
- Is that a constant rate?
- Do you have an opinion as to the number of drinks that would have been in a person's system weighing ____ pounds (defendant's weight) to register a BAC of ____ (defendant's BAC)?
- Do you have an opinion, based on a reasonable degree of scientific certainty, whether or not a person having a BAC of ____ (defendant's BAC) would be capable of safely driving a car?
- What is that opinion?
- How would such a person normally behave behind the wheel?
- Have there been any studies to substantiate the opinion you have just expressed?
- What have these studies shown?

Predicate Questions – The DRE

1. Background information

- Please state your name.
- What is your occupation?
- How long have you held that position?
- Have you had any special training in detecting and apprehending drivers who are impaired by alcohol and other drugs?
- Have you ever participated in what's known as a drinking lab?
- What is a drinking lab?
- During these labs, did you have the opportunity to administer field sobriety tests to individuals and then compare your opinions regarding their level of impairment with the results of a breath test?
- Are you generally able to accurately and reliably discern their level of alcohol impairment?
- Have you ever participated in any labs where individuals were provided with illegal or illicit drugs?
- Why not?
- Approximately how many times have you stopped drivers you believed might be impaired?
- Did you arrest all of these drivers?
- Why not?
- How many arrests have you made for DWI?
- When you arrest someone for DWI, is this based on only one thing?
- What do you base your arrest on?

2. DRE Training

- Are you familiar with the national Drug Evaluation and Classification Program?
- What is this program?
- What is the National Highway Traffic Safety Administration?
- How is NHTSA involved in the DEC Program?
- How many states participate in this program?
- How many other countries participate in this program?
- What is a drug recognition expert?
- Are you a certified DRE?
- Who certified you?
- When were you certified as a DRE?
- How does an officer become a certified DRE?
- Can anyone undergo the training to become a DRE?
- Why not?
- How many hours of training are required?
- What is involved in the training period?

- Are any tests or exams required?
- What score do you need to achieve on that test to pass?
- Once this training is complete and the test has been passed, is an officer automatically certified as a DRE?
- What else is the officer required to do?
- Once these evaluations have been completed, is the officer then certified as a DRE?
- What else has to happen before an officer can become certified as a DRE?
- Is the officer then issued a certification card?
- Does that certification last forever?
- How often does it expire?
- What do you have to do to renew that certification?
- Who issues that card?
- Have you completed all the training, testing and evaluations we just discussed?
- Do you have a certification card?
- I'm showing you what's been marked as State's Exhibit ____, do you recognize it?
- What is it?
- Is that the original card or a photocopy?
- Is it a true and exact copy of the original?

3. The Drug Influence Evaluation

- What procedures do DREs use to determine whether or not someone is under the influence of a drug or drugs?
- What is a drug influence evaluation?
- Is the DRE protocol generally accepted to be an accurate and reliable means of identifying drug influence and impairment?
- How many people have you evaluated for drug influence and impairment?
- Is this evaluation done if someone is determined to be under the influence of alcohol?
- Why not?
- Approximately how many times have you determined that a DWI suspect was under the influence of drugs?
- Have you ever confirmed your opinions by taking urine samples?
- Based on your training and experience, can you accurately and reliably determine whether someone is under the influence of drugs?
- In determining whether someone is under the influence of drugs, do you determine which precise drug he has used?
- Why not?
- Do you instead determine which category of drug he is under the influence of?
- How many drug categories are there?
- How are the drugs grouped?

- Does each category of drug cause certain unique and identifiable signs and symptoms?
- What are the drug categories?
- Can you briefly describe how a drug influence evaluation is performed?
- Did you perform a drug influence evaluation on the defendant in this case?

a. The Breath Test—Step 1

- What is the first step in the drug influence evaluation?
- Was the defendant given a breath test in this case?
- Are you familiar with the results of that test?
- How are you familiar with the results of that test?
- What experience do you have in recognizing alcohol-induced impairment?
- What did the breath test results indicate to you with regard to whether alcohol was the sole cause or a contributing factor to the defendant's impairment?

b. Interview of Arresting Officer(s)—Step 2

- What is the next step in the drug influence evaluation?
- Did you interview the arresting officer(s) in this case?
- Did the arresting officer tell you how the defendant behaved and what, if anything, he said?
- What did you learn from that interview?

c. Preliminary Examination and First Pulse—Step 3

- Please describe the next step in the evaluation.
- What is the purpose of the preliminary examination?
- Did you conduct a preliminary examination in this case?
- Did you ask the defendant some questions?
- Did you ask the defendant if he knew what time it was?
- What did he say?
- Did you ask the defendant when he last slept?
- What did he say?
- Did you ask the defendant how long he had slept?
- What did he say?
- Did you ask the defendant if he was sick or injured?
- What did he say?
- Did you ask the defendant if he was diabetic?
- What did he say?
- Did you ask the defendant if he was epileptic?
- What did he say?
- Did you ask the defendant if he suffered from allergies?
- What did he say?
- Did you ask the defendant if he took insulin?
- What did he say?
- Did you ask the defendant if he had any physical defects?

- What did he say?
- Did you ask the defendant if he was under the care of a doctor or dentist?
- What did he say?
- Did you ask the defendant if he was taking any medications or drugs?
- What did he say?
- What observations did you make of defendant's speech?
- What observations did you make of defendant's eyes?
- What observations did you make of defendant's face?
- What observations did you make of defendant's breath?
- What observations did you make of defendant's balance?
- Did you check the defendant's pulse rate?
- How did you do this?
- Were you trained how to do this?
- What was defendant's pulse rate?
- How does that compare to a normal pulse rate?
- Based on your training and experience, what did the results of the preliminary examination mean to you?
- Did you rule out the possibility that the defendant was suffering from a medical problem?

d. Eye Examination—Step 4

- What is the next step in the evaluation?
- What is the first eye test administered?
- How is the HGN test performed?
- What do you mean by smooth pursuit?
- Why is this test important?
- Can you please describe how smooth pursuit is checked?
- Did you perform this part of the test on the defendant?
- Did you check for smooth pursuit in the defendant's left eye?
- What observations did you make?
- Did you check for smooth pursuit in the defendant's right eye?
- What observations did you make?
- What is the second part of the test?
- What do you mean by maximum deviation?
- How long do you have the subject hold his eye at the outer corner?
- Did you check for this in defendant's left eye?
- What observations did you make?
- Did you check for this in defendant's right eye?
- What observations did you make?
- What is the third part of the test?
- How is this portion of the test performed?

- Why do you estimate the angle of onset?
 - Did you check for this in defendant's left eye?
 - What did you observe?
 - Did you check for this in defendant's right eye?
 - What did you observe?
 - Based upon your training and experience, what did the defendant's performance on the HGN test indicate to you?
 - What is the second eye test that DREs perform?
 - How is the VGN test performed?
 - Did you perform the VGN test in this case?
 - What did you observe?
 - Based upon your training and experience, what did this indicate to you?
 - What is the third eye test performed?
 - How is this test performed?
 - What does lack of convergence mean?
 - Did you perform this test in this case?
 - What did you observe?
 - Based upon your training and experience, what did this indicate to you?
- e. Divided Attention Psychophysical Tests—Step 5
- What is the next step in the drug influence evaluation?
 - What tests do you administer in this step?
 - Are these divided attention tests?
 - What is a divided attention test?
 - Why are divided attention tests important?
 - How do these tests relate to driving?
 - Are these tests used exclusively by DREs?
 - Are the subjects instructed how to properly perform the tests?
 - Do you demonstrate each test for the subject?
 - What is the first divided attention test administered?
 - Would you explain and demonstrate the Romberg test in the same manner that DREs do for each subject?
 - What do DREs look for when administering this test?
 - Did you administer this test to the defendant?
 - Did you fully explain and demonstrate this test to the defendant?
 - Did he perform the test?
 - What observations did you make?
 - Based upon your training and experience, what did this indicate to you?
 - What is the second divided attention test you administered?
 - Would you explain and demonstrate the Walk and Turn test in the same manner that DREs do for each subject?
 - What do DREs look for when administering this test?

- Did you explain and demonstrate the WAT test to the defendant in this case?
- Did you ask the defendant to perform this test?
- Did he agree?
- What observations did you make?
- Based upon your training and experience, what did this indicate to you?
- What is the next divided attention test administered as part of the evaluation?
- Would you explain and demonstrate the One Leg Stand test in the same manner that DREs do for each subject?
- What do DREs look for in administering this test?
- Did you explain and demonstrate the OLS test for the defendant in this case?
- Did you ask the defendant to perform this test?
- Did he agree?
- What observations did you make?
- Based upon your training and experience, what did this indicate to you?
- What is the final divided attention test administered during an evaluation?
- Would you explain and demonstrate the Finger to Nose test in the same manner that DREs do for each subject?
- What do DREs look for when administering this test?
- Did you explain and demonstrate this test to the defendant in this case?
- Did you ask the defendant to perform the Finger to Nose test?
- Did he agree?
- What observations did you make?
- Based upon your training and experience, what did this indicate to you?

f. Vital Signs and Second Pulse—Step 6

- What is the next step in the drug influence evaluation?
- Why do you check a suspect's vital signs?
- What is the first vital sign checked?
- How do you check a pulse rate?
- Have you received training in how to check a pulse rate?
- Do you check a suspect's pulse more than once?
- Why do you take it more than once?
- Is there a normal range into which most peoples' pulses fall?
- What is that range?
- Is that range medically accepted?
- Did you take the defendant's pulse during this portion of the evaluation?
- What was the rate?
- Based on your training and experience, what did that indicate to you?
- This is actually the second time his pulse was checked, correct?
- How did the pulse rates compare the first and second time they were checked?
- What did that indicate to you?

- What is the next vital sign checked?
- Why do you check the blood pressure?
- What do you use to check the blood pressure?
- Have you been trained to use that instrument?
- How do you check blood pressure?
- Is there a normal range into which most peoples' blood pressures fall?
- What is that range?
- Is that range medically accepted?
- Did you check the defendant's blood pressure?
- What was it?
- Based upon your training and experience, what did that indicate to you?
- What is the next vital sign checked?
- How do you check a subject's temperature?
- Have you been trained to do so?
- Is there a normal range into which most peoples' temperatures fall?
- What is that range?
- Is that range medically accepted?
- Did you check the defendant's temperature?
- What was it?
- Based upon your training and experience, what did that indicate to you?

g. Dark Room Examination—Step 7

- What is the next step in the drug influence evaluation?
- What does this consist of?
- In this eye examination, what are you looking for?
- How do you measure pupil size?
- Is there a normal range for pupil size?
- Under what lighting conditions are the pupils examined?
- Why are the pupils examined under different lighting conditions?
- Are both eyes checked under all three lighting conditions?
- What is the first lighting condition you check?
- Is there a normal range for pupil size in room light?
- What is that range?
- Did you check the defendant's pupils under room light?
- What did you observe?
- What did this indicate to you?
- What is the next lighting condition you check?
- How do you check pupil size in near total darkness?
- Did you check the defendant's pupils in near total darkness?
- What did you observe?
- What did this indicate to you?

- What is the next lighting condition you check?
- How do you check pupil size in direct light?
- Did you check the defendant's eyes in direct light?
- What did you observe?
- What did this indicate to you?
- When you check the oral and nasal cavities, what are you looking for?
- What kinds of things indicate recent drug use?
- Did you examine the defendant's mouth and nasal cavities?
- What did you observe?
- What did this indicate to you?

h. Examination for Muscle Tone—Step 8

- What is the next step in the drug influence evaluation?
- Why do you examine a subject's muscle tone?
- How do you examine muscle tone?
- Did you examine the defendant's muscle tone?
- What did you observe?
- Based upon your training and experience, what did this indicate you?

i. Check for Injection Sites and Third Pulse—Step 9

- What is the next step in the drug influence evaluation?
- Why do you check for injection sites?
- How do you check for injection sites?
- How can you tell if bumps are caused by injections?
- Did you examine the defendant for injection sites?
- What did you observe?
- What did this indicate to you?
- Why do you check a suspect's pulse again?
- Did you check the defendant's pulse for the third time?
- What was the rate?
- How did this rate compare to the two previous checks?
- What did this indicate to you?

j. Suspect's Statements and Other Observations—Step 10

- What is the next step in the drug influence evaluation?
- Prior to asking the subject any questions, do you read him his Miranda rights?
- Did you read the defendant in this case his rights?
- Did he agree to answer your questions?
- Did you ask the defendant what he had eaten the day of his arrest?
- What did he say?
- Did you ask him when he had eaten?
- What did he say?
- Did you ask the defendant what he had been drinking?

- What did he say?
- Did you ask the defendant how much he had to drink?
- What did he say?
- Did you ask him what time he had his last drink?
- What did he say?
- Did you ask the defendant what time it was?
- What did he say
- What time was it?
- Did you ask the defendant when he had last slept?
- What did he say?
- Did you ask him how much he had used?
- What did he say?
- Did you ask him what time he had used?
- What did he say?
- Did you ask him where the drugs were used?
- What did he say?

k. Opinions of the Evaluator—Step 11

- What is the next step in the drug influence evaluation?
- Did you form an opinion in this case?
- What was that opinion?
- What did you base that opinion on?
- Are you familiar with _____ (drug found in tox screen)?
- Is that drug within the category of drugs that you believed was influencing the defendant on the night of his arrest?

l. Toxicological Examination—Step 12

- What is the next step in the drug influence evaluation?
- Why do you request a urine sample?
- Did you request a urine sample in this case?
- Did you inform the defendant of his rights under the Missouri Implied Consent Law?
- Did he agree to provide a urine sample?
- Did you collect the sample?
- How did you collect the sample?
- Did you witness the defendant provide the sample?
- Did the defendant make any attempt to add anything to the sample?
- What did you do with the urine sample after you obtained it?
- Did you in any way change, alter or add anything to the sample?
- Did you allow anyone else to change, alter or add anything to the sample?
- Did you seal it in any way?
- Did you ultimately send the sample to a laboratory for drug testing?

Predicate Questions – The Urine Test

1. The Urine Collection Officer (if not the DRE)

- Please state your name.
- What is your occupation?
- How long have you held that position?
- On _____ (date of sample collection), did you have occasion to come into contact with _____ (defendant)?
- Do you see him in the courtroom today?
- What is he wearing?
- On _____ (date of sample collection), did you collect a urine sample from the defendant?
- Why did you collect this sample?
- How did you collect this sample?
- Did you observe the defendant provide the sample?
- Did the defendant alter or add anything to the sample?
- Did you alter or add anything to the sample?
- Did you allow anyone else to add anything to the sample?
- What did you do with the sample once it was collected?
- Did you seal it in any way?
- Did you initial the sample or complete any other paperwork?
- Did you ultimately deliver the sample to a laboratory for drug testing?
- Where did you take it?

2. The Toxicologist

- Please state your name.
- What is your occupation?
- Where are you employed?
- How long have you held that position?
- What education and training have you had to qualify you as a toxicologist?
- Have you had any specific training on performing drug tests?
- Have you written any articles on this subject?
- Have you given any lectures on this subject?
- What education, training or experience qualifies you as an expert on the effects of drugs on driving?
- What specialized training have you received in the effects of drugs on driving?
- Have you testified as an expert on the effects of drugs on driving?
- Have you received any permits from the Missouri Department of Health?
- What type of permit do you hold?
- What does that permit authorize you to do?
- Was that permit valid on _____ (date of test)?

- Have you received specific training with regard to the detection of drug levels in urine?
- Have you performed tests on urine to determine the presence and concentration of drugs?
- About how many times?
- Have you previously testified in court as a toxicologist?
- Have you previously been qualified as an expert in toxicology?
- About how many times?
- Please describe the process used to test urine for the presence and concentration of drugs.
- What instrument do you use?
- How does a gas chromatograph work?
- Do you use any standards or control samples in testing urine?
- What is the purpose of the standard or control sample?
- Is the gas chromatograph generally accepted in the scientific community as a reliable method for testing for the presence and concentration of drugs in urine?
- On or about _____ (date of test), did you test a urine sample taken from _____ (defendant)?
- I'm showing you what has been marked as State's Exhibit ____, do you recognize it?
- How do you recognize it?
- What is it?
- Do you know who that urine was taken from?
- How do you know?
- Whose urine is it?
- How did that come into your possession?
- How was it packaged and marked?
- Was it in a sealed container?
- Was the seal intact when you received it?
- Was there any kind of identification on or with the container when you received it?
- How were you able to identify the container and letter as belonging together?
- Where do you store urine prior to testing?
- Was the defendant's urine stored in that area?
- Who has access to that area?
- Did you test the defendant's urine using the gas chromatograph?
- Was that instrument working properly?
- How could you tell?
- What did you do with the urine sample when you finished?
- From the time you opened the container until the time you tested the sample, was it in your care, custody and control?

- Did you follow the regulations of the Missouri Department of Health in conducting the test?
- Do those regulations require you to fill out a report when you test a urine sample for the presence or concentration of drugs?
- Did you fill out a report when you tested the defendant's urine?
- Was the report filled out at or near the time of the test?
- Are these reports made in the regular course of business?
- I'm handing you what has been marked as State's Exhibit ____, do you recognize it?
- What is it?
- How can you identify that report as the report you filled out with regard to the test of defendant's urine?
- What was the result of the test you performed on defendant's urine?
- Was that result recorded on your report?
- Have you had any training on the effects of drugs on the human body?
- Have you had any training on how the ingestion of drugs affects a person's normal mental faculties?
- Can you determine a probable level of impairment based on the amount of drugs in someone's system?
- What drug was present in defendant's urine?
- How much of that drug was present?
- Is that a sufficient amount to cause someone's normal mental faculties to be impaired?
- Is that a sufficient amount to cause someone's ability to safely operate a motor vehicle to be impaired?
- Are you familiar with the results of the drug influence evaluation of the defendant conducted by _____ (name of DRE)?
- Are the observations made by _____ (name of DRE) consistent with the drug taken by the defendant?
- Are the observations consistent with the level of that drug in the defendant's urine?
- Are the defendant's driving behavior, SFST performance, signs and symptoms consistent with someone who is under the influence of that drug?
- Consistent with impaired driving by the drug?

Predicate Questions – The Reconstructionist

A. The Reconstructionist

- Please state your name.
- What is your occupation?
- Where are you employed?
- How long have you held that position?
- Describe your law enforcement training.
- Do you hold any special position within your agency?
- What is that position?
- What is crash reconstruction?
- Were you required to undergo specialized training to become an accident reconstructionist?
- Please describe that training.
- How many hours was that training?
- Were you required to take a written examination as part of that training?
- Did you receive any type of certification as a result of that training?
- In the course of this training do you learn certain laws of physics that apply to the reconstruction of motor vehicle crashes?
- Since you received that training have you investigated any motor vehicle crashes?
- How many crashes have you investigated?
- How many times have you been asked to perform a reconstruction of a crash?
- Are there certain “terms of art” that are used by crash reconstructionists that are pertinent to an investigation?
- What are those terms?
- Could you explain those terms for the jury?
- Did you become involved in the investigation of a crash that occurred on _____ (date of crash)?
- How did you become involved in that investigation?

B. The Reconstruction

- Did you visit the scene of the crash?
- When did you visit the scene?
- When you visited the scene what did you observe?
- What was the nature of the roadway and the general area where the crash occurred?
- Did you visit the scene soon after the crash?
- What were the lighting conditions at that time?
- What were the weather conditions at that time?
- Did you make any measurements at the scene?
- Did you measure the general dimensions of the roadway?

- Did you make note of any signs, guardrails or other objects in or near the roadway?
- Were there any skid marks present at the scene?
- Did you measure those skid marks?
- Was the point where the skid marks started of any special significance to you in reaching an opinion in this case?
- Did you measure the drag factor of the road surface?
- Did you determine the point of impact in this crash?
- Where was that point of impact?
- Did you determine the final rest position of the vehicles involved?
- Did you determine the final rest position of any bodies at the scene?
- Did you determine the position of any debris at the scene resulting from the crash?
- Why did you make all those measurements?
- Please describe how you made those measurements.
- Is that method of measuring what was taught to you as part of your training in accident reconstruction?
- How many times have you made those types of measurements as part of an investigation of a crash?
- What type of devices did you use to make those measurements?
- Did you take any photographs of the scene of the crash?
- Did you take photographs of the physical evidence found at the scene of the crash?
- Did you document in any other way the measurements that you made and your observations of the scene?
- At some point did you make a scale drawing of the scene of the crash?
- Why did you make this drawing?
- Were you trained to make such drawings as part of the investigation of a crash?
- What is perception-reaction time?
- How does that affect the reconstruction of a crash?
- Have you received special training in measurement of perception-reaction time?
- Have you received any special training in the measurement of a vehicle operator's perception- reaction time?
- Have you received any special training in what can cause a vehicle operator's perception- reaction time to be lengthened?
- Have you used the concept of perception-reaction time in previous reconstructions?
- Did you determine the defendant's perception-reaction time in this case?
- Do you have any opinion regarding the defendant's perception-reaction time relative to what would ordinarily be considered a normal perception-reaction time under similar circumstances?
- What is that opinion?

- At the conclusion of your investigation, were you able to form an opinion as to how the crash occurred?

- What is that opinion?

1. Skid Mark Evidence

- In regards to the evidence on the road, what did you observe?

- Were the tire marks related to the crash?

- How did you know that?

- What type of tire marks were they?

- What's a skid mark?

- How did you know that these were skid marks?

- Can you describe the skid marks?

- Were the skid marks straight or curved?

- What caused the skid marks to be curved?

- What is crowning?

- Did you determine the direction of the skid marks?

- How did you determine the direction?

- Did you compare the skid marks to the vehicle(s) involved in the crash?

- How?

- What is track width?

- What is the track width of the skid mark?

- What was the track width of the defendant's vehicle?

- Were both the front and rear axles of the defendant's vehicle the same track width?

- Were the front and rear skid marks left by the same vehicle?

- What is tread width?

- What was the tread width of the defendant's vehicle?

- What was the width of the skid marks?

- What is a tread pattern?

- Did you document the tire marks?

- How?

- Did you measure the skid marks?

- How did you measure them?

- Is that part of your normal practice and routine?

- What were the lengths of the skid marks?

- Could you determine what tire left what marks?

- How?

2. Drag Factor Measurements

- You said that you measured the skid marks?

- Why did you do that?

- To compute a speed estimate, do you need to do anything else?

- What else do you need to do?
- What is drag factor?
- What is the significance of the drag factor to a collision investigation?
- What effect does the drag factor have on a vehicle?
- How is the drag factor measured?
- What is a drag sled?
- Are there any other components?
- I'm showing you what's been marked as State's Exhibit ____, what is that a picture of?
- Using a drag sled, how do you perform the measurements?
- Are there any other measurements performed?
- Are there any specific considerations when performing these tests?
- What are those considerations?
- Do you measure the drag factor adjacent to and in the same direction as the skid marks?
- Why do you do that?
- When did you conduct these measurements?
- Why did you perform the tests at that time?
- After performing these tests, did you form any conclusions?
- What were those conclusions?
- Are these tests normally done in the course of a crash investigation?
- Have you received training relative to the use of a drag sled?
- Please describe that training.

3. Minimum Speed from Skid Marks Calculation

- Based on the skid mark evidence and the drag factor determined for the roadway, were you able to determine a speed of the defendant's vehicle in the crash?
- What do you mean by minimum initial speed?
- Is that an exact speed?
- Why not?
- Is the speed you calculated slower than the defendant's actual speed then?
- How did you arrive at the defendant's minimum initial speed?
- What was the defendant's minimum initial speed?
- Are you certain of that number?
- Do you figure in some degree of error?
- Why do you do that?
- How much does that affect your determination of the speed?

4. Time and Distance Analysis/Acceleration Tests

- Do you have any photographs that depict the scene of the crash?
- Do those photographs accurately represent this area?
- Did you make any measurements of visibility distance?

- How did you make those measurements?
- Were there any permanent view obstructions in the area that would have limited the line of sight?
- What was the posted speed limit on the roadway?
- At a known speed, would you be able to tell us how much time it would take to cover that distance?
- If a vehicle is traveling at a constant speed of ____, is it possible to determine how much time it would take to travel ____ feet?
- How much time would it take?
- If a vehicle were traveling at the posted speed limit, how long would it take to travel that distance?
- What does this analysis allow you to conclude?
- What is the significance of this difference?
- Did you find any evidence that the defendant had taken any evasive action?
- Why was that significant?
- Were you able to conduct any tests to determine at what rate a vehicle like that of the defendant's is able to accelerate?
- What were the results?
- If you use that acceleration, are you able to determine the maximum speed obtained by the vehicle prior to the area of impact?
- What were the results?
- Why was that significant?

5. Yaw Mark Evidence

- During the course of your scene examination, what evidence did you observe on the roadway?
- With reference to the tire marks, how would you describe the tire marks you saw?
- What is a yaw mark?
- What do you mean by diagonal striations?
- What is the cross-over?
- What is a decreasing radius?
- How is a yaw mark made?
- Can you explain the difference between a tire yaw mark and other tire marks?
- What else does a yaw mark indicate about the actions of the vehicle?
- How many of these yaw marks did you observe at the scene?
- Can you describe the appearance of these yaw marks?
- Of what importance are these yaw marks to your investigation?
- How can these yaw marks be used to determine speed?
- Did you observe any other evidence that would indicate to you that the vehicle in question was in a yaw?
- What evidence did you observe?
- In the totality of this investigation, is there any other way the yaw marks could have been made?

6. What if Defendant had been Traveling at the Speed Limit?

- What is the posted speed limit in the area of the crash?
- How is that posted?
- Were the signs clearly visible at the time of the crash?
- How far from the collision scene was that roadway posted at ___ mph?
- What time of day did the crash occur?
- What were the weather conditions?
- Is there anything else you observed at the scene?
- What is sight distance?
- Did you determine a sight distance for the defendant's vehicle?
- How did you determine the sight distance?
- How long was the sight distance?
- Did you observe any view obstructions?
- In regard to the roadway surface, what examinations did you make?
- What conclusions did you draw from that examination?
- Where in the roadway did the crash occur?
- Based upon your training, experience and evidence observed at the scene, were you able to determine what the vehicles were doing prior to the crash?
- What was that determination?
- Your calculations have shown that at the time of the crash the defendant's vehicle was traveling at ___ mph in a ___ mph zone and the victim's vehicle was traveling ___ mph. Are you able to determine what would have happened if the defendant's vehicle had been traveling at the posted speed limit prior to the crash?
- What would have happened?
- What affect would this extra time have on the location of the victim's vehicle?
- Why is that significant?

7. Night Time Visibility Test

- What other tests did you conduct during the course of your investigation?
- What is a night time visibility test?
- How do you conduct a night time visibility test?
- Please describe the vehicle used in the test.
- Please describe the operator of the test vehicle.
- Please describe the pedestrian used in the test.
- What were the conditions of the roadway at the time of the test?
- What was the result of this test?
- Were you able to make any conclusions relative to the defendant involved in the crash?

8. Headlight Cold Shock

- Did you inspect the defendant's vehicle after the crash?
- Did you specifically examine the headlights?

- What did you find?
- What is the significance of cold shock?
- Could you explain what cold shock is?
- What is a lamp filament?
- What does cold shock look like?
- What made you determine that cold shock was present in the headlight removed from the defendant's vehicle?
- Would the filament have looked differently if the headlight was on at the time of the crash?
- How would it have looked?
- What does the presence of cold shock in the headlight indicate?

Admission Of Evidence

Admitting Evidence

There are several types of evidence particular to DWI cases that a prosecutor may need to admit at trial. Sometimes the defense attorney will file a motion to suppress before trial regarding a specific piece of evidence. Other times, the objection to that evidence won't happen until it is offered during trial. It is important to be aware of the foundation requirements. Some common types of evidence offered are breath test results, blood test results, field sobriety test results and prior convictions.

BREATH TESTS

Breath test results are admissible pursuant to section 577.037. Section 577.020 assigns responsibility for the breath alcohol program in this state to the Missouri Department of Health and Human Services (DHSS). Regulations promulgated by DHSS dictate what instruments will be used, how tests will be administered, and what type of training is required. These regulations can be found at 19 CSR 25-30.011-30.060.

To be admissible, the tests must be administered in accordance with the DHSS regulations, which includes the following:

- A 15 minute observation period was conducted by a Type II or Type III Permit holder
- The test was administered by a Type II or Type III Permit holder
- A maintenance check was performed by a Type II Permit holder within 35 days of the test

BLOOD TESTS

Section 577.020 specifically authorizes the use of blood testing to determine the alcohol or drug content in a person's body. Section 577.029 governs the methods in which blood shall be drawn. DHSS dictates the procedures for testing blood. These regulations can be found at 19 CSR 25-30.070-30.080.

Please be advised that these regulations apply only to those laboratories or persons performing analysis of blood for the determination of the alcohol or drug content at the direction of a law enforcement officer acting under the provisions of sections 577.020-577.039. When seeking to admit the results of a test done on a blood sample drawn for purposes of medical treatment, these requirements will not apply.

To be admissible, the test must be administered in accordance with the DHSS regulations and section 577.029, which includes the following:

- The blood was drawn by a licensed physician, registered nurse, phlebotomist, or trained medical technician
- The blood was drawn using a previously unused and sterile needle and sterile vessel
- The withdrawal was done in strict accord with accepted medical practices
- The test was conducted by a Type I Permit holder

FIELD SOBRIETY TESTS

In general, there is no need to lay a foundation when attempting to admit evidence of field sobriety tests. However, a particular foundation is

required before evidence of the Horizontal Gaze Nystagmus test can be admitted. *State v. Rose*, 86 S.W.3d 90, 98 (Mo. App. W.D. 2002); see also *State v. Hill*, 865 S.W.2d 702 (Mo. App. W.D. 1993).

To lay a proper foundation for the admission of HGN evidence, the state must show:

- The officer is adequately trained to administer the test and render an opinion regarding the results thereof (minimum of 8 hours.)
- The test was properly administered

PRIOR CONVICTIONS

In a jury trial, evidence of the defendant's priors must be presented before the submission of the case to the jury and outside of the hearing of the jury. In a bench trial, prior convictions must be proven before sentencing. Section 577.023 governs the admission of prior convictions. It may be helpful to have more than one type of record for each conviction for cases that go to trial. This can help defend against objections by the defense because of a deficiency in the record of the prior conviction.

Types of records that can be used to prove a prior offense include the following:

- Certified records from the court
- Missouri uniform law enforcement system (MULES)
- Driving while intoxicated tracking system (DWITS)
- Certified driving record maintained by the Missouri Department of Revenue

SEARCH WARRANTS

IN THE CIRCUIT COURT OF _____ COUNTY, MISSOURI

IN RE SUBPOENA TO: _____)
)
)

[Name] _____

Case No.

Custodian of Records _____)

Division

[Company] _____)

[Address] _____)

[City, State, Zip] _____)

[Contact Phone Number]

MOTION FOR INVESTIGATIVE SUBPOENA

COMES NOW THE STATE OF MISSOURI, by and through _____, (Assistant)
Prosecuting Attorney of _____ County, Missouri, and for its Motion for Investigative
Subpoena, states to the Court as follows:

1. Section 56.085 RSMo, 2000, provides as follows:

In the course of a criminal investigation, the prosecuting or circuit attorney may request the circuit or associate circuit judge to issue a subpoena to any witness who may have information for the purpose of oral examination under oath to require the production of books, papers, records, or other material of any evidentiary nature at the office of the prosecuting or circuit attorney requesting the subpoena.

2. Based upon information provided to the Prosecuting Attorney's Office, the person identified in the caption above currently has information in his or her possession that may be relevant to the investigation of a criminal offense committed in

_____ County, Missouri. The information and/or materials requested are described in the proposed subpoena attached hereto and incorporated herein by reference. The time and place the witness is requested to appear is also listed in the proposed subpoena and is incorporated herein by reference.

WHEREFORE, the State requests that the Court issue the proposed subpoena attached hereto.

OFFICE OF THE PROSECUTING ATTORNEY

BY: _____
[Name]

ORDER

Now on this ____ day of _____, 20__ , the Court, having reviewed the attached Motion for Investigative Subpoena, hereby grants same and orders and authorizes the issuance of the subpoena attached to the Motion and incorporated by reference.

(Associate) Circuit Court Judge

IN THE CIRCUIT COURT OF _____ COUNTY, MISSOURI

IN RE SUBPOENA TO:

)
)
)

[Name]

Case No.

Custodian of Records

)

Division

[Company]

)

[Address]

[City, State, Zip]

)

)

[Contact Phone Number]

SUBPOENA

THE STATE OF MISSOURI TO:

ATTORNEY OR PARTY REQUESTING

[Name]

[Attorney's Name]

Custodian of Records

(Assistant) Prosecuting Attorney

[Company]

[Address]

[Address]

[City, State Zip]

[City, State Zip]

[Phone]

[FAX]

[Phone]

You are hereby commanded to provide in person to _____ of the _____ County Prosecutor's Office, on or before {Date} , at ___ PM the following information:

Any and all information, including but not limited to:

This subpoena will remain in effect until this trial is concluded or you are discharged by the Court. You must attend a trial or hearing if directed. If you fail to appear, you may be held in contempt of Court.

Note: You are requested not to disclose the existence of this subpoena, or that your company has given information to any one, including any named suspect; such a disclosure would impede the investigation.

Subpoena typed _____ by _____

Clerk

By:

Date

Deputy Clerk

RETURN

I certify that I served this subpoena in _____ County, Missouri, by:

____ delivering a copy to the person subpoenaed
____ reading a copy to the person subpoenaed

on this _____ day of _____, 20__.

Fees: _____

SHERIFF

Mileage: _____

Total: _____

By: _____

PLACE ON OFFICE LETTERHEAD

Date:

TO: Custodian of Records
_____ Hospital

RE: State of Missouri v. _____
Case Number: _____
Patient: _____

Dear Sir or Madam,

Enclosed is a release for medical records. Also, enclosed is an affidavit which must be completed, signed by the custodian of records in the presence of a notary public, notarized and attached to the requested records. These requested records are needed by the State of Missouri for criminal prosecution, and your cooperation is requested. Thank you in advance for your cooperation and assistance.

Yours very truly,

Prosecuting Attorney
_____ County, Missouri

Enclosures

Date: _____
Custodian of Records
_____ Hospital

_____, Missouri

AUTHORIZATION TO RELEASE MEDICAL RECORDS

I hereby authorize you to release and furnish to the Prosecuting Attorney's Office of _____ County, Missouri, any and all information regarding the treatment of _____ by you or your institution on or about _____, or thereafter. I acknowledge that a copy of this release shall have the same force and effect as the original.

I hereby expressly waive any confidentiality requirement set forth by 42 CFR Part 2 or any other State or Federal statute or regulation and hereby authorize the Office of the Prosecuting Attorney of _____ County to use all information received from you in any manner which it deems necessary for its prosecution in this matter.

Your full cooperation with the Office of the Prosecuting Attorney of _____ County, Missouri is respectfully requested and authorized.

Signature

Name

Street Address

State v. _____

City State Zip

Attn: _____

Phone Number

(SIGNED:

(SEAL)

RE: STATE VS. _____

ATTN: _____

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
) _____

AFFIDAVIT

I, the undersigned, being duly sworn, and under the penalties of perjury, state as follows:

I am a law enforcement officer employed by _____ in the County of _____, State of Missouri. I have approximately ____ years of law enforcement experience. I am trained in the detection and apprehension of impaired drivers.

I have probable cause to believe that _____ was the driver of a vehicle that he/she operated while under the influence of alcohol or drugs in _____ County, Missouri on _____, 20____.

The probable cause was established by my personal observations and/or statements of witnesses as follows:

[List narrative of facts that give rise to probable cause]

Affiant has reasonable grounds to believe and does believe that the evidence of the crime of (driving while intoxicated) (Assault in the 2nd degree) (Involuntary manslaughter) is now located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

In the blood of _____, D.O.B. _____ SSN _____ currently located at _____

I hereby affirm that the facts stated in this Affidavit are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Affiant

Subscribed and sworn before me this _____ day of _____, 20____.

Honorable Judge

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
)

APPLICATION FOR SEARCH WARRANT

nd

I, _____, being duly sworn and under the penalties of perjury, hereby request that a search warrant be issued based upon this application and the attached affidavit(s). The undersigned states upon information and belief that certain evidence of the crime of (driving while intoxicated)(Assault in the 2 degree) (Involuntary manslaughter), to-wit:

The blood of _____, D.O.B. _____ SSN _____

Is currently located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

That the basis of the applicant's information and belief is contained in the attached affidavit(s) of the witness(es) to the facts in the said matter. The affidavit(s) and any attachments are hereby made a part of this application as a basis upon which this Court may find the existence of probable cause for the issuance of said warrant.

WHEREFORE, applicant prays that a search warrant be issued as provided by law.

I hereby affirm that the facts stated in this Application are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Applicant

Signed on this _____ day of _____, 20____ at _____ hours.

Prosecuting Attorney

Reviewed and signed on this _____ day of _____, 20____ at _____ hours.

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
)

IN THE CIRCUIT COURT OF _____ COUNTY
STATE OF MISSOURI

SEARCH WARRANT

THE STATE OF MISSOURI TO ANY PEACE OFFICER IN THE STATE OF MISSOURInd

WHEREAS, an application and affidavit for a search warrant in writing, duly verified by oath or affirmation, has been filed with the undersigned Judge of this Court, stating upon information and belief that certain evidence of the crime of (driving while intoxicated)(Assault in the 2nd degree) (Involuntary manslaughter), to-wit:

The blood of _____, D.O.B. _____ SSN _____

Is currently located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

WHEREAS, the Judge of this Court from the application and affidavit(s) filed therewith has found that there is probable cause to believe the allegations of the application to be true and probable cause for the issuance of a search warrant herein.

NOW THEREFORE, IN THE NAME OF THE STATE OF MISSOURI, I command that you search for and seize a sample(s) of the blood of the above described person, within ten (10) days, and take with you, if need be, the power of your county, and, that you seize the samples of blood from the above-described person and take the same into your possession, making a complete and accurate inventory of the items so taken by you in the presence of the person from whose possession the same is taken, if that be possible, and giving to such person a receipt for such property, together with a copy of this Search Warrant. After execution of the Search

Warrant, the Warrant with a Return thereon, signed by the officer making the search, shall be delivered to the Judge who issued the Warrant, together with an itemized Receipt for said property taken.

WITNESS my hand and the seal of this COURT this _____ day of _____, 20 ____, at _____ a.m/p.m.

Honorable Judge

RETURN AND INVENTORY

_____ employed by _____,

I, Officer _____,

do hereby make return to the above and within warrant as follows:

that on or about the _____ day of _____, 20____, and within 10 days after the issuance of said warrant, I went to the location and person described therein and searched the same for blood, and from within that said person I seized blood evidence, inventoried below, which I then and there took into my possession:

SAMPLE

2 grey topped tubes of Suspect's blood taken at _____:_____

I made this Return and Inventory in the presence of the person named in the within warrant and delivered to that person a copy of this warrant with a receipt for the blood taken. I have now placed the blood and/or urine sample so taken in the possession of the Court.

Signature of Law Enforcement Officer

Subscribed and sworn to before me at _____ day _____ of _____, 20____.

Judge / Circuit Clerk/ Notary Public

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
) _____

AFFIDAVIT

I, the undersigned, under the penalties of perjury, state as follows:

I am a law enforcement officer employed by _____ in the County of _____, State of Missouri. I have approximately ____ years of law enforcement experience. I am trained in the detection and apprehension of impaired drivers.

I have probable cause to believe that _____ was the driver of a vehicle that he/she operated while under the influence of alcohol or drugs in _____ County, Missouri on _____, 20____.

The probable cause was established by my personal observations and/or statements of witnesses as follows:

[List narrative of facts that give rise to probable cause]

Affiant has reasonable grounds to believe and does believe that the evidence of the crime of (driving while intoxicated) (Assault in the 2nd degree) (Involuntary manslaughter) is now located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

In the blood of _____, D.O.B. _____ SSN _____ currently located at _____

I hereby affirm that the facts stated in this Affidavit are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Affiant

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
)

APPLICATION FOR SEARCH WARRANT

nd

I, _____, under the penalties of perjury, hereby request that a search warrant be issued based upon this application and the attached affidavit(s). The undersigned states upon information and belief that certain evidence of the crime of (driving while intoxicated)(Assault in the 2 degree) (Involuntary manslaughter), to-wit:

The blood of _____, D.O.B. _____ SSN _____

Is currently located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

That the basis of the applicant's information and belief is contained in the attached affidavit(s) of the witness(es) to the facts in the said matter. The affidavit(s) and any attachments are hereby made a part of this application as a basis upon which this Court may find the existence of probable cause for the issuance of said warrant.

WHEREFORE, applicant prays that a search warrant be issued as provided by law.

I hereby affirm that the facts stated in this Application are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Applicant

Signed on this _____ day of _____, 20____ at _____ hours.

Prosecuting Attorney

Reviewed and signed on this _____ day of _____, 20____ at _____ hours.

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
)

IN THE CIRCUIT COURT OF _____ COUNTY
STATE OF MISSOURI

SEARCH WARRANT

THE STATE OF MISSOURI TO ANY PEACE OFFICER IN THE STATE OF MISSOURInd

WHEREAS, an application and affidavit for a search warrant in writing, duly verified by oath or affirmation, has been filed with the undersigned Judge of this Court, stating upon information and belief that certain evidence of the crime of (driving while intoxicated)(Assault in the 2nd degree) (Involuntary manslaughter), to-wit:

The blood of _____, D.O.B. _____ SSN _____

Is currently located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

WHEREAS, the Judge of this Court from the application and affidavit(s) filed therewith has found that there is probable cause to believe the allegations of the application to be true and probable cause for the issuance of a search warrant herein.

NOW THEREFORE, IN THE NAME OF THE STATE OF MISSOURI, I command that you search for and seize a sample(s) of the blood of the above described person, within ten (10) days, and take with you, if need be, the power of your county, and, that you seize the samples of blood from the above-described person and take the same into your possession, making a complete and accurate inventory of the items so taken by you in the presence of the person from whose possession the same is taken, if that be possible, and giving to such person a receipt for such property, together with a copy of this Search Warrant. After execution of the Search

Warrant, the Warrant with a Return thereon, signed by the officer making the search, shall be delivered to the Judge who issued the Warrant, together with an itemized Receipt for said property taken.

WITNESS my hand and the seal of this COURT this _____ day of _____, 20 __, at _____ a.m/p.m.

Honorable Judge

RETURN AND INVENTORY

_____ employed by _____,

I, Officer _____,

do hereby make return to the above and within warrant as follows:

that on or about the _____ day of _____, 20____, and within 10 days after the issuance of said warrant, I went to the location and person described therein and searched the same for blood, and from within that said person I seized blood evidence, inventoried below, which I then and there took into my possession:

SAMPLE

2 grey topped tubes of Suspect's blood taken at _____:

I made this Return and Inventory in the presence of the person named in the within warrant and delivered to that person a copy of this warrant with a receipt for the blood taken. I have now placed the blood and/or urine sample so taken in the possession of the Court.

Signature of Law Enforcement Officer

Subscribed and sworn to before me at _____ day _____ of _____, 20____.

Judge / Circuit Clerk/ Notary Public

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
) _____

AFFIDAVIT

I, the undersigned, under the penalties of perjury, state as follows:

I am a law enforcement officer employed by _____ in the County of _____, State of Missouri. I have approximately ____ years of law enforcement experience. I am trained in the detection and apprehension of impaired drivers.

I have probable cause to believe that _____ was the driver of a vehicle that he/she operated while under the influence of alcohol or drugs in _____ County, Missouri on _____, 20____.

The probable cause was established by my personal observations and/or statements of witnesses as follows:

[List narrative of facts that give rise to probable cause]

Affiant has reasonable grounds to believe and does believe that the evidence of the crime of (driving while intoxicated) (Assault in the 2nd degree) (Involuntary manslaughter) is now located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

In the blood of _____, D.O.B. _____ SSN _____ currently located at _____

I hereby affirm that the facts stated in this Affidavit are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Affiant's Signature

Signed on this _____ day of _____, 20____ at _____ hours.

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
)

APPLICATION FOR SEARCH WARRANT

nd

I, _____, under the penalties of perjury, hereby request that a search warrant be issued based upon this application and the attached affidavit(s). The undersigned states upon information and belief that certain evidence of the crime of (driving while intoxicated)(Assault in the 2 degree) (Involuntary manslaughter), to-wit:

The blood of _____, D.O.B. _____ SSN _____

Is currently located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

That the basis of the applicant's information and belief is contained in the attached affidavit(s) of the witness(es) to the facts in the said matter. The affidavit(s) and any attachments are hereby made a part of this application as a basis upon which this Court may find the existence of probable cause for the issuance of said warrant.

WHEREFORE, applicant prays that a search warrant be issued as provided by law.

I hereby affirm that the facts stated in this Application are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Applicant

Signed on this _____ day of _____, 20____ at _____ hours.

Prosecuting Attorney

Reviewed and signed on this _____ day of _____, 20____ at _____ hours.

STATE OF MISSOURI)
)
)

ss.

COUNTY OF _____)
)

IN THE CIRCUIT COURT OF _____ COUNTY
STATE OF MISSOURI

SEARCH WARRANT

THE STATE OF MISSOURI TO ANY PEACE OFFICER IN THE STATE OF MISSOURInd

WHEREAS, an application and affidavit for a search warrant in writing, duly verified by oath or affirmation, has been filed with the undersigned Judge of this Court, stating upon information and belief that certain evidence of the crime of (driving while intoxicated)(Assault in the 2nd degree) (Involuntary manslaughter), to-wit:

The blood of _____, D.O.B. _____ SSN _____

Is currently located and being held and kept within the County of _____, State of Missouri, at the following specifically described location, to-wit:

WHEREAS, the Judge of this Court from the application and affidavit(s) filed therewith has found that there is probable cause to believe the allegations of the application to be true and probable cause for the issuance of a search warrant herein.

NOW THEREFORE, IN THE NAME OF THE STATE OF MISSOURI, I command that you search for and seize a sample(s) of the blood of the above described person, within ten (10) days, and take with you, if need be, the power of your county, and, that you seize the samples of blood from the above-described person and take the same into your possession, making a complete and accurate inventory of the items so taken by you in the presence of the person from whose possession the same is taken, if that be possible, and giving to such person a receipt for such property, together with a copy of this Search Warrant. After execution of the Search

Warrant, the Warrant with a Return thereon, signed by the officer making the search, shall be delivered to the Judge who issued the Warrant, together with an itemized Receipt for said property taken.

WITNESS my hand and the seal of this COURT this _____ day of _____, 20 ____, at _____ a.m/p.m.

Honorable Judge

RETURN AND INVENTORY

_____ employed by _____,

I, Officer _____,

do hereby make return to the above and within warrant as follows:

that on or about the _____ day of _____, 2014, and within 10 days after the issuance of said warrant, I went to the location and person described therein and searched the same for blood, and from within that said person I seized blood evidence, inventoried below, which I then and there took into my possession:

SAMPLE

2 grey topped tubes of Suspect's blood taken at _____:

I made this Return and Inventory in the presence of the person named in the within warrant and delivered to that person a copy of this warrant with a receipt for the blood taken. I have now placed the blood and/or urine sample so taken in the possession of the Court.

Signature of Law Enforcement Officer

Subscribed and sworn to before me at _____ day _____ of _____, 20__.

Judge / Circuit Clerk/ Notary Public

described within ten days after the issuance of this warrant, by day or night, and take with you, if need be, the power of your county, and, if said above described records or any part thereof are found on said premises by you, that you seize or copy the same and take the records or copies into your possession, making a complete and accurate record of the articles seized or copied in the presence of the person from whose possession same is taken, if that be possible, and giving to

such person a receipt for such property so taken or copied by you, together with a copy of this warrant, or, if no person be found in possession of said articles, leaving said receipt and said copy upon the premises searched, and that you thereafter return the property so taken and seized or copied by you, together with a duly verified copy of the inventory thereof and with your return to this warrant to this court to be herein dealt with in accordance with law.

WITNESS MY HAND AND THE SEAL OF THIS COURT ON THIS _____ DAY
OF _____, 20___, _____ a.m./p.m.

Judge of the Circuit Court

Affidavit for Search Warrant

STATE OF MISSOURI

ss.

COUNTY OF **

I, **, an officer of the _____, BEING DULY SWORN AND UNDER PENALTIES OF PERJURY, STATE AS FOLLOWS:

I am **Officer/Trooper **. I have been employed with the **[name of department] for ** years, and during the course of my employment am assigned to the investigation of traffic crashes.

I am requesting a Search Warrant for the **electronic data from the vehicle Event Data Recorder module, or the module itself, from a [**color, year, make, model,**] bearing [**state**][license #**], [VIN#**]**, for the purpose of securing electronically stored data pertinent to a collision event in which its driver was involved while operating said vehicle, and that the stated property requested may contain evidence related to the commission of a criminal offense. The above-described property is now being held at [**], in ** County, Missouri.

On [Date, time] **, I was dispatched to a motor vehicle collision on ** roadway in ** County, Missouri. I arrived at the scene of the crash at about **. The investigation revealed that the **, was [**bound on ** when it **explain what it did and became involved in a one, two, three, etc. vehicle collision which resulted in the injury/deaths of ** and ** [make this a *very* brief synopsis of the crash].

The driver of the [Chevrolet, Dodge, whatever] was identified as (**name, DOB)

The owner of the vehicle was identified as **.

The vehicle described above should be equipped with an event data recorder module, often informally referred to as a “black box”. The device will collect and store data regarding the forces involved, with additional information also possibly stored such as vehicle speed, throttle position, engine RPM’s, brake use, as well as other information relative to the event.

The retrieval of electronic data from the vehicle Event Data Recorder module, or the module itself for the purposes of retrieving its electronically stored data, is pertinent to the collision event, and will aid in the investigation of the causes and factors contributing to the crash.

Affidavit for Search Warrant

I hereby affirm that the facts stated in this Affidavit are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Affiant's Signature

Signed on this _____ day of _____, 20____ at _____ hours.

Affidavit for Search Warrant

STATE OF MISSOURI

ss.

COUNTY OF _____

I, **, an officer of the _____, BEING DULY SWORN AND UNDER PENALTIES OF PERJURY, STATE AS FOLLOWS:

I am _____ **. I have been employed with the _____ for ** years, and during the course of my employment am assigned to the investigation of traffic crashes.

I am requesting a Search Warrant for the **electronic data from a [**Nokia, Apple, etc.** cellular telephone, **model name or #**]**, for the purpose of securing electronically stored data believed pertinent to a collision event in which the driver was involved, and that the stated property requested may contain evidence related to the commission of a criminal offense. The above-described property is now being held at [**], in Miller County, Missouri.

On [Date, time] **, I was dispatched to a motor vehicle collision on _____ in _____ County, Missouri. I arrived at the scene of the crash at about **. The investigation revealed that [** was [**bound on ** when it **explain what it did and became involved in a collision which resulted in the injury/deaths of ** and ** make this a *very* brief synopsis of the crash].

The driver of the Toyota was identified as (**name, DOB)

The owner of the vehicle was identified as **.

I believe that the retrieval of electronic data from the cellular telephone for the purposes of retrieving its electronically stored data is pertinent to the collision event, and will aid in the investigation of the causes and factors contributing to the crash.

I hereby affirm that the facts stated in this Affidavit are true, according to my best information, knowledge and belief. I understand that false statements made herein are punishable by Missouri law.

Affiant's Signature

Signed on this _____ day of _____, 20____ at _____ hours.

PRE TRIAL MOTIONS

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.: _____
 _____)
)
)
 _____)
 Defendant.

MOTION IN LIMINE

COMES NOW the State, by and through its attorney, _____, Assistant Prosecuting Attorney for the County of _____, State of Missouri, and moves this Court to prohibit counsel for the defendant from questioning the arresting officer on any subject matter upon which they do not possess personal knowledge

1. A lay witness may only testify to matters within their personal knowledge. *State v. Dixon*, 420 S.W.2d 267, 271-72 (Mo. banc 1967). The proponent of testimony must establish that the witness has requisite knowledge in order to further inquire as to a particular subject matter. *Southwestern Bell Telephone Co. v. Buie*, 758 S.W.2d 157, 165 (Mo. App. E.D. 1988).
2. The State requests this Court order counsel for defendant not to question any witness on any subject matter that goes beyond their personal knowledge, training, or expertise.

WHEREFORE, the State requests the Court to grant the State's motion in limine.

Respectfully submitted,

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.: _____
 _____)
)
)
 _____)
 Defendant.

MOTION IN LIMINE

COMES NOW the State, by and through its attorney, _____, Assistant Prosecuting Attorney for the County of _____, State of Missouri, and moves this Court to prohibit counsel for the defendant from eliciting any information regarding the procedures for administering standardized field sobriety tests (SFSTs).

1. The defendant declined to perform any standardized field sobriety tests in this case.
2. The State anticipates that defense counsel may seek to cross examine the arresting officer on the proper procedures for administering SFSTs.
3. Because the defendant did not submit to SFSTs, such questioning would be irrelevant to the issues in the case and, if permitted, would risk confusing the jury with irrelevant information.

WHEREFORE, the State requests the Court to grant the State's motion in limine.

Respectfully submitted,

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.: _____
 _____)
)
 Defendant.

MOTION IN LIMINE

COMES NOW the State, by and through its attorney, _____, Assistant Prosecuting Attorney for the County of _____, State of Missouri, and moves this Court to prohibit counsel for the defendant from questioning the arresting officer on matters regarding the breath testing instrument that are not within his personal knowledge.

1. The arresting officer, _____, is a Type III permit holder in the state of Missouri. A Type III permit holder is authorized to administer breath tests.
2. The State anticipates that defense counsel may seek to cross examine officer _____ regarding information that is beyond his scope as a Type III permit holder. A Type III permit holder is not qualified to answer questions regarding the details of how the instrument works or the maintenance of the instrument.
3. Permitting the officer to be cross examined over a subject that he is not qualified to testify about would be unfair and would risk confusing or prejudicing the jury.

WHEREFORE, the State requests the Court to grant the State's motion in limine.

Respectfully submitted,

County Assistant Prosecuting Attorney
County of _____, State of Missouri
[ADDRESS]
Telephone: (____) ____ - ____

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.: _____
 _____)
)
)
 _____)
 Defendant.

MOTION IN LIMINE

COMES NOW the State, by and through its attorney, _____, Assistant Prosecuting Attorney for the County of _____, State of Missouri, and moves this Court to prohibit counsel for the defendant from questioning the arresting officer on matters regarding alcohol consumption and elimination rates as it pertains to a person's blood alcohol content.

1. The arresting officer, _____, is qualified as a Peace Officer in the State of Missouri and is employed by _____. However, he is neither a toxicologist nor an expert in the effects of alcohol on the human body as it pertains to a person's blood alcohol content.
2. The State anticipates that defense counsel may seek to cross examine officer _____ regarding information that is beyond his scope of knowledge and training as a police officer. Questioning Officer _____ on the effects of a certain number of drinks over a certain time frame or the blood alcohol curve would unfairly prejudice the State's case.
3. Permitting the officer to be cross examined over a subject that he is not qualified to testify about would be unfair and would risk confusing or prejudicing the jury.

WHEREFORE, the State requests the Court to grant the State's motion in limine.

Respectfully submitted,

_____ County Assistant Prosecuting Attorney
County of _____, State of Missouri
[ADDRESS]
Telephone: (____)____ - _____

Respectfully submitted,

County Assistant Prosecuting Attorney
County of _____, State of Missouri
[ADDRESS]
Telephone: (____)____ - _____

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: _____
)	_____
)	
_____.)	
Defendant.)	

MOTION IN LIMINE

The State of Missouri requests this Court to enter its order prohibiting Defendant or the Counsel from making statements in the presence of the jury or adducing any testimony or evidence concerning the findings made by the hearing officer in the Department of Revenue administrative hearing. _____ relied on 302.505.3 RSMo which states, "The determination of these

1. On _____, 20__ a hearing officer made the determination that the defendant's BAC was not above .08 at the time of the stop. It is the State's position that this evidence is not admissible in the criminal case.
2. This issue was addressed in State v. Brightman _____ 739 S.W.2d 589, 591 (Mo. _____) which found that "Missouri law is clear that such a finding is not binding on a court in the criminal action."
3. The court in Brightman _____ facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any suspension or revocation under this section."
4. "The operation of a motor vehicle while under the influence of intoxicants gives rise to separate and independent proceedings, one civil and one criminal, and the outcome of one proceeding is of no consequence to the other." State v. Purvis,

App. S.D. 1987).

WHEREFORE, the State prays this Honorable Court orders Defendant not to elicit testimony or evidence regarding the findings made by the hearing officer in the Department of Revenue administrative hearing.

Respectfully submitted,

_____ County Assistant Prosecuting Attorney
County of _____, State of Missouri
[ADDRESS]
Telephone: (____)____ - _____

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.: _____
 _____)
)
 Defendant.

MOTION IN LIMINE

The State of Missouri requests this Court to enter its order prohibiting Defendant or his Counsel from making statements in the presence of the jury, or adducing any testimony, or evidence, concerning the Horizontal Gaze Nystagmus test:

1. Horizontal Gaze Nystagmus (HGN) is one of the three standardized field sobriety tests. _____, 86 S.W.3d 90, 98 (Mo. App. W.D. 1993); 865 S.W.2d 702 (Mo. App. W.D. 1993).
Nystagmus is defined as an involuntary jerking of the eyes. Horizontal gaze nystagmus is an involuntary side-to side jerking. Although there are many different types of nystagmus, the ingestion of alcohol or certain other drugs causes HGN.
2. To lay a proper foundation for the admission of HGN evidence, it must be shown that:
 - i. the officer is adequately trained to administer the test and render an opinion regarding the results thereof, and
 - ii. that the test was properly administered. State v. Rose 2002); see also State v. Hill
- 3.

The National Highway Traffic Safety Administration (NHTSA) specifies the proper procedure to administer the test.

4. On DATE, Officer _____ performed the HGN test on the defendant. Subsequently, during sworn testimony, Officer _____ admitted he did not administer the test according to NHTSA standards..

WHEREFORE, the State respectfully requests an order from this court excluding any evidence regarding the administration of the HGN test or its results because a proper foundation cannot be laid.

Respectfully submitted,

County Assistant Prosecuting Attorney
County of _____, State of Missouri
[ADDRESS]
Telephone: (____) ____ - ____

IN THE CIRCUIT COURT OF _____, MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.) Case No.: _____
 _____)
)
 Defendant.

MOTION IN LIMINE

COMES NOW the State, by and through its attorney, _____, Assistant Prosecuting Attorney for the County of _____, State of Missouri, and moves this Court to prohibit counsel for the defendant from attempting to impeach any witness by verbally summarizing or paraphrasing their testimony, and/or from impeaching witnesses with extrinsic evidence on any collateral matter.

1. In order to properly impeach a witness with a prior inconsistent statement, counsel should show documents to the witness, read impeaching question and answer, and ask the witness if that was their prior statement. *State v. Douglas*, 132 S.W.3d 251 (Mo. App. S.D. 2004).
2. “There are two criteria that must be followed when using statements for purposes of rebuttal and impeachment: (1) a showing that the statements are voluntary and (2) the use of statements must rest upon the laying of a proper foundation.” *State v. Wilson*, 105 S.W.3d 576, 585 (Mo. App. S.D. 2003). In order to lay a foundation to properly impeach a witness, the witness must be granted the chance to refresh his or her memory by looking at documents, such as the transcripts from their prior testimony, and then be given the opportunity to admit, deny, or explain the prior statement. *Id.*
3. A defendant can impeach a witness with prior inconsistent statements, but the impeachment may concern neither an immaterial nor a collateral matter. *State v. Williams*, 849 S.W.2d 575,

578 (Mo. App. E.D. 1993). A matter is collateral if the fact in dispute is of no material significance in the case or not pertinent to the issues developed. *State v. Dunson*, 979 S.W.2d 237, 242 (Mo. App. W.D. 1998). If the questioner inquires as to a collateral matter on cross examination, the questioner must take the answer received and no extrinsic evidence is permitted so as not to confuse the issues before the jury. *State v. Taylor*, 944 S.W.2d 925, 934-35 (Mo. banc 1997).

4. The State requests this Court order counsel for defendant not to attempt impeachment of any witness by broad reference to prior testimony nor attempt to impeach any witness with extrinsic evidence on any issue not directly at issue in this case.

WHEREFORE, the State requests the Court to grant the State's motion in limine.

Respectfully submitted,

_____ County Assistant Prosecuting Attorney
County of _____, State of Missouri
[ADDRESS]
Telephone: (____)____ - _____