



LIFESAVERS 2017

WHAT HAPPENS WHEN YOU DRIVE

IMPAIRED BY ALCOHOL OR OTHER DRUGS.



LIFESAVERS 2017 PRESENTERS

- Earl G. Penrod, Senior Judge, Indiana Office of Court Services, ABA Judicial Fellow in cooperation with NHTSA
- Sgt. Ann M. Fowler, Asheville Police Department, DWI Task Force
- Melissa G. Shear, Esq., Traffic Safety Resource Prosecutor (TSRP), Assistant Attorney General, Office of the Attorney General for the District of Columbia
- Mark Stodola, Probation Fellow, American Probation and Parole Association

Arrest/Fact Pattern

On Monday January 3, 2017 at 0230 hours Phoenix Police Officer Majestic observed Yellow Ford Mustang driven by an individual later identified as Mark Hendershot, heading westbound on West Thomas Road, run through a red light.

When Officer Majestic made contact with Hendershot, he quickly noticed several signs of intoxication: a strong odor of alcohol, bloodshot and watery eyes, and slurred speech.

Hendershot agreed to perform standardized field sobriety tests (SFSTs). As he exited the vehicle, Officer Majestic observed the defendant's balance was slightly swayed. After observing all six clues on the horizontal gaze nystagmus (HGN) test, Hendershot determined the driver was intoxicated and he was arrested for DWI.

A MVD check revealed the defendant's license was suspended after a conviction of DOID (marijuana) on September 20, 2016. There was also an active FTA warrant from the Tolleson Justice Court for misdemeanor aggravated assault.



DWI FACT PATTERN

Phases of DWI Detection

- Vehicle in Motion
 - *What did you see and what are your reasons for the stop*
 - *How did he stop*

- Personal Contact
 - *What did you Smell*
 - *What did you Hear*
 - *What did you See*

DWI FACT PATTERN

Phases of DWI Detection

- Pre Arrest Screening
 - *Horizontal Gaze Nystagmus*
 - *Walk and Turn*
 - *One Leg Stand*
 - *Roadside Breath Testing (ALCO)*



Ps

- Prepared
- Professional
- Proficient
- Polite
- Personable
- Plain language
- Procedure

Direct Examination---What to Expect

- Training and experience
- Qualifying as an Expert
- Three phases
 - *Vehicle in motion*
 - *Personal Contact*
 - *Pre-arrest screening*
 - Testimony regarding each of the SFSTs – HGN, Walk and Turn, One Leg Stand
- Opinion re: impairment
- Arrest process
- Chemical Testing

Direct Examination—Phase 1—Vehicle in Motion

- What is the vehicle doing?
 - *Moving violation v. “technical” violation?*

- RAS to stop the vehicle

- How does driver respond to signal to pull over

Direct Examination—Phase 2—Personal Contact

- Face to face observation and interview of driver
- Use your senses
 - *See: BS/Watery Eyes, Alcohol/Drugs in car*
 - *Hear: slurred speech, admissions, unusual stmts*
 - *Smell: alcoholic beverages, marijuana, mints, etc.*
- How did driver respond to divided attention
- How did driver exit vehicle

Direct Examination—Phase 3—Pre Arrest Screening

- SFSTs
 - *HGN/VGN*
 - *WAT*
 - *OLS*
- Other tests
- Other observations

Cross examination—common techniques

- Short, leading questions

- Yes/No

- Concessions—getting you to agree on certain things

- Impeaching/Contradicting—pointing out mistakes or inconsistencies

Cross examination—common areas of attack

- Issues or inconsistencies with the paperwork
- All the “good” that occurred
- Improper SFST instructions
- Other types/causes of nystagmus
- Alternative explanations for signs of impairment
- Studies for alcohol not drugs
- Interest/Bias/Credibility

JUDICIARY, COURTS, JUDGES



JUDICIARY, COURTS, JUDGES

- Legislative Branch (Congress, State Legislatures) ENACTS laws.
- Executive Branch (Police, Prosecution) ENFORCES and EXECUTES laws.
- Judicial Branch (Courts) INTERPRETS laws.

Judges: Different Role...Common Goal

- Separate, co-equal branch of government.
- Administration of justice, criminal and civil.
- Criminal Justice system promotes public safety by providing fair and impartial forum for prosecution of suspected wrongdoers.
- Administration of criminal justice system NOT fostering prosecution.

Prosecuting Wrongdoers

- Crimes are wrongs against public/society.
- ALL crimes brought in name of and on behalf of Government.
- Government/prosecution protects society by holding individuals accountable for conduct.
- Prosecuting wrongdoers promotes lawful, positive conduct.

JUDGES...

- Insure individual rights and constitutional protections for every individual.
- Balance individual freedoms with societal values and objectives.
- Protect individuals from overzealous (even if well intentioned) government.

Bedrock Constitutional Protections

- Fair, Public, Speedy TRIAL/process
- Presumption of Innocence
- Burden of Proof on Government: Beyond a Reasonable Doubt
- Privilege Against Self Incrimination

GETTING OFF ON A TECHNICALITY?

- Shame on judges who allow the guilty to go free because the police, prosecution, government were not perfect,
- Or...
- Shame on judges who fail to uphold the law, even when unpopular, controversial or a 'criminal' goes free.

Promoting the Public (General) Welfare

Ensuring a fair and just forum.

Respecting and following rule of law.

Remaining neutral and independent.

Ruling fairly on evidentiary and other issues NOT promoting/favoring prosecution.

Imposing sanctions/punishment only upon **guilty**.

Sentencing the GUILTY...

- Retribution: getting what one **deserves**.
- Incapacitation: **remove** offender's ability to offend.
- Rehabilitation: mandate/foster **reform**.
- Specific deterrence: sanction motivates **offender** NOT to reoffend.
- General deterrence: sanction teaches/motivates **others** not to offend.

Community Supervision



Who is Most Likely to Reoffend?





4,708,100 individuals under community supervision in 2014

15% of this probation population have been convicted of DWIs

8% of the probation population have been convicted of multiple DWIs

Approximately two thirds of individuals under community supervision are drug or alcohol involved

Major Risk Areas of DWI Recidivism

1. Prior involvement in the justice system specifically related to impaired driving
2. Prior non-DWI involvement in the justice system
3. Prior involvement with alcohol and other drugs (AOD)
4. Mental health and mood adjustment problems
5. Resistance to and non-compliance with current and past involvement in the justice system

Supervision That...

- Places focus on the person, not the charge
- Addresses criminogenic needs
 - *The Big Four*
 - *The Next Four*



Assessments

- **ADS** (Alcohol Dependence Scale)
- **ASUDS-R** (Alcohol Substance Use and Driving Survey – Revised)
- **ASI** (Alcohol Severity Index)
- **AUDIT** (Alcohol Use Disorders Identification Test)
- **IDTS** (Inventory Drug-Taking Situations)
- **DAST** (Drug Abuse Screening Test)
- **LSI-R** (Level of Service Inventory-Revised)
- **MAST** (Michigan Alcoholism Screening Test)
- **SASSI** (Substance Abuse Subtle Screening Inventory)
- **RIASI** (Research Institute on Addiction Self Inventory)
- **IDA** (Impaired Driver Assessment)
- **CARS** (Computerized Assessment and Referral System)

Assessment Questions Examples

Do you have up or down moods?

Do you get nervous, tense or worry about things?

How many times have you received treatment for mental or emotional problems?

How many times in your life have you been drunk or intoxicated on alcohol?

How many times in your life have you received a ticket for non- DWI driving violation such as speeding....?

How many times have you been enrolled in an alcohol education or treatment program?

-How serious of a problem is your DWI for you?

So What about Hendershot?

PRIOR INVOLVEMENT IN THE JUSTICE SYSTEM
SPECIFICALLY RELATED TO IMPAIRED DRIVING

PRIOR NON-DWI INVOLVEMENT IN THE JUSTICE
SYSTEM

PRIOR INVOLVEMENT WITH ALCOHOL AND OTHER
DRUGS (AOD)

MENTAL HEALTH AND MOOD ADJUSTMENT
PROBLEMS

RESISTANCE TO AND NON-COMPLIANCE WITH
CURRENT AND PAST INVOLVEMENT IN THE JUSTICE
SYSTEM



So What about Hendershot?

Build a case plan based on risk and needs

Drug/alcohol assessment and treatment
Thinking for a change
Drug testing
Medium high supervision





Contact Information

Judge Earl Penrod

penrod26d01@msn.com

Sgt. Ann M. Fowler

afowler@ashevillenc.gov

Melissa G. Shear, Esq.

Melissa.shear@dc.gov

Mark Stodola

Probationfellow@csg.org