



Former State Prosecutor

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For DUI Defense Attorneys Only

I often receive calls and e-mail from other attorneys seeking my help and advice on the availability of DUI related information, publications and experts.

Resources and experts in this field of law can be invaluable in uncovering suppression issues ranging from the initial stop of your client's vehicle, to his ultimate arrest and incarceration. Very often, successful arguments and supporting testimony considered routine by practitioners in one locale may be unheard of or untested in another. Borrowing strategy from your distant brethren may turn out to be the very break needed in your own case.



In this spirit, I have provided below a list and links to helpful resources, software, publications, case law, legislation, and well qualified experts.

Frank Russo

Attorney at Law

DUI Software For Attorneys

DUI Professional™ Blood-Alcohol Analysis for Window 95/98/NT 4.0:

DUI Professional is a pharmacology utility used to calculate blood alcohol content. This software offers an easy to use wizard-style calculator that prompts for input on type of drink, quantity, weight, time of consumption, gender and stomach contents. Using this data, DUI Professional calculates a range of expected blood alcohol levels based on the generally accepted scientific principles of Widmark, Dubowski, and Watson. A drink database is included providing instant information on nearly 200 different alcohol beverages.



The program provides extensive online help on both the technical functioning of the software as well as the background scientific basis for the calculations. Detailed charts and reports are generated from the calculations. DUI Professional™ Alcohol Analysis System achieved a Five-Star Rating by ZDNet, the highest software rating awarded by the publishers of PC Magazine. **To purchase the software on CD-ROM for \$249.00 Call: 800-242-4775 (ext. 15607).** You can visit the DUI Professional™ website at: www.duipro.com

New DUI Legislation - 2002 Legislative

Session

On 3/22/02 the Florida Legislature unanimously passed House Bill 1057 greatly affecting DUI laws. Our office reviewed the fifty-two pages of legislation and summarized all major changes. The following information covers the new laws that are most likely to affect your clients.

Felony DUI

Felony DUI's have been expanded to include the following:

- A third DUI conviction that occurs within ten years of any prior DUI conviction shall be a third degree felony. (Effective 7/1/02)
- "Serious bodily injury" language of felony DUI statute is expanded to include the words "contributes to causing" in addition to "the former language that provides: "causes." (Effective 7/1/02)
- Amends Florida Criminal Punishment code F.S. Section 921.0022 to include a third time felony DUI conviction as a level three offense.

Ignition Interlock Devices

- A person convicted of a second DUI must obtain at his sole expense, an ignition interlock device on all vehicles in his name or in joint name with another, prior to obtaining a permanent or restricted license. (Not to be effective until 7/1/03) (Not court ordered. Presumably monitored by DHSMV.)
- Upon a third conviction within 10 years of any prior conviction, the court shall for a period of not less than two years order the installation of, an ignition interlock device at the Defendant's sole expense on all vehicles in the Defendant's name or in joint name with another person, at the time he qualifies for a permanent or restricted license. (Not to be effective until 7/1/03)
- Upon a third conviction outside of ten years of any prior conviction, the court shall for a period of not less than two years order the installation of, an ignition interlock device at the Defendant's sole expense on all vehicles in the Defendant's name or in joint name with another person, at the time he qualifies for a permanent or restricted license. (Not to be effective until 7/1/03)
- In 1st time DUI cases in which there involved minor children or an enhanced BAC, the court shall for a period of up to six months order the installation of, an ignition interlock device at the Defendant's sole expense on all vehicles in the Defendant's name or in joint name with another person, at the time he qualifies for a permanent or restricted license. And for a second conviction, involving the same contingencies, said interlock device shall be for a period of at least two years. (Not to be effective until 7/1/03)
- All references to probation have been deleted from F.S. Section 316.1937 as it formerly referenced the ignition interlock device. (Since probation is no longer a prerequisite to the mandatory requirement for the device.) Likewise, the driver now makes his reporting for purposes of proof of installation of the device to DHSMV.

Fines & Forms

- Maximum fine amounts (caps) associated with third or subsequent DUI's and DUI's involving minor children or enhanced BAC have been removed. (Effective 7/1/02)
- Requires the implementation of uniform arrest affidavit and alcohol influence report forms by all law enforcement agencies. (Effective 7/1/02 but requires implementation by 7/1/04.)

Refusal to Submit

- The words "Right to Refuse" have been stricken from F.S. Section 316.1932 (Effective 7/1/02)
- The following words have been added to Florida's Implied Consent Law:

"and shall also be told that if he or she refuses to submit (*to breath or urine*)...and they have suffered a previous suspension for a prior refusal...he or she commits a misdemeanor in addition to any other penalties." Note: Language likewise amended in same fashion where there is a request by law enforcement for blood. (Effective 7/1/02)
- F.S. Section 316.1939 was created to outline the necessary elements associated with the new criminal

offense of misdemeanor refusal. (*Misdemeanor of the first degree*) A.) Refusal to submit to breath, blood, or urine; B.) Prior refusal; C.) Arresting officer has probable cause to believe the Defendant is DUI; D.) Defendant was placed under arrest for DUI; E.) The Defendant was read Implied consent; F.) The Defendant was told that his refusal constituted a misdemeanor offense. Note: The statute also provides that the results of any DHSMV administrative proceeding to do not effect the criminal case and visa versa. (Effective 7/1/02)

Use of Reasonable Force

(Where DUI associated with serious bodily injury or death)

- "The person shall submit" language has been amended to reflect "the officer shall require" the individual to submit a blood sample... (Effective 7/1/02)
- Language added to 316.1933 that allows law enforcement to require the submission of a blood sample without making a lawful arrest. (Effective 7/1/02)

Boating Under the Influence

- Tracks In many respects the new DUI legislation including the creation of a felony for a third offense and the creation of a misdemeanor for a second refusal. (Effective 7/1/02)

From the 2000 Legislative Session - House Bill 168: Permits forfeiture of the Defendant's motor vehicle if he is convicted of DUI, when at the time of the offense the driver was already operating under a DUI related suspension. This law amends Florida Statute Section 322.34 to insert the forfeiture provision and the Florida Contraband Act to add the motor vehicle driven under these circumstances to the list of contraband articles found in Fla. Statute Section 932.701. **Update/ Legislation Passed:** Effective 1/1/00 Section 322.34 allows seizure/forfeiture of auto driven by impaired driver whose driver's license is under suspension/revocation as a result of a prior DUI conviction.

EXPERT WITNESSES

Richard E. Jensen, Ph.D. 4690 IDS Center, Minneapolis, Minnesota 55402-2207; Phone: (612) 339-7903 Fax: (612) 349-677 Dr. Jensen is considered the foremost recognized expert in the areas of chemical testing, the analysis of blood, breath and urine for ethyl alcohol and other drugs, and the interpretation of the results. He has qualified and testified as an expert witness in (30) states and Canada. He is the owner of Forensic Associates, Inc. in Minneapolis, and holds the appointment of Director of Alcohol Toxicology at "Medtox Laboratories, Inc.," in St. Paul. The Doctor lectures throughout the United States, and in addition to his scientific publications, he is a contributing author and scientific editor and consultant to numerous publications and books.

Rick A. Swope

Rick is an accident reconstruction specialist and DUI consultant. His past experience includes work as a Sheriff's Deputy and law enforcement instructor. He has been declared an expert in court over 600 times and provides effective testimony in connection with the operation and short comings of the Intoxilyzer 5000 breath testing machine. Rick holds a Masters degree from the University of Miami in the area of Technology and Engineering. He has published numerous articles associated with breath testing, field sobriety tests and the investigation of accidents involving impaired drivers. Rick has been a featured speaker at Emory University, Harvard Law School, and at numerous other seminars and lectures across the United States. Rick's address and phone number are as follows: P.O. Box 290547, Davie, FL 33329. Telephone number: (954)476-7640.

Mark Montgomery, Ph.D. 12109 Wood Duck Place, Tampa, FL 33617, Phone: (727) 988-5853, Fax: (727) 988-1833. Dr. Montgomery is a Professor of Toxicology at

the University of South Florida, College of Public Health. He offers consulting **forensic and medical/legal toxicology**. He is a frequent lecturer to Florida Bar Association groups, The Florida Prosecuting Attorneys' Association and various law enforcement agencies. The Doctor has even testified before a Congressional Committee. He serves on the editorial Board of the "Journal of Toxicology and Environmental Health."

Rick Hart: Private Investigator 7843 Seminole Blvd., Seminole, FL 33772.

Telephone number: (813) 319-8200. Rick Hart is a former detective with the St. Petersburg Police Department. He holds a B.A. degree in Criminal Justice and has received training through the "Federal Bureau of Investigation," the "Drug Enforcement Administration," the "Secret Service," and the "Florida Department of Law Enforcement." Rick's combined investigative experience totals 21 years.

Dr. Michael P. Gamache, Ph.D. Psychologist 500 N. Westshore Blvd. Suite #520, Tampa, FL 33609. Telephone number: (813) 282-8090. Dr. Gamache is a licensed Psychologist with specialties in the areas of "forensic psychology," "neuropsychology," and "clinical psychology". The Doctor has an impressive background of education and experience including his present position as a Professor of Graduate Studies at the University of South Florida, Department of Law and Mental Health. He has been qualified on numerous occasions to testify in Pinellas County courtrooms as an expert. The Doctor is articulate and impressive during his Courtroom presentations. Doctor Gamache's testimony can often be of great help in connection with sentencing guideline departures, or cases involving addiction or personality disorders.

LaPier & Associates: NHTSA Master Instructor. Expert testimony related to field sobriety testing, drug recognition evaluations, and accident reconstruction.

Dr. David Stafford, Toxicology: (901) 448-6355

Dr. Joseph Citron, MD, HGN: (Board Certified

Richard Rackleff, Polygraph: (Associated with the "Richard Jewell" case) (800) 251-9190

David Sweeney, Pharmacology: (843) 347-1855

[Click Here To Search For Additional Experts](#)

DUI PUBLICATIONS FOR LAWYERS

Drinking/Driving Law Letter

Drinking/Driving Law Letter: Published 26 times per year by West Group 620 Opperman Drive, St. Paul, MN 55164. Includes DUI and administrative review appellate decisions indexed by the state of origin. <http://www.cbcllegal.com/catalog/crime/dii.html>

DUI Defense Forms & Checklists: Includes an excellent client interview form and memorandums in support of a variety of motions. James Publishing 3520 Cadillac Ave. Suite E, Costa Mesa, CA 92626

101 Ways to Avoid a Drunk Driving Conviction: by: William C. Head and Reese I. Joye, Jr. Attorneys. Maximar Publishing Company, Inc. P.O. Box 81188 Atlanta, GA 30341-1188. Written primarily for the benefit of non lawyers. At the same time, it provides very valuable insight into client fears and the numerous questions they need answered. A must read! <http://www.drunkdrivingdefense.com/101.htm>

Mastering Scientific Evidence in DUI/DWI Cases: Headlines Marketing 945 E. Paces Ferry Rd. Suite 2525 Atlanta, GA 30202. A compilation of material covered during a seminar recently held in New Orleans and attended by over 150 DUI attorneys from around the country. Goes beyond scientific evidence, including field sobriety testing, cross examination and dramatic courtroom demonstrations. (Also available in audio tape format). <http://www.drunkdrivingdefense.com/scievbok.htm>

Drunk Driving Defense: Authored by California attorney, Lawrence E. Taylor, who is recognized nationally as one of the foremost authorities in DUI litigation. A single volume treatise that includes comprehensive defenses, strategies, motions, and arguments. This resource demystifies complex chemical and biological concepts associated with blood and breath testing. <http://law.net/sponsors/taylor/index.html>

Drinking/Driving Litigation: Criminal and Civil: by: Donald H. Nichols. A treatise unique for its inclusion of topics concerning civil damages and civil liquor liability issues associated with DUI. <http://www.cbcelegal.com/catalog/crime/ddl.html>

American Law Reports Critical Issues: Drunk Driving Prosecutions: by: The Publisher's Editorial Staff. West Group Publishing. A comprehensive compilation of ALR annotations covering critical DUI Issues. (Hardbound book; one volume) <http://www.westgroup.com/htbin/westgroup.exe?>

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DUI Publications Emphasizing a Particular State

Florida DUI Defense, Law Tactics & Procedure: by Flem K. Whited III. Revere Legal Publishers P.O. Box 14407 Clearwater, FL 34623. (800) 262-1776. An excellent comprehensive guide for Florida attorneys. Significant case law support with regular updates in connection with pre-trial, trial and DHMV administrative review representation.

Pennsylvania Drunk Driving Defense: by Patrick F. Lauer, Jr. Exhaustive coverage of Pennsylvania DUI law, tactics and procedure. Includes litigation tips, strategies, and questioning techniques. Revere Legal Publishers. <http://www.romingerlegal.com/Revere.htm#DUI>

California Drunk Driving Defense 2nd: by Lawrence E. Taylor. West Group Publishing. A thorough analysis of California and Federal DUI legislation and case law.

<http://www.westgroup.com/htbin/westgroup.exe?>

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Overnight California DUI News Faxed: This service provides late breaking DUI news and information via overnight fax. California Supreme Court and Court of Appeals decisions, new D.M.V. forms, winning trial strategies. Fast Freddie Publishing Co. 1325 Hilltop Dr. Willits, CA 95490 (707) 459-3999. <http://dui-law.com/ffead.htm>

Judge Walter Gorelick's Summary of California DUI Cases: Tule Legal Press 433 E. Chevy Chase Dr. Tulare, CA (209) 688-7841. Contains all DUI cases and DUI related statutes. Issues covered include roadblocks, field sobriety testing, nystagmus, and preliminary alcohol testing.

<http://www.dui.com/whatsnew/gorelick.html>

Ohio Driving Under the Influence Law: by Mark P. Painter and James M. Looker. West Group Publishing. Authored by a judge and a defense attorney. A practical guide which includes implied consent forms, Ohio DUI case law, and analysis of recent case law. <http://www.westgroup.com/htbin/westgroup.exe?>

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New York Driving While Intoxicated, 2d: by; Edward L. Fiandach. West Group Publishing. Provides complete coverage of alcohol legislation in New York as well as practical guidelines in representing the DUI offender. Unique in its attention to special problem cases including enhancement, forfeiture, and underage offenders. <http://www.westgroup.com/htbin/westgroup.exe?>

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Handling the DWI Case in New York: by: Peter Gerstenzang. West Group Publishing. An up to date practice guide that includes practical advice on trying a DUI in New York State Courts. Extensive trial preparation materials. Important practice oriented insights. Valuable negotiation tactics are revealed.

<http://www.westgroup.com/htbin/westgroup.exe?>

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Cross Examination of the Police Officer With His Own Manual

Publications that the police use:

Officer's DUI Handbook: Kwasnoski, Partridge & Stephen. (1999 Edition) Lexis Publishing 1-800-562-1197

Apprehending & Prosecuting The Drunk Driver: Cohen & Green, 1999 edition Mathew Bender 1-800-223-1940

DUI Resources for Lay Persons

The following DUI publication lends itself well to non-lawyers. It is easy reading and conveys complicated legal issues and concepts in a manner understood by those without the benefit of a Juris Doctorate degree. This book provides an excellent background for your support staff or a terrific gift for that deserving client.

101 Ways to Avoid a Drunk Driving Conviction: by: William C. Head and Reese I. Joye, Jr. Attorneys. Maximar Publishing Company, Inc. P.O. Box 81188 Atlanta, GA 30341-1188
<http://www.drunkdrivingdefense.com/101.htm>

Articles/Studies

The following articles/studies can be sent to a State's witness prior to trial. They support the proposition that any field sobriety test used by law enforcement, other than the (3) standardized tests approved by NHTSA, have no scientific basis of reliability.

Separating Myth From Fact: A Review of Research on FST'S. NACDL Champion Magazine. 8/95 Pg. 40

DWI/DUI Field Sobriety Testing Revisited, Trichter & Pena: NACDL Champion 8/96 Pg. 17

Proof & Disproof of Alcohol Induced Driving Impaired Through Evidence of Observable Intoxication & Coordination Testing: 9 AM JUR P.O.F. 3rd Pg. 459 (1990) (*This article lists the studies on non approved FST's*)

SIXTH JUDICIAL CIRCUIT "APPELLATE DIVISION"

DECISIONS: NEW!

Although the results of two breath tests were **greater than .02 apart** and a third test was not administered, this does not require the suppression of the test results because in this case it was the defendant himself who prevented the third test from being administered. Defendants may not benefit from defects they create. **State v. Thompson, No. CRC 94-3910 CFANO (Fla. 6th Cir. Ct. July 5, 1995).**

Defendants' **failure to understand their rights** under the Implied Consent law does not provide a basis for suppressing breath test results. **State v. Ngo, No. CRC 94-16680 CFANO (Fla. 6th Cir. Ct. Sept. 8, 1995).**

Order granting state's motion in limine excluding results of a defendant's roadside **pre-release breath test** was affirmed because the defendant failed to show the results were properly obtained and scientifically reliable. **State v. Thompson, No. CRC 95-21388 CFANO (Fla. 6th Cir. Ct. May 15, 1996).**

Evidence obtained as a result of a blood test was properly suppressed because the **officer misinformed the defendant** he was required to submit to a blood test and there was no evidence that a blood test was impractical. **State v. Dorgan, No. CRC 95-13451 CFANO (Fla. 6th Cir. Ct. June 12, 1996).**

A single breath test is not scientifically unreliable and, therefore, inadmissible. A single breath test only precludes the state from using the evidentiary shortcut in Florida Statute 316.1932 (1) (b) 2 that provides that the results of breath tests conducted in substantial compliance with the regulations are presumptively reliable. **State v. Irwin, No. CRC 95-3835 CFANO (Fla. 6th Cir. Ct. July 3, 1996).**

A single test may be admissible if the state can establish a scientific predicate to support the test results. The state must establish that: (1) the test was reliable; (2) the test was performed by a qualified operator with the proper equipment; and (3) expert testimony demonstrates the meaning of the test. **State v. Irwin, No. CRC**

95-3835 CFANO (Fla. 6th Cir. Ct. July 3, 1996).

Defendant's consent to a **blood test** was not tainted by the officer's reading of Miranda followed by the implied consent law.

Knapp v. State, No. CRC 95-17189 CFANO (Fla. 6th Cir. Ct. Sept. 25, 1996).

Defendant was in **actual physical control** of an auto because he was found behind the wheel of a car with the driver's side door open. He was in constructive possession of the keys because he was seen by the police who came to investigate reaching underneath the driver's side floor mat -- where the keys to the car were ultimately found. **Guthrie v. State, No. CRC 96-2678 CFANO (Fla. 6th Cir. Ct. Dec. 6, 1996).**

Actual physical control is to be determined by the totality of the circumstances. The relevant factors are: (1) active or constructive possession of the key to the vehicle; (2) the defendant is in the driver's seat; and (3) the vehicle is operable. **Guthrie v. State, No. CRC 96-2678 CFANO (Fla. 6th Cir. Ct. Dec. 6, 1996).**

DUI suspects' refusal to submit to pre-arrest **field sobriety tests** are admissible in evidence. **State v. Linden, No. CRC 94-5948 CFANO (Fla. 6th Cir. Ct. Feb. 7, 1995).**

Individuals who are the subject of ordinary traffic stops, even ones that involve field sobriety tests, are not in **custody** for the purpose of being Mirandized. **State v. Baughman, No. CRC 94-2020 CFANO (Fla. 6th Cir. Ct. May 15, 1995).**

Because **roadside stops are generally not custodial**, the privilege against self-incrimination was not violated by allowing into evidence the defendant's statement that he had been at an all-day party at his country club. **State v. Smith, No. CRC 94-11909 CFANO (Fla. 6th Cir. Ct. July 21, 1995).**

If a defendant is convicted of his **third DUI within five years of a prior conviction**, then Florida Statute 316.193(6)(c) requires a jail sentence. The remoteness of the first conviction is not to be considered. **State v. Mangum, No. CRC 95-5442 CFANO (Fla. 6th Cir. Ct. Dec. 13, 1995).**

[[DUI FAQ](#)] [[Breath or Blood?](#)] [[Alcohol & the Human Body](#)] [[DUI Injustice](#)] [[Drink Chart](#)]
 [[Refuse the Tests?](#)] [[DUI Update](#)] [[Proper Field Sobriety Tests](#)] [[Russo in the News](#)]
 [[DUI Penalties](#)] [[Forfeiture of Car](#)] [[St. Pete Mobile Breath Test](#)] [[Flashlight Alcohol Sniffer](#)]
 [[Detecting DUIs](#)] [[Under 21 DUI](#)] [[DUI Professional Blood Alcohol Analysis](#)] [[DUI Links](#)]
 [[For DUI Defense Attorneys Only](#)] [[DUI Radio Interview](#)]
 [[What if I Want to Simply Plead Guilty?](#)] [[Getting Your Hardship License](#)]
 [[Out of State DUI Convictions](#)] [[Multiple Offender Hardship Licenses](#)]



Our Primary Office Location:
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Consultations also available at:
 Ulmerton Road and 58th Street North
 The Summit Building
 Clearwater, Florida 33760

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

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