

DWI CROSS EXAM OF OFFICER

| Jurisdiction | Officer Approach |
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| Sworn law enforcement on duty? | On initial approach, how long did officer speak with defendant? |
| Occurred within Mecklenburg County? | Was defendant showing any of the following signs of intoxication: |
| Observed Driving | <ul style="list-style-type: none"> • Eye fixation? |
| Opportunity to observe driving? | <ul style="list-style-type: none"> • Tightly gripping steering wheel? |
| How long? | <ul style="list-style-type: none"> • Slouching in seat? |
| Safe/Lawful driving? | <ul style="list-style-type: none"> • Face close to windshield? |
| Swerving? | <ul style="list-style-type: none"> • Any erratic gesturing? |
| Cross yellow line? | <ul style="list-style-type: none"> • Any use of obscenities |
| Cross white line? | Did officer ask for license and registration? |
| Weaving through traffic? | Did defendant produce license and registration in calm/collected manner? |
| Did they endanger other drivers in their immediate vicinity while driving? | Was defendant belligerent or uncooperative? |
| Cause other drivers to swerve? | Did defendant in fact produce a valid driver's license? |
| Cause other drivers to brake? | Was defendant cooperative and honest? |
| Did defendant have tag on vehicle? | Odor of Alcohol: |
| Once blue lights activated, did defendant begin stopping vehicle? | Where was odor emanating from: Breath? Body? Clothes? Vehicle? How can you be sure? |
| Any signs defendant attempted to flee or elude? | Slurred Speech Faint, Moderate or Strong? |
| Did defendant stop vehicle in safe location? | How long did you talk to defendant while in the vehicle? |
| Did defendant stop vehicle in safe manner? | Did you personally know the defendant prior to this incident? |
| Did defendant exit the car prior to officer approaching vehicle? | Are you familiar with defendant's normal speech? |
| NOTES: | So you don't know whether defendant has any speech impediments? |
| | So even today you would not know if defendant normally spoke in a slurred manner? |

DWI CROSS EXAM OF OFFICER-PAGE 2

| Incriminating Statements | | Plan View Inside Vehicle | |
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| Did you ask defendant whether he had consumed alcohol that night? | | Did you have an opportunity to look inside the vehicle? | |
| Did you ask how many drinks he had? | | Did you in fact conduct a search incident to arrest at some point? | |
| Did you ask what types of drinks he consumed? | | Did you find any open containers? | |
| Did you ask when he began drinking? | | Did you find any drugs or contraband? | |
| How long before the stop was the last drink? | | Did you find any drug paraphernalia? | |
| Over the course of how many hours was defendant drinking? | | Did you find any prescription medications or evidence suggesting defendant was unlawfully prescribed any medications? | |
| So you don't know whether he had one beer every 3 hours beginning early in the morning? | | SFST's: Is officer familiar with NHTSA regulations concerning SFST's? | |
| Vehicle Exit | | What type of surface was defendant standing on? | |
| Did you ask defendant to exit vehicle? | | What were weather conditions? | |
| Did defendant in fact do so? | | Was the defendant facing bright, rotating or strobe lights? | |
| Did defendant object to exiting the vehicle? | | Was defendant near passing traffic? | |
| Was defendant cooperative? | | Was pavement uneven? | |
| Did defendant trip or stumble while exiting? | | Was it windy/dusty outside? | |
| Did defendant sway while exiting? | | Were there other distractions during the tests, such as bystanders watching? Loud noises? | |
| Did defendant lean against vehicle? | <u>NOTES:</u> | | |
| Did you ask defendant to not lean against vehicle? | | | |
| So defendant showed no signs of intoxication as he exited the vehicle? | | | |
| Did you take a good look at defendant at this point? What kind of shoes was he wearing? | | | |
| Were defendant's clothes wet as a result of spilling alcohol? | | | |

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HGN TEST: Max. # of clues is 3 per eye – total of 6. 4 or more clues = 77% BAC >.10

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| 1. Check for glasses | <i>Start each test with left eye</i> | Did officer ask whether suspect had eye problems or abnormalities? Seizure meds affect nystagmus | |
| 2. Verbal instructions | | Did suspect say he understood? | |
| 3. Position stimulus | | What did officer use to measure distance? | |
| 4. Equal pupil size Resting nystagmus | | Any substantial difference between left and right eyes? | |
| 5. Equal tracking | Stimulus moves from center to far right to far left at 2 seconds | Did eyes in fact track stimulus equally? | |
| 6. CLUE: Lack of smooth pursuit | Move stimulus from center to right side at 2 seconds. Check right eye. MUST do 2 passes | | |
| 7. CLUE: Distinct and sustained nystagmus at max. deviation | Move stimulus from center to right side until eye as far as possible; no white should show. Must hold at least 4 seconds. Must show definite and sustained jerking. Check right eye. | | |
| 8. CLUE: Onset of nystagmus prior to 45 degrees | Stimulus moves from center to near defendant's shoulders. Stimulus should stop when jerking observed; CLUE if occurs prior to 45 degrees. | | |
| 9. Total the clues | | | |
| 10. Check vertical gaze nystagmus | | | |

WALK AND TURN: 2 or more clues = 68% likely BAC > .10

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| CLUE | Unable to balance during instructions | 9 heel to toe steps; turn by keeping front foot on line and taking small steps with other, keep arms at side, watch feet at all times, and count steps out loud. Once you start do not stop until you have completed test. | Was test conducted on dry, hard, level, non-slippery surface? | |
| CLUE | Starts too soon; Came out of instruction | Suspect must maintain heel to toe throughout instructions. | Did officer designate an actual straight line? | |
| CLUE | Stops while walking | Pause for several seconds, not just walking slowly. | Did suspect acknowledge he understood instructions? | |
| CLUE | Doesn't touch heel to toe | Leaving a space of > 1/2" | Suspect wearing what kind of shoes? | |
| CLUE | Steps off line | Steps so that 1 foot is entirely off line | Suspect facing bright lights, traffic, strobe lights, other distractions? | |
| CLUE | Uses arms to balance | Raises 1 or both arms > 6" from sides to maintain balance | What were weather conditions? | |
| CLUE | Improper turn | Suspect removes front foot from line while turning, or if pivoting | Did suspect advise of existing medical conditions? | |
| CLUE | Wrong number of steps | | NHTSA regs state that test not accurate when used on elderly, or people with back, leg, inner-ear problems. | |

IF SUSPECT HAS DIFFICULTY WITH TEST (STEPS OFF LINE, STOPS) CONTINUE FROM THAT POINT AS TEST LOSES SENSITIVITY WHEN REPEATED SEVERAL TIMES.

DWI CROSS EXAM OF OFFICER – PAGE 4

ONE LEG STAND: 2 or more clues, or when suspect unable to complete = 65% likely BAC . .10

Instructions: Raise 1 leg, either leg, with the foot 6 inches off the ground keeping foot raised parallel to the ground. Keep both legs straight, arms at side. Count 1000-1 until told to stop. Keep eyes on raised foot.

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| CLUE | Sways while balancing | Either side-to-side or back-and-forth while maintaining 1 leg stand | What surface is test being conducted on? |
| CLUE | Uses arms to balance | Moves 6" or more from sides | What shoes is suspect wearing? |
| CLUE | Hops | | Any existing medical conditions? |
| CLUE | Puts foot down | | |

§ 20-138.1. Impaired driving.

- (a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:
- (1) While under the influence of an impairing substance; or
 - (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration; or
 - (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.
- (a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a relevant time after driving, an alcohol concentration of 0.08 or more.
- (b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.
- (b1) Defense Allowed. – Nothing in this section shall preclude a person from asserting that a chemical analysis result is inadmissible pursuant to G.S. 20-139.1(b2).
- (c) Pleading. – In any prosecution for impaired driving, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant drove a vehicle on a highway or public vehicular area while subject to an impairing substance.
- (d) Sentencing Hearing and Punishment. – Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge shall hold a sentencing hearing and impose punishment in accordance with G.S. 20-179.
- (e) Exception. – Notwithstanding the definition of "vehicle" pursuant to G.S. 20-4.01(49), for purposes of this section the word "vehicle" does not include a horse.

N.C.G.S. 8C-1 Rule 702

- (a1) A witness, qualified under subsection (a) of this section and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:
- (1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
 - (2) Whether a person was under the influence of one or more impairing substances, and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services, shall be qualified to give the testimony under this subdivision.

State v. Scott 356 NC 591, 573 S.E.2d 866

No intoxalyzer available in DWI case where Supreme Court considered whether State presented substantial evidence of impairment. Court found substantial evidence

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| 1. suspect driving > 60mph | 4. failure to pull over safely | 7. open container in vehicle | 10. Refused PBT |
| 2. vehicle had no tags | 5. strong odor of alcohol | 8. Clothes were wet with beer | 11. Refused intoxalyzer |
| 3. failed to pull over after blue lights activated | 6. suspect exited vehicle before directed by officer | 9. Slurred speech | |

