

A Practical Guide for Reviewing Evidence in DWI/DUI Cases

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Friday, February 14th, 2020



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When evaluating drug testing evidence in any case, there are two important questions for the judge and jury to address. The first question is, "Was the drug test done correctly? Is it valid?" The second question is, "Is the drug test relevant?" In the State of Texas, DWI laws require that a per se opinion of intoxication must be supported by a scientific opinion.

It is important to understand that not all laboratories across the state have the same procedures or qualified staff. Many laboratories have technicians who are trained in chemistry but may not have any knowledge of pharmacology or toxicology. Thus, just because the state has evidence of a "positive" test does not necessarily mean there is proof that someone was intoxicated.

It is thus important to request a detailed list of documents from the laboratory in the discovery request; the

request should contain the following:

- Chain of custody documentation
- Any video of the arrest or biological sample draw or collection
- All data printouts from the laboratory test
- All standard operating procedures
- All calibration records

In my experience reviewing cases over the last 15 years, chain of custody is the most common area where I have found gaps. Often, there is poor documentation from the officer or health care professional who draws and collects a sample to the transportation of that sample to the laboratory. Samples are often in storage for weeks, or even months, before they are tested. Proper chain of custody documents support that a sample has been properly handled and managed during the time it was in custody. Any gap in documentation creates a foundational question of whether, beyond a reasonable doubt, the evidence is valid. There should be clear documentation that connects the laboratory's report from the technician that ran the initial test to the supervisor or lab director that signs off on the final report or decision. In labs handling large volumes, these are often different people.

Focus on Marijuana and THC Evidence ? Checklist for a Case Involving THC

With several counties and the State of Texas effectively decriminalizing small amounts of marijuana, the prevalence of THC use in cannabis or electronic vaporizing devices continues to grow. It is challenging to set policy for a specific level of intoxication for marijuana intoxication for several reasons. One reason is that we have natural cannabidiol signaling in our bodies, with cannabidiol receptors, that are linked to the muscular, skeletal, and nervous systems. This is one of the reasons why CBD products are popular; people use them for relief of chronic ailments. Another reason is that the body can adjust to responses from THC use. An occasional user of THC may likely respond differently to THC than a habitual user. Several states have attempted to create levels of per se intoxication for THC, ranging from 1 ng, 2 ng, or 5 ng. Texas currently has no specific number.

If you have a case involving THC evidence, make use of the checklist below for your file in order to help you better understand the issues in the case. Organizing this evidence will assist you in evaluating the strengths and weaknesses of the case being made by the State.

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THC (Any Drug) Investigation Checklist for DWI/DUI

Geographics

Location of Accident

Local Statutes

Test Information

Time of Accident

Time of Test

Chain of Custody

Medium Tested: Blood __ Urine __ Saliva/Oral Fluid __ Hair __ Field Sobriety __

Test Result: Positive __ Negative __ THC (Active) _____ Carboxy-THC (THC-COOH) __

Limit of Detection _____ Limit of Quantitation _____

Admitted Use, If Provided

Inhalation / Smoked: If so, manner: Pipe _____ Water Pipe / Bong _____ Joint/Blunt _____ Vape _____

Approximate Amount in Grams: _____ % THC if commercial product / known _____

Edible: Brand _____ Description including THC concentration, total weight _____

Time of Use _____ Hours or Time before Incident _____

Patterns of Use (Daily, Monthly):

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