

Saliva Test Kits: Is the Future Now?

In response to the growing concern over the dangers of impaired driving, all 50 states and the District of Columbia have expanded their DUI laws to prohibit driving under the influence of drugs. However, as in all impaired driving cases, the first step in enforcement is detection -- not always an easy task in drugged driving cases. Unlike alcohol and related impaired driving cases where officers can use preliminary breath tests (PBTs), there are currently no roadside devices that detect the presence of drugs to help officers make arrest decisions. Could there be such a device for detecting drugged drivers in the near future? According to several manufacturers of recently developed state-of-the-art drug saliva test kits, the answer is yes.

There are several saliva test kits currently on the market or in development. Manufacturers claim that these kits can immediately detect the presence of drugs and/or alcohol in a person's system. These devices, according to the manufacturers, are quick and simple, noninvasive, require little training, and give reliable, scientifically based indications of the presence of many drugs of abuse, including THC (marijuana/hashish), opiates, cocaine/crack, methamphetamine, and PCP, as well as alcohol.

Most of the devices are marketed as screening devices designed to provide a qualitative indication of the presence of drugs; positive test results should be confirmed by gas chromatography-mass spectrometry. One manufacturer, LifePoint, Inc., however, claims to have developed an innovative technology for the collection of saliva, enabling their test kits to provide "quantitative" measurements of drugs and alcohol. While a prototype device is under development, they claim that this system will be able to detect up to ten drugs simultaneously from a single saliva sample.

Should these manufacturers' claims prove to be validated by independent testing, saliva test kits may prove to be quite effective in enforcing drugged driving laws, particularly in states with per se drugged driving legislation -- where it is illegal to drive with the mere presence of certain drugs in a person's system, whether or not the individual is impaired by the drug(s). Nine states have some form of per se drugged driving laws: Arizona, Georgia, Illinois, Indiana, Iowa, Minnesota, Rhode Island, South Dakota and Utah.

Currently, the U.S. Department of Transportation (DOT) has approved three saliva test kits to be used for alcohol screening purposes only. DOT's approval of these kits supports their use in zero-tolerance enforcement and workplace testing in the transportation industry (airline personnel, motor carrier drivers, school bus drivers and the like).

With the increased awareness of the dangers of impaired driving, and the need for quick, accurate detection of impaired drivers, new technology such as saliva test kits may become an effective tool in the fight against drugged driving. Undoubtedly, there will be defense challenges to this new technology. NTLC is a resource for research, studies, and case law on the admissibility of scientific evidence in impaired driving cases and can provide assistance to prosecutors facing these challenges. For more information contact NTLC at 703-549-4253 or fax 703-836-3195.

Passive Alcohol Sensors Update

For an NTLC article addressing the constitutionality of passive alcohol sensors recently published in Civic Research Institute's bimonthly journal *Impaired Driving Update*, e-mail Shenequa Grey at shenequa.grey@ndaa-apri.org. In addition, NTLC would like to remind both officers and prosecutors that for law enforcement purposes, passive alcohol sensors like the PAS™ III "Sniffer," www.sniffalcohol.com, should only be used to detect the presence of alcohol, not to provide a quantitative BAC measurement.

Automated Enforcement Technology Red Light Cameras

If you haven't done it, you've probably seen it done -- red light running. Although many people may think that occasionally running a red light is harmless. According to the Insurance Institute for Highway Safety, red light running factors into more than 800 deaths per year and over 200,000 injuries. Red light running is a serious problem but sometimes difficult to enforce because police officers simply cannot be everywhere at once and cannot monitor red lights all day. Furthermore, even if police do observe a vehicle running a red light, the officer would probably have to speed through the red light as well in order to stop the violator -- further endangering other motorists and pedestrians. Red light cameras seem to be an answer, providing 24-hour surveillance of traffic intersections, thereby freeing police officers to focus on other enforcement needs.

Red light cameras are installed at intersections and connected to sensors. The sensors are synchronized with the traffic lights. A vehicle passing over the sensors above a minimum speed and a set time after the signal has turned red triggers the camera. A second photograph is generally taken showing the vehicle in the intersection. The camera records the date, time and place of the violation. Trained police officers or other officials then review the photograph to determine whether a violation has occurred. The photos are also used to determine ownership of the vehicle from the license plate number. A ticket is mailed to the owner only when it is clear the vehicle ran the red light. Digital cameras or videos may also be used for increased accuracy in detecting violators and determining ownership of the vehicle.

Although this may be an effective means of catching red light runners, a city cannot simply install a camera and start mailing out tickets -- there must be some enabling legislation in place providing for it. Legislation permitting the use of red light cameras generally provides that enforcement agencies may ticket the vehicle owner by mail. Provisions may also state that vehicle owners are responsible regardless of who was driving the vehicle at the time of the offense.

Finally, the installation and maintenance of red light cameras are not cheap. Some jurisdictions pay the manufacturer a percentage of the revenue generated from the fines in exchange for the manufacturer absorbing some of the expenses associated with these costs. Currently, 13 states and the District of Columbia permit the use of red light cameras: Arizona, California, Colorado, Delaware, Hawaii, Illinois, Maryland, New York, North Carolina, Oregon, Virginia and Washington.

Arresting Developments

Germany. Police observed a car weaving slowly down a street and stopped the driver, a 33-year-old man who is blind. The driver told police he had always wanted to drive a car and that he was being very careful by getting out and checking for obstacles before proceeding on. His BAC was later found to be three times the legal limit.

Rochester, NY. Officer Scott McLaughlin was standing on a sidewalk questioning a robbery suspect when a car swerved off the road and struck him. McLaughlin spent three weeks in a coma, continues to have memory problems, and has been unable to return to work. The driver of the vehicle, 42-year-old Edward Jones, had a seizure immediately before the crash. Jones, an unlicensed driver operating a car registered and insured by a friend, has had uncontrollable seizures since he was 16, and repeatedly ignored his doctor's advice not to drive. He maintains he has been vilified for an "accident," but in handing down an 18-year prison sentence, Supreme Court Justice Kenneth R. Fisher agreed with prosecutor Vincent Rizzo that Jones has failed to accept responsibility for his actions.

Buffalo, NY. Todd Riscile was a big hit outside of Buffalo Police Headquarters. Charged with driving while intoxicated and unreasonable speed, police witnesses say Riscile crashed his pickup truck into six police vehicles parked in front of the station. A breathalyzer test showed Riscile's BAC to be .19.