

Defeating Attacks on the Police Reconstructionist - Part I

by John Kwasnoski and Patricia Gould

In almost all vehicular fatality cases the defense expert was not at the crash scene and must rely upon documentation and reports provided by a police technical investigator. In some cases the defense expert will visit the scene at a later point in time to make additional measurements or perform tests to obtain information on which to base his/her opinion(s). It is usually difficult for the defense to argue convincingly that the evidence the police documented at the scene (drag factor, tire marks, gouges, etc.) is unreliable if the officer:

- has received formal training in crash reconstruction
- made multiple and detailed measurements to avoid errors
- used equipment that was calibrated
- followed standard departmental procedure
- worked with another officer who checked the measurements
- produced a report that projects professionalism

When the physical evidence is competently gathered and recorded, the defense expert may resort to challenging the state's reconstruction by asserting that:

- equations used are theoretical and have not been validated by field studies or tests
- the measuring instrument used by police is not generally accepted by experts in the field
- the prosecution's reconstructionist misinterpreted the data (e.g. a yaw mark was mistakenly treated as a skid mark)
- the wrong equation was used (e.g. to estimate the defendant's speed)
- the equations were misapplied (e.g. a momentum analysis was used when the vehicles had very different weights)

The first two attacks listed above can be defeated by assuring that the police measuring instruments were properly calibrated and by obtaining the results of validation studies that confirm the equations. The last two can be very subjective and may be difficult to counter even with a good cross examination, thus requiring the prosecution to use a rebuttal expert.

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Available Resources

The detection of DWI at BACs Below .10, U.S. Dept. of Transportation, National Highway Traffic Safety Administration (NHTSA). The behavioral cues used by police to identify impaired drivers were developed in the 1980's by NHTSA for a blood alcohol concentration (BAC) level of .10. As more states lower their BAC level to .08, NHTSA completed a revalidation study of the cues at the lower level. The study confirms the key cues that were contained in the original NHTSA guide, provides additional cues and 10 post-stop cues that are good predictors of DWI at .08.

In addition, there is a brochure called The Visual Detection of DWI Motorists that breaks down the 24 DWI cues into four main categories. A Training Videotape is also available. To order at no cost: write or fax Media & Marketing Division, NHTSA, NTS-21, 400 Seventh St., S.W., Washington, DC 20590, fax: 202-493-2062. Please specify which materials you are requesting.

Getting Aggressive with Aggressive Drivers

Is someone who drives "aggressively" engaging in criminal behavior that is different from someone who is driving "recklessly" or "to endanger"?

Legislators in nine states proposed 23 bills that defined new, separate offenses with labels such as aggressive driving, driving while infuriated (DWI), and road rage.

The elements constituting an aggressive driving offense included driving in a belligerent, contentious, reckless, intimidating, antagonistic manner or creating a substantial risk of serious physical injury to another. Some states required a driver to commit specific offenses, e.g. changing lanes erratically, following too closely, failing to yield right of way, failing to obey a traffic control device, flashing headlights, pointing a firearm to reasonably induce fear in the mind of another, or throwing glass or other sharp objects on the road. Despite the differences in each states' approach, the penalties generally included license suspension, fines, point on a license or enrollment in a driver's education course.

Only Arizona and Virginia have passed aggressive driving legislation. Arizona's bill added an aggressive driving offense to its reckless driving statute. Considered a misdemeanor offense, the penalties include a 30 day license suspension and a driver's education course. Virginia's bill did not create a new offense but requires driver's education programs offered through the schools to include instruction concerning aggressive driving.

Arresting Developments

Fauquier County, VA - Peter C. Gentry was sentenced to two years in prison after faking his own death three times to beat DUI charges. Each charge was initially dismissed after an official-looking death certificate was sent to authorities. Gentry was finally foiled when the officer who arrested him for his third DUI saw him run a stop sign a few months after his reported death.

San Antonio, TX - A jury found Steven Howenstine guilty of DUI and manslaughter sentencing him to only six months in jail. However, the presiding judge, Raymond Angelini, ordered Howenstine to carry a photograph of the victim in his wallet and place flowers on the grave and crash site once a year. Additionally, Howenstine must write a one dollar check very week toward the victim's memorial fund and complete at least half of his 800 hours of community service with MADD.

South Field, MI - State Police are using an undercover operation to spot aggressive drivers. A uniformed trooper blends with the normal flow of traffic in an older unmarked car. When a motorist tailgates the unmarked car or another vehicle, the trooper radios ahead to another officer. The motorist is stopped and ticketed for tailgating or reckless driving.

Ask Doctor TOX

The following questions were submitted from a reader in Oklahoma:

Q: What is methyl sulfonyl methane? What is the "normal" purpose of this substance? Is it available over the counter without a prescription? If taken orally after consuming alcohol can this substance cause alcohol to metabolize more quickly?

A: Methyl sulfonyl methane, or MSM, is a supplement sold in health food stores. Since it is sold over-the-counter, it is available without a prescription. It is described by the manufacturer as an antioxidant and source of biological sulfur. The manufacturer claims it can do many things from relieving stress, muscle cramps, lactic acid buildup, and constipation to strengthening capillary walls, increasing heart function, keeping hair, skin and nails healthy and fighting against asthma and arthritis. There is no "normal" purpose for taking this compound, in my opinion. And I found no indication that, if MSM is taken after consuming ethanol, it would cause ethanol to be metabolized more quickly.

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