

Are Sniffing Flashlights Too Nosy?

From California to Virginia, some police departments now arm their officers with a new weapon against drunk drivers -- the PAS III Sniffer, a hand-held alcohol detection device concealed in a flashlight for nighttime use or a clipboard for daytime stops. PAS Systems, www.sniffalcohol.com, located in Fredericksburg, VA, has sold two to three thousand devices to police and school systems across the country during the past seven years, according to company president, Jarel Kelsey. The police use them to help single out drivers who warrant the additional standardized field sobriety testing; schools have found them helpful at parties and gatherings where underage drinking is suspected. Mr. Kelsey explained that the underlying purpose of the device is merely to detect the presence of alcohol. "It was never intended to be a quantitative measurement of its presence," he asserted.

Operation is simple: while standing eighteen to twenty-four inches away from the subject, an officer pushes a button on the device, it then samples the air in front of and around the subject and estimates the blood-alcohol level. The results appear on a colored bar -- green representing a very low reading of about .01; varying degrees of yellow indicating approximately .03 to .06; and red indicating .08 to .12 or greater. The measurement can be taken in as little as four seconds -- less than the time it takes for an individual to state his name, address and date of birth.

The Fairfax County, Virginia, police department began using the devices last fall, mostly at field sobriety checkpoints, although occasionally on routine patrol as well. Lt. Dennis O'Neill says that so far his department is pleased with the new tool in the fight against drunk driving. "It's helpful from an officer safety standpoint. Since the officer can stand at arm's length from the subject, we no longer have to tick our face in the car. We know the test results aren't admissible at trial if a driver is later prosecuted, but we don't see that as a problem. It's just a screening device to help us decide whether or not we need to ask the driver to step out of the car and go through the SFSTs or whether we can go ahead and just send him or her on their way."

Some civil liberties groups consider the use of the device to be an erosion of personal privacy since the Sniffer, unlike other breath screening devices, takes samples without the subject's knowledge or consent. Ultimately, the courts may have to decide whether or not the use of the device violates an individual's Fourth Amendment protection against unreasonable search and seizure, and whether or not the results from the device are reliable enough to be admissible at trial or during a suppression hearing. Prosecutors should check with their local law enforcement agencies to see if there are plans to use the device and prepare themselves for any legal challenges that might be raised.

The National Traffic Law Center is compiling a list of jurisdictions that use the Sniffer and is researching opinions where courts have ruled on its admissibility. If your jurisdiction uses the device, or if you know of unpublished opinions where the admissibility of the device has been addressed, let us know at (703) 549-4253. For an updated article from a previous edition of The Prosecutor magazine addressing constitutional issues raised by the use of the Sniffer, go to the legal issues section of our website.

Technology Update: Black Boxes

Over the past ten years, as part of a federal project with the National Highway Traffic Safety Administration, General Motors has installed "black box" sensors in several million vehicles. Originally designed to learn more about the effectiveness of air bag systems, recent improvements to the accident data recorder now allow it to collect data from multiple sensors in the automobile, recording measurements ranging from vehicle speed to throttle and brake information. This data could conceivably be translated into hard evidence for use in the prosecution of a driver who is at fault in a collision. Where law enforcement investigators have relied exclusively on other sources to gather information, at least some of it may now be available from the vehicle's onboard computer. The use of such data, if proven reliable, could be used to supplement the information gathered by the investigator: observable vehicle damage, vehicle debris, skid marks, and statements of the involved parties or witnesses to the crash.

Until recently, retrieval of the black box data was no easy task. However, it is now possible to download the information into a specially equipped laptop computer for analysis. Vetronix, www.vetronix.com, a California-based company, markets this computer for \$2,500 per unit. Currently, the system works with approximately eighty-five percent of GM cars beginning with the 1996 model year. Planned software updates will eventually extend the retrieval capability to all GM models with an airbag, including models dating back to the 1990 model year. The federal government has purchased approximately 50 of these computers as part of a NHTSA study aimed at

determining the accuracy of the data recorded during a crash event. It is anticipated that the results of this study will be available next spring.

Arresting Developments

Kittikas County, Washington Audrey Kishline, founder of Moderation Management, an organization that supports the belief that problem drinkers can drink in moderation, pleaded guilty to two counts of vehicular homicide after killing a 38-year-old father and his 12-year-old daughter in a head-on collision. At the time of the crash, Kishline was driving on the wrong way on an interstate with a B.A.C. level at more than three times the legal limit. She has since abandoned her role in the moderation movement.

Phoenix, Arizona A woman was sentenced to seven years in prison for attempted child abuse after she had her 11-year-old daughter drive her home from a bar where she had been drinking. Michele McCoy, 36, had previously been convicted of aggravated driving under the influence. Her daughter, who had never driven before, crashed the vehicle into a house shortly after leaving the bar and suffered minor injuries.

Middlefield Village, Ohio A 17-year-old Amish youth was charged with driving under the influence after his horse-drawn buggy took police on a two-mile low speed chase through the streets of a quiet Ohio town. The one-horse buggy caught the attention of police after it was seen weaving in the roadway. The driver appeared to be unconscious and did not respond to sirens and emergency lights from police cruisers. The chase ended when an officer pulled in front of the buggy, the horse veered left, and the buggy flipped.

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