



K43 “Less Than Perfect” DUI Drug Cases: Do You Think They Were Impaired?

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After attending this presentation, attendees will be given the opportunity to discuss the pros and cons of using only limited information to establish suspected Driving Under the Influence of Drugs (DUID).

This presentation will impact the forensic science community by assisting toxicologists who support Drug Recognition Expert (DRE) programs as well as those who regularly testify on Driving Under the Influence of Drugs cases for both the prosecution and defence.

Developing forensic opinions on persons suspected of drug-impaired driving is regularly performed by forensic toxicologists who testify in court. Accomplishing this based solely on records review can be difficult under the best circumstances. The widely used “triad of results” involves: 1) consideration of the nature of any accident and events which led up to it, including observed driving behaviors, 2) field sobriety tests (FST’s) and/or drug recognition examinations (DRE’s) by law enforcement, and 3) qualitative and quantitative toxicology findings, preferably from a blood sample. But can a valid opinion on impairment be developed with less-than- perfect information? You be the judge!

Part One: The “Hit-and-Run Nanny”: The defendant in the first case, a resident alien who had worked for several years as a nanny, was driving to work when she drifted off the road, over a curb and struck and killed two young children out for a walk with their mother. Afterwards, the suspect fled on foot and was apprehended after two days. Blood collected at the time of her arrest tested negative for drugs and alcohol.

The information available for case review included accounts of the suspect’s criminal background, personal history, behavior on the accident day, her witnessed driving pattern prior to the accident and behaviors immediately afterwards, and lastly, the defendant’s admissions about her drug consumption before the accident. When the accident occurred, she was driving on a suspended license and had four previous DUI alcohol convictions. She had had marital problems with a recent separation from her husband due to heavy drinking. She had prescriptions for Vicodin® (hydrocodone) and Flexeril® (cyclobenzaprine). She had apparently taken 110 Vicodin pills in the prior 22 days and had prescriptions from several physicians. Neighbors reported seeing her drinking alcohol earlier that afternoon.

Observed driving patterns and behaviors included weaving, jackrabbit starts and stops, sleepy and confused appearance, and driving with her hair covering her face. She admitted ingesting four or more pills of each medication that day. What is your opinion? Was her driving was impaired by drugs and perhaps alcohol when the accident occurred?

Part Two: Can a Positive Urine THC Metabolite (THC-COOH) Be Used to Prove Impairment in a Driving Under the Influence (DUID) - Cannabis Case?: A suspect was stopped for speeding at midnight on Colorado Interstate 70, a section of the interstate with a steep 6% grade. According to the arresting officer the subject “displayed indicators of being under the influence of alcohol or drugs or both”. Officer observations included “speech was slow and thick tongued and that he had a brown-green coating on his tongue”. The subject admitted taking a Vicodin® pill earlier that day. His hand was in a cast. He agreed to perform standardized field sobriety tests (SFST’s) and according to the officer, he failed them. A search of the subject’s vehicle revealed an open 24-pack of beer, an open can in the console, and a glass pipe. The subject was arrested at 0020 hours and agreed to take a breath alcohol test (which was <0.05%) and a urine sample was also collected.

The urine screened positive for cannabinoids and confirmed for delta- 9-THC-COOH (84 ng/ml). The sample also screened positive for opiates and confirmed for hydrocodone. The subject apparently had spent the day with friends, and reportedly consumed a minimal amount of beer and no other drugs within six hours of being arrested. He reported recent dental surgery and was taking Vicodin received from his dentist for pain.

The officer who conducted the SFST’s was not a certified Drug Recognition Expert (DRE). Based upon the low breath alcohol concentration, there was no charge of driving while intoxicated with alcohol.

You decide. Do the positive drug and drug metabolite findings in the subjects urine substantiate, along with his failure to pass the SFST’s, that he was impaired by drugs to such a degree at the time of driving that he should be charged with DUID? If so, what was the contribution of cannabinoids? Of hydrocodone? Of alcohol?

Drugs and Driving, Forensic Toxicology, Impairment