



# Bulletproof DUI Reports

1.5 Hour Webinar

Course Outline

Blue to Gold Law Enforcement Training  
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## Module One: Course Introduction – 10 minutes

- 1) Instructor introduction.
- 2) Explain the course objective.
- 3) Encourage attendees to ask questions and share feedback with other attendees.
- 4) Explain that certificates will be emailed after the class.
- 5) Go over the three disclaimers:
  - a) Laws and agency standard operating procedures may be more restrictive. Blue to Gold is teaching the federal standard unless otherwise stated. Therefore, students must know their state and local requirements in addition to the federal standard.
  - b) If students have any doubts about their actions, ask a supervisor or legal advisor.
  - c) The course is not legal advice, but legal education. Therefore, nothing we teach should be interpreted as legal advice. Check with your agency's legal advisor for legal advice.

## Module Two: Report Writing Overview - 10 minutes

Bulletproof Report Writing  
Bulletproof DUI Reports

Goals → Discourage filing motions to suppress

Why are we here?

1)

Your Turn

Does a defendant have an automatic no-questions asked right to a suppression hearing?

2)

- 3) No, the defendant must first **clearly state the grounds** upon which the suppression hearing is based and the requested relief. **For Example:** Application for all pretrial orders, except for motions and objections made during evidentiary hearings and trial, must be in the form of a written motion, unless the court grants permission to make an oral motion. 3 Evidentiary support may be made by affidavit, and the motion must state clearly the grounds upon which it is based and the requested relief. 4 All motions and other filings must be filed and served in accordance with the Rules of Civil Procedure.



4)

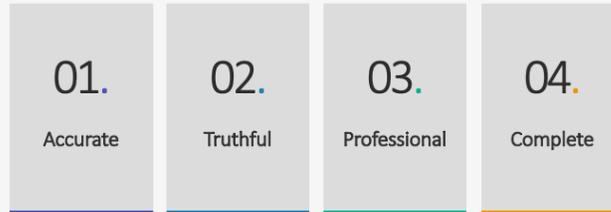
## How do you accomplish this?

01.

Accurate

- 5)
- 6) **Pro Tip:** If it's not documented, the presumption is it didn't happen.
- 7) **Case Sample:** A reserve officer stopped a car for speeding and driver was DUI. Another officer took the arrest and reserve didn't make a report. **Synopsis:** A reserve officer used a radar unit to determine that Zachariah Marshall was speeding in a 50 MPH zone. The reserve officer stopped Marshall and another officer provided backup. The backup officer determined that Marshall was intoxicated and arrested the driver for DUI. Neither officer charged Marshall with speeding, nor did the reserve officer make any report about his pre-stop observations. Later, Marshall argued that since there was no evidence of probable cause to make the stop, it was unlawful and the DUI evidence must be suppressed. **Court Decision:** The court disagreed with Marshall. First, the court said the reserve officer testified that even though he forgot exactly how fast Marshall was traveling, he remembered the high "squeal" from the radar which indicated the target vehicle was traveling at a high speed. Therefore, the reserve officer had at the very least reasonable suspicion that Marshall was speeding...therefore the stop was lawful. **Held:** IN Supreme Court upheld conviction because reserve testified he remembered "high squeal" from radar and RS existed for stop. Still, case could have been avoided with supplemental!

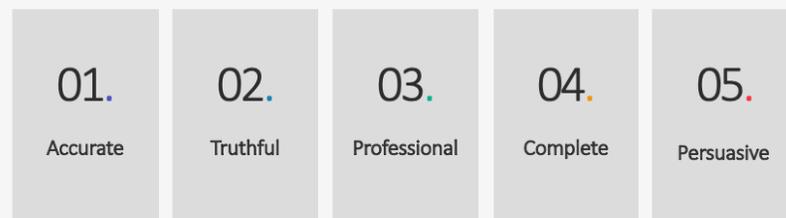
How do you accomplish this?



8)

- 9) It's my recorded recollection of the incident for the purpose of refreshing my memory as needed to testify accurately.

How do you accomplish this?



10)

- 11) Is an arrestee presumed "innocent until proven guilty" at the law enforcement level? **Answer:** No. The judge and jury are required to have that viewpoint, not law enforcement. During an arrest, do you presume the person is innocent? The opposite is true, and your job is to convince the court to agree.

- 12) **Pro Tip:** You want to convince an **uninformed juror**, who has no idea how the criminal world operates, that the suspect committed the crime and that your actions were **reasonable, appropriate, and defensible**.

**Module Three: Report Mechanics - 10 minutes**

1) **Rule: Don't write in ALL CAPS.**

Blue to Gold Law Enforcement Training  
Bulletproof Report Writing

### Three Reasons Why



Harder to read



No proper nouns



Harder to scan for information

2)

3) **Examples:**

at approximately 12:34 AM, at 6200 GULF BOULEVARD (JIMMY B'S) in Pinellas County did:

DID THEN AND THERE KNOWINGLY, ACTUALLY AND INTENTIONALLY THREATEN TO DO VIOLENCE TO DEPUTY W. WILTSE #56815, A LAW ENFORCEMENT OFFICER OF THE PINELLAS COUNTY SHERIFF'S OFFICE AGAINST THE WILL OF DEPUTY W. WILTSE #56815, WHILE HAVING THE APPARENT ABILITY TO CARRY OUT SAID THREAT AND DID CREATE A WELL-FOUNDED FEAR WHILE THE SAID DEPUTY SHERIFF WAS ENGAGED IN THE LAWFUL PERFORMANCE OF HIS DUTIES, TO-WIT: DEPUTY W. WILTSE HAD PLACED THE CO-DEF INTO CUSTODY BUT DUE TO THE CO-DEF UNCOOPERATIVE NATURE THE ARRESTING DEPUTY WAS UNABLE TO SAFELY SECURE THE DEF INTO HAND CUFFS AS WELL. THE ARRESTING DEPUTY ORDERED THE DEF TO WALK TOWARDS THE ENTRANCE OF THE PROPERTY AND WAS HOLDING THE DEF'S LEFT ARM. THE DEF PULLED AWAY AND SWUNG HER ARM BACKWARDS FORCING THE ARRESTING DEPUTY TO MOVE HIS HEAD BACKWARDS IN FEAR OF BEING STRUCK IN THE FACE BY THE DEF. THE DEF CONTINUED TO BE UNCOOPERATIVE AND HAD TO BE CONTROLLED ALL THE WAY TO THE FRONT OF THE PROPERTY.

(ENTER SUFFICIENT FACTS/DATA FOR THE COURT TO ESTABLISH PROBABLE CAUSE DETERMINATION)

N A R R A T I V E	On 9-23-19 at 1710, I, Officer Malak, along with Officer Ane and Officer Brabc, responded to 329 Margaret St in regards to two subjects trespassing in the caller's (Maria Lindsley DOB 2-21-1967) side yard. Specifically, Lindsley stated the two people were having sex in her side yard.	
	Upon arrival, I located the two subjects laying in the side yard of the residence, behind a small stone barrier wall. The two were identified as, Teresa Behan DOB 1-15-1970 and Stephen Dean DOB <span style="float: right;">** Continued **</span>	
S T A T U S	Arresting Officer Signature/ID #Bureau	MALAK, TIMOTHY J (4045)
	Case Status	Cleared By Arrest

Printed By: ACREAN, 1541

4) **Rule:** A topic heading is when you include a separate sentence before the paragraph to explain what you're about to discuss. A true pro uses **topic headings**.

## Two Reasons Why



Better  
organization



And



Easier to scan for  
information

5)

### 6) Examples:

#### PHASE 1 Vehicle in Motion / Interview with Officer:

On October 16, 2019 at approximately 1644 hours, I responded to the area of 1100 Dunson Road Davenport, Florida in reference to assisting Lt. Davis #4927 with a possible intoxicated person. Lt. Davis advised he observed a Segway driving east bound on Dunson Rd in the westbound lanes going head on with vehicles. Lt. Davis advised vehicles were having to go around the Segway because it was in their lane of travel.

When Lt. Davis made contact with the white male operating the Segway he stated he could smell the odor of an alcoholic beverage coming from her person and breathe as well as watery eyes. Lt. Davis also stated that the operator of the Segway made multiple spontaneous statements about being drunk and that was an alcoholic.

Lt. Davis then contacted me and requested I respond to the scene and conduct a DUI evaluation. See Lt. Davis' supplement for further information

#### PHASE 2 Personal Contact:

I made contact with the white male operator of the Segway, who I identified by his passport card to be Andy Sigears. Upon contact with Sigears, I observed his speech to be slurred and eyes to be watery. I could also smell a strong odor of an alcoholic beverage coming from his person and his breathe.

Based on these indicators I asked Sigears to submit to a series of Standardized Field Sobriety Test (SFST's) and he consented to those test.

#### PHASE 3 Pre-Arrest Screening / Standardized Field Sobriety Testing (SFST's):

I conducted the following Field Sobriety test (SFST's) with the following results:

#### Post Arrest Procedures / Breath Testing:

I transported Leavitt to the Polk County Sheriff's Office Central substation.

Upon my arrival at the central substation at 1812 hours, I began a 20-minute observation period at 1816 hours.

At the conclusion of the 20-minute observation period, I requested Sigears to provide two breath samples to determine his breath alcohol level. Sigears said yes and agreed to take the breath test.

The breath samples showed Sigears' breathe alcohol level to be .243 G/210L / .220 G/210L / .238 G/210L

I issued Sigears one Florida DUI citation (#ABV3X6E) for DUI.

On June 27th, 2018 at approximately 1728 hours I responded to 754 S. US Highway 1 (McDonalds) in reference to a possible disturbance. Kia Chambliss call in stating that a blue vehicle (FL Tag L863JJ) was in the drive-thru behind her. She stated that the driver was a older white male. Ms. Chambliss stated that while she was stopped in the line the blue vehicle's front bumper struck her rear bumper. She stated that the vehicle struck her rear bumper a second time and "Over and Over." Ms. Chambliss stayed on scene and pointed out the vehicle to D/S Sharpeta as he arrived on scene. Upon my arrival I approached the above vehicle. I observed a white male driver who was later identified as Earle Stevens Jr.

I asked Mr. Stevens for his driver's license. He struggled to remove his wallet from his back pants pocket. Mr. Stevens opened his wallet and produced a Florida ID card. I asked him if he had a valid license and he stated, "That's all I have." I asked him again if he has ever had a valid Florida license and he stated, "No sir." In the passenger seat I could see an open bottle of liquor in a open brown paper bag. As Mr. Stevens spoke I could smell a strong odor of an alcoholic beverage emitting from his breath. His speech was slurred and his eyes were red and glossy. I asked him how he was feeling and he stated, "I'm feeling pretty good." Due to him not having a valid license I asked him to exit the vehicle. He he attempted to exit the vehicle he realized that the vehicle was still in drive. He showed some difficulty getting out of the vehicle.

I asked Mr. Stevens if he had been drinking today and he stated, "Yes." I asked him how much he had to drink and he stated, "I don't know, about three drinks." He further stated that he was drinking straight from the bottle in the passenger seat. He stated that the bottle contained Jim Bean Bourbon. I asked him if he was drinking in the vehicle and he stated, "No." When I asked him where he was drinking he stated, "Stop signs." He further explained that he was not drinking while the car was moving and only when he stopped for stop signs and traffic signals. I asked him again how much he had to drink today and he stated, "Four drinks." This was more than his original statement of three drinks. I escorted Mr. Stevens over to D/S Sharpeta's patrol vehicle. As he walked he was uneasy on his feet and I needed to hold his arm to help keep him steady.

I asked Mr. Stevens if he struck the rear bumper of the vehicle in front of him and he stated, "Not that I know of." I asked him if he was a diabetic and he stated, "No." I asked him if he too any medications and he stated that he took pain medication for his arthritis. Inside the vehicle D/S Sharpeta located (3) prescription pill bottles for Atorvastain Calcium 10mg, Indomethacin 50mg and Allopurinol 100mg. Mr. Stevens further stated that he was coming from visiting his doctor and he was just prescribed pain medication

Based on the above observations I asked Mr. Stevens if he was willing to perform several field sobriety exercises. Mr. Stevens agreed to the exercises. I asked him if he was hurt or injured in any way and he stated, "No." I asked him he was able to walk and stand and he stated, "Yes." I positioned D/S Sharpeta's vehicle so that the driver's performance would be captured on his in car video camera. All exercises were conducted on a flat paved surface with a visible line in the roadway. There were no flashing lights on during the exercises. Mr. Stevens chose to keep his shoes on for the exercises.

In my first exercise I checked Mr. Stevens's eyes for horizontal gaze nystagmus. I instructed Mr. Stevens to stand with his feet together and his arms down by his sides. Mr. Stevens was not wearing glasses. I held a black pen approximately 12-15 inches away from his face just above eye level. I asked Mr. Stevens if he could see the pen and he stated, "Yes." I asked him what color it was and he correctly stated, "Black." I instructed Mr. Stevens to follow the stimulus with his eyes only and not to move his head. He stated that he understood. While administering the exercise I observed lack of smooth pursuit in both eyes. I observed distinct and sustained nystagmus at maximum deviation in both eyes. I observed the onset of nystagmus prior to 45 degrees in both eyes. Vertical nystagmus was present. Lack of convergence was also present. During the exercise Mr. Stevens was observed swaying in a circular manner. He also needed to be reminded to following the stimulus. He was constantly look back and forth between me and the stimulus. He also moved his head slightly from left to right with the stimulus.

The next exercise I began to explain was the walk and turn. Turn my instructions Mr. Stevens was unable to stand as instructed. He was observed swaying and stumbling off the line. He then stated that he had foot problems and was unable to perform the exercise. Due to his physical limitations I decided not to conduct this exercise.

The second exercise I explained and demonstrated was the one leg stand. Mr. Stevens stated that he understood my instructions. During the exercise Mr. Stevens was unable to hold his foot up for more than a few seconds. He constantly dropped his foot and stopped counting during the exercise. He was observed swaying from side to side. He also began recounting from 1001 during the middle of the exercise.

The third exercise I explained and demonstrated was the finger to nose. Mr. Stevens stated that he understood my instructions. During the exercise I noted the following observations:

- 7) **Rule:** Bullet points are an effective way to justify legally significant actions. Additionally, bullet points are a great pre-report articulation tool.

## Three Reasons Why



You are very analytical



You articulate more



Prosecutors like them for motion prep and court prep

8)

EXAMPLE ONE: SEARCH OF VEHICLE AFTER DUI

391 Wis.2d 831  
Supreme Court of Wisconsin.

STATE of Wisconsin, Plaintiff-Respondent,  
v.  
Mose B. COFFEE, Defendant-Appellant-Petitioner.

No. 2018AP1209-CR  
Oral Argument: January 21, 2020  
Opinion Filed: June 5, 2020

9)

- 10) **Question:** Why would an objectively reasonable officer believe alcohol was in the car?

EXAMPLE ONE: SEARCH OF VEHICLE AFTER DUI

1. The Passenger Compartment

¶52 Skelton had reasonable suspicion that the passenger compartment might contain relevant evidence of OWI. First, Skelton testified that when he had Coffee sit in the vehicle, he smelled "an odor of intoxicants coming from [Coffee's person] or from the vehicle." [Reagan, 713 F. Supp. 2d at 733 n.7](#). Although he used a disjunctive "or" to describe where the smell was coming from, his testimony offers support in favor of reasonable suspicion. Furthermore, the affidavit does not use the disjunctive, or. It states that a smell of intoxicants was coming from the automobile.

¶53 Second, Coffee indicated that he was coming from his friend's house. Generally, a private residence has alcohol only if it is brought to the residence. *Cf. id.*, Coffee might have brought the alcohol that he consumed to his friend's house and have retained some in his vehicle. The facts of this case are different than, for example, a case where an officer observes a patron drink at a bar and then immediately get into an automobile. *Id.* at 732.

¶54 Third, after Skelton initiated the traffic stop Coffee "continued into the parking lot," which could indicate that Coffee was hesitant to pull over because he knew there was something in the automobile that he should not have had. *Cf. Patel v. State, 240 Ga.App. 178, 522 S.E.2d 760, 761 (1999)* (reasoning that the failure to "immediately pull over" can inform an officer's probable cause determination); *United States v. Gonzalez-Guytan, 419 F. App'x 848, 849 (10th Cir. 2011)* (same).

11)

EXAMPLE ONE: SEARCH OF VEHICLE AFTER DUI

I searched the driver's vehicle for intoxicants because:

- (1) The odor of intoxicants;
- (2) Driver was coming from a friend's house, which makes it more likely that he brought alcohol to the house and retained some of it;
- (3) Driver didn't pull over immediately, which could indicate he was hesitant to pull over because he knew that there was something in his vehicle that he should not have;

- (4) Driver's careless parking and hasty exit from his car could indicate that he was trying to distance himself from something inside the car;
- (5) Driver was unusually talkative, which could indicate that he was nervous because he had something to hide;
- (6) Driver was extremely intoxicated which means there could be alcohol nearby.

12) **Rule:** Write in the first person, not the third person "Your Affiant" style.

Blue to Gold Law Enforcement Training  
Bulletproof Report Writing

### Three Reasons Why



It's not natural



You write more detailed reports



1<sup>st</sup> person increases comprehension and persuasion

13) Examples:

**PROBABLE CAUSE:**

Rock County Sheriff's Deputy Anacker reports that on December 9, 2019 at approximately 12:45 a.m., officers responded to the area of East Rotamer Road and North Henke Road in Harmony Township, Rock County, Wisconsin upon a report that there were two men by a vehicle trying to flag other vehicles down. Anacker reports that he found Alan Huschka and Brian Heywood by a black Chevy Trailblazer which was parked in the eastbound lane of travel on East Rotamer Road.

**Rewrite:**

On December 9, 2019 at approximately 0045 hours, I was dispatched to the area of East Rotamer Road and North Henke Road in Harmony Township, Rock County, Wisconsin to investigate a report that two men next to a vehicle were trying to flag other vehicles down. I arrived approximately ten minutes later and observed Alan Huschka and Brian Heywood next to a black Chevy Trailblazer that was parked in the eastbound travel lane on East Rotamer Road.

Huschka appeared to be extremely intoxicated, he had trouble answering Anacker's questions and he had a very heavy odor of intoxicants coming from his breath. Although one of his eyes were swollen almost completely shut, Anacker could see that Huschka's eyes were blood shot and glassy.

Rewrite:

The driver appeared extremely intoxicated and showed difficulty answering my questions. I smelled the strong odor an alcoholic beverage coming from his breath. Although the driver's left eye was swollen and practically shut, I observed that his right eye was bloodshot and glassy.

- 14) **The Rule of 5:** Strive to articulate at **least five facts and circumstances** for your search, seizure, and criminal elements. Why 5, why not 4 or 6?
- 15) **Video:** "Seven Minute Abs"

#### Module Four: Pretext Stops - 5 minutes

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Bulletproof DUI Reports

### Courts Look at Objective Facts

Court's don't use the would you have test

Instead, courts use the could you have test

- 1)
- 2) This is true even if police deviate from department policies. There's still no Fourth Amendment violations. But must never be motivated by racial profiling.
- 3) **Case Sample:** Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction.

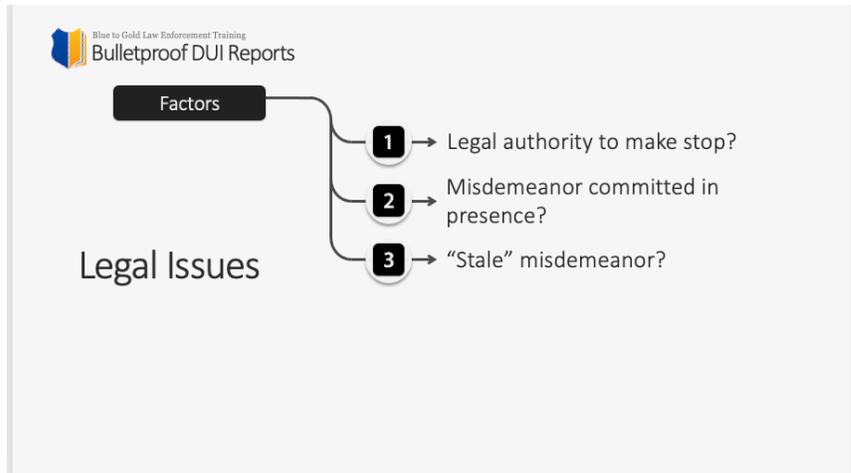


4)

5) **Video:** "Traffic: Pretext Stop". **Questions:** Valid pretext stop?

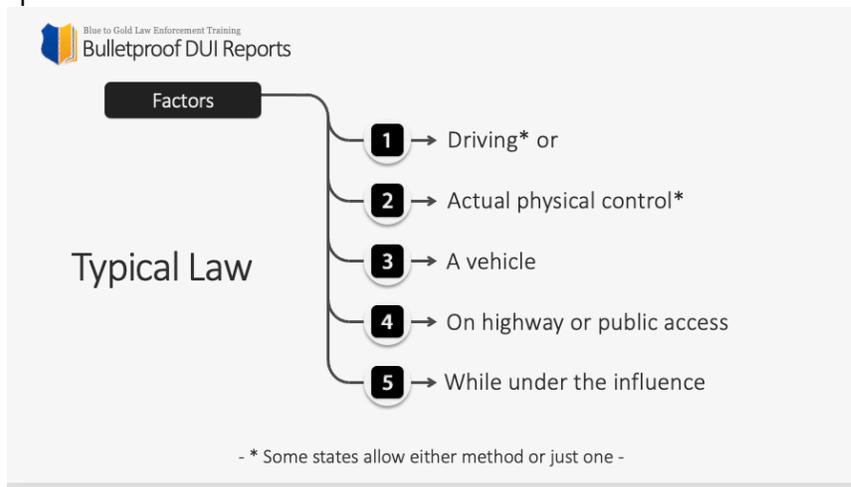
#### **Module Five: Pre Stop Issues: - 10 minutes**

- 1) **Legal Rule:** Since your subjective mindset is irrelevant, defendants may try to argue you had no legal authority to stop them.
- 2) The precise terms used in the drinking/driving statute, individual definitions provided for the state's motor vehicle code, and judicial decisions must be reviewed in order to determine how any individual state deals with these concepts. As an example, the New Mexico code uses only the word "driving" but judicial decisions have held that that term encompasses driving, being in actual physical control or exercising control over or steering a vehicle being towed.<sup>3</sup> The same is true for Colorado and Missouri. Maryland actually defines the term "drive" to mean drive, operate, move, or be in actual physical control of a vehicle even while being towed.<sup>6</sup> If the conduct that is alleged as driving would constitute actual physical control then research should be done in that area also. The conduct, not the label, should be the focus.



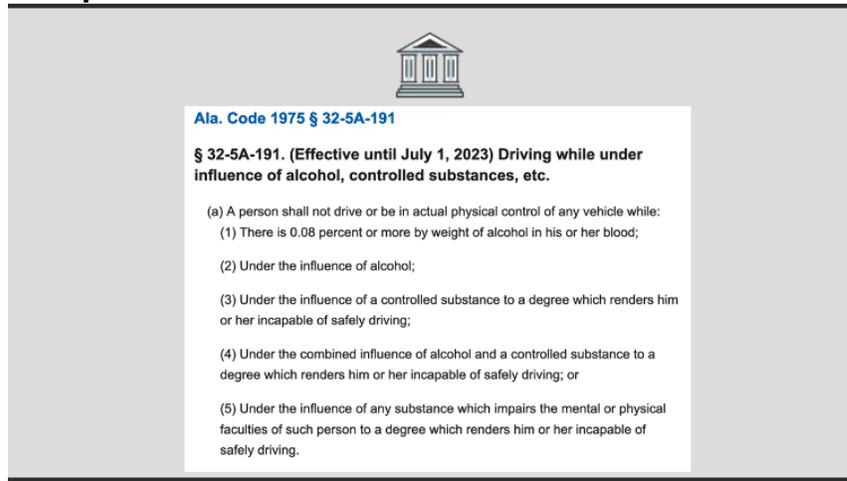
3)

- 4) **Legal Rule:** It's vital you read and understand your specific state law. I teach generalities and best-practices. I don't teach specific state law.



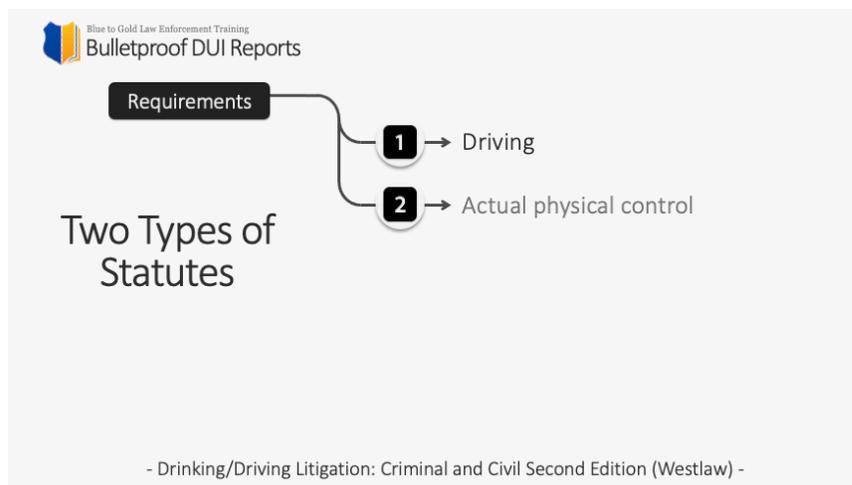
5)

6) **Example:**



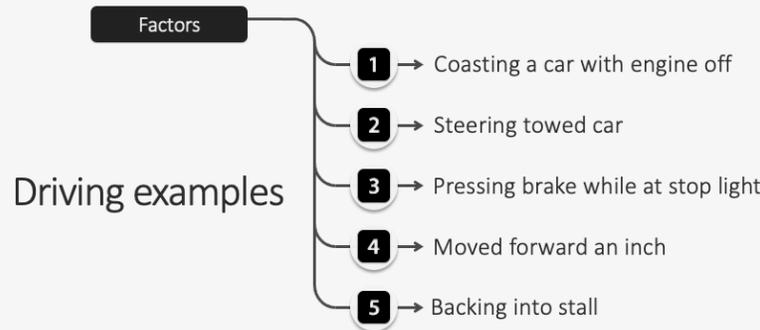
The image shows a document titled "Ala. Code 1975 § 32-5A-191" with a classical building icon at the top. The text reads: "§ 32-5A-191. (Effective until July 1, 2023) Driving while under influence of alcohol, controlled substances, etc." followed by a list of five conditions (a) through (e) defining when a person is considered to be driving while under the influence.

7) **Best Practice:** These differences come into play when you did not observe the vehicle in motion, e.g. accident scenes.



The diagram is titled "Two Types of Statutes" and "Requirements". It shows a flow from "Requirements" to two categories: "1 → Driving" and "2 → Actual physical control". The source is cited as "- Drinking/Driving Litigation: Criminal and Civil Second Edition (Westlaw) -".

8) **Pro Tip:** "Driving" has the most limited meaning of the statutory terms used, and in many jurisdictions a person is considered to have been "driving" only if the person steered or exercised control over the vehicle while it was in motion or intentionally stopped.



10)

11) **Legal Rule:** A driver's confession, standing alone, will not be enough to prove "driving" under state law. You need additional evidence. **However:** But a sufficient corpus delicti was proved by circumstantial evidence where the defendant was observed standing alone by his vehicle in an obvious drunken condition;<sup>13</sup> where the defendant was seen entering the driver's side of the car within five to ten minutes of the accident and the deceased's body was found several feet from the demolished car under circumstances from which investigators concluded that he occupied the passenger's side of the car; where the defendant was found unconscious lying near the driver's side of the truck and two occupants of the truck were found dead in the front of the truck, where defendant summoned a tow truck and when it arrived he hailed it; and where the defendant was at the scene of a crash, he owned the truck and the passenger was passed out in the crew cab; injuries consistent with driving; while out of vehicle but other parties in their vehicles; defendant lying in the vehicle as if he had been driving. A sufficient corpus delicti has been shown where two persons were standing next to two trucks and both men admitted to driving.<sup>21</sup> And courts have allowed the statement of the defendant, along with other corroborating evidence, to prove the corpus delicti. The Washington Supreme Court required admissions be "corroborated by other evidence" prior to their being admitted into evidence. Where admissions cannot be corroborated they should not be admitted.

12) **Case Sample:** After responding to a single car accident, the husband admitted to driving. During the investigation the wife

told the officer she was sitting in the middle seat. **Synopsis:** **Georgia.** [State v. Loy, 251 Ga. App. 721, 554 S.E.2d 800 \(2001\)](#) (sufficient evidence to show defendant was driver of the vehicle when it crashed; sufficient evidence of intoxication to support finding of probable cause for the arrest even though officer did not see defendant in the driver's seat; defendant was standing beside car that belonged to him and saw person being taken from passenger seat by rescue personnel and another witness said the defendant was driving shortly before the crash; see also [Hall v. State, 200 Ga. App. 585, 586, 409 S.E.2d 221 \(1991\)](#) (overruled on other grounds by, [Curtis v. State, 275 Ga. 576, 571 S.E.2d 376 \(2002\)](#)); [Napier v. State, 184 Ga. App. 770, 771, 362 S.E.2d 501 \(1987\)](#)). **Held:** The wife's statement was enough circumstantial evidence to uphold the husband's confession to driving.

- 13) **Pro Tip:** Driving can be proved by circumstantial evidence. Direct evidence is not required.
- 14) **Case Sample:** A suspect was standing next to a car, he was the registered owner, the car was involved in an accident and immobile, and a witness saw the driver behind the wheel. **Synopsis: Georgia.** [State v. Loy, 251 Ga. App. 721, 554 S.E.2d 800 \(2001\)](#) (sufficient evidence to show defendant was driver of the vehicle when it crashed; sufficient evidence of intoxication to support finding of probable cause for the arrest even though officer did not see defendant in the driver's seat; defendant was standing beside car that belonged to him and saw person being taken from passenger seat by rescue personnel and another witness said the defendant was driving shortly before the crash; see also [Hall v. State, 200 Ga. App. 585, 586, 409 S.E.2d 221 \(1991\)](#) (overruled on other grounds by, [Curtis v. State, 275 Ga. 576, 571 S.E.2d 376 \(2002\)](#)); [Napier v. State, 184 Ga. App. 770, 771, 362 S.E.2d 501 \(1987\)](#)). **Held:** This was enough circumstantial evidence that the arrestee drove the vehicle.
- 15) **Case Sample:** An officer observed a bruise on the suspect's left shoulder. **Synopsis: New York.** [People v. Dutcher, 244 A.D.2d 499, 664 N.Y.S.2d 110 \(2d Dep't 1997\)](#) (bruise on left shoulder came from seat belt indicating defendant was driver). **Held:** This seat belt bruise helped prove the suspect was the driver.

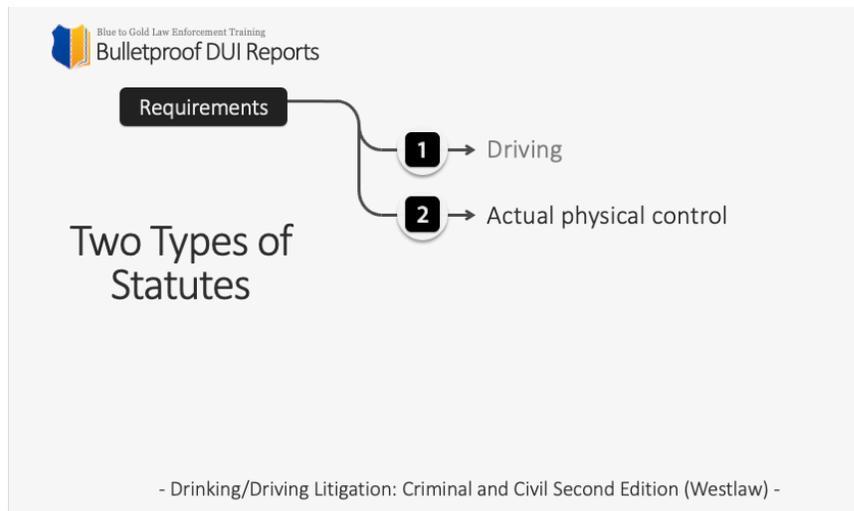
- 16) **Case Sample:** Cops responded to a call of a truck stuck in the mud. They observed an intoxicated occupant in the driver's seat. The occupant was arrested for driving while intoxicated. **Synopsis:** The Supreme Court has held that an intoxicated person who is in the driver's seat of a motor vehicle with the key in the ignition is operating the vehicle. *State v. McGlone* (1991), 59 Ohio St.3d 122, 570 N.E.2d 1115. However, in that case the court held that the car was under the driver's control because he could have moved the car whenever he wanted. Similarly, in *State v. Cleary* (1986), 22 Ohio St.3d 198, 22 OBR 351, 490 N.E.2d 574, the Supreme Court found that a stationary vehicle is being operated within the contemplation of the statutes where a person is seated behind the steering wheel of the vehicle with the ignition key in the ignition and the motor running. However, once again, in *Cleary*, the car was operable. The court pointed out that the statutes were aimed at intoxicated persons with impaired faculties \*\*63 who were behind the wheel of an automobile which could be put into motion to cause a hazard to another person who is using a highway. *Columbus v. Seabolt* **Held:** This, without more, was not enough to support a conviction for "driving" while intoxicated. Note: This is an example to articulate!



California courts closely follow federal search and seizure standards

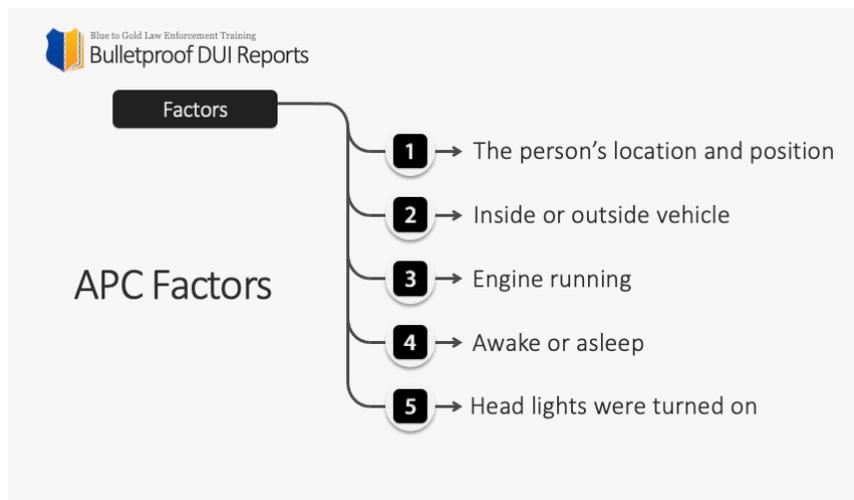
- Victim's Bill of Rights -

17)



18)

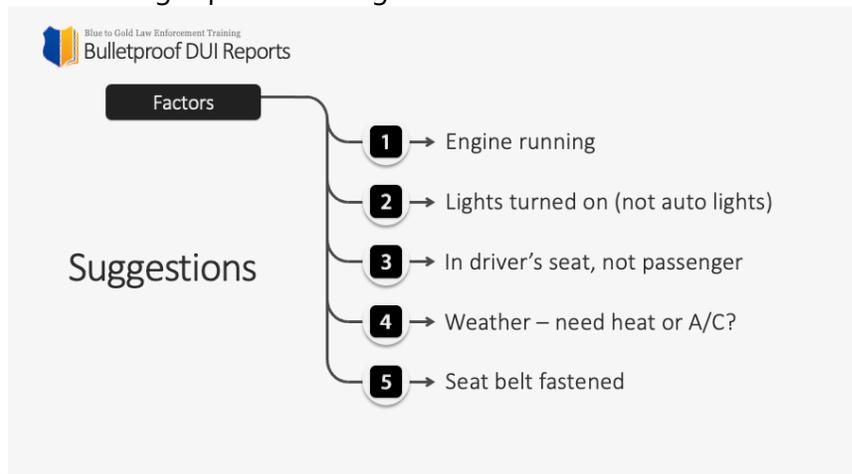
- 19) **Pro Tip:** Actual physical control occurs when “the person has existing or present bodily restraint, directing influence, domination or regulation of the vehicle.



20)

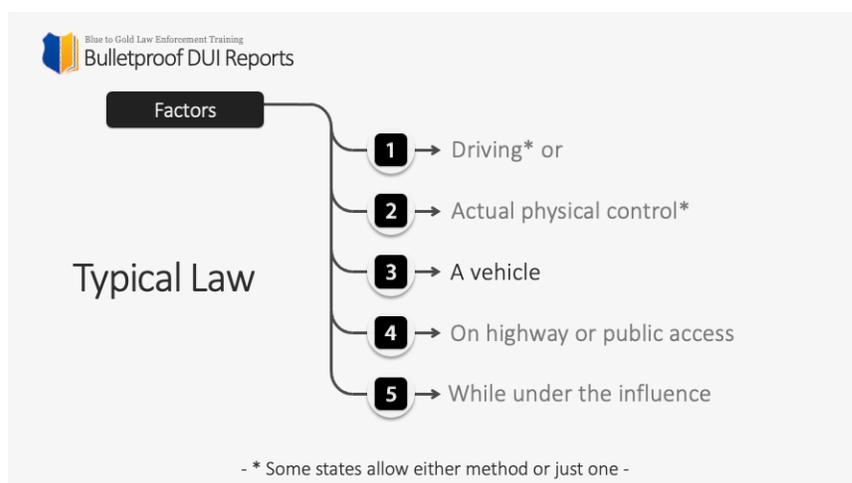
- 21) **Case Sample:** Cops got a call of a female drunk driver. Cops found the car on the side of the road with a male behind the wheel, engine off, female not on scene. **Synopsis:** The Nevada Supreme Court did address some of the factors in detail in *Barnier v. State*, 119 Nev. 129, 67 P.3d 320, 323 (2003). In *Barnier*, the police received a tip about a female drunk driver. *Barnier*, a male, was found behind the wheel, parked along the roadway. The trial court gave a jury instruction that did not include all of the *Rogers* factors and the Supreme Court reversed *Barnier*’s conviction. **Held:** These facts alone did not prove male drove or had APC of vehicle.

22) **Pro Tip:** The most difficult APC case is where it's possible the person drove to the parking lot sober (think bar) and claims to be "sobering" up or is waiting for the DD.



23)

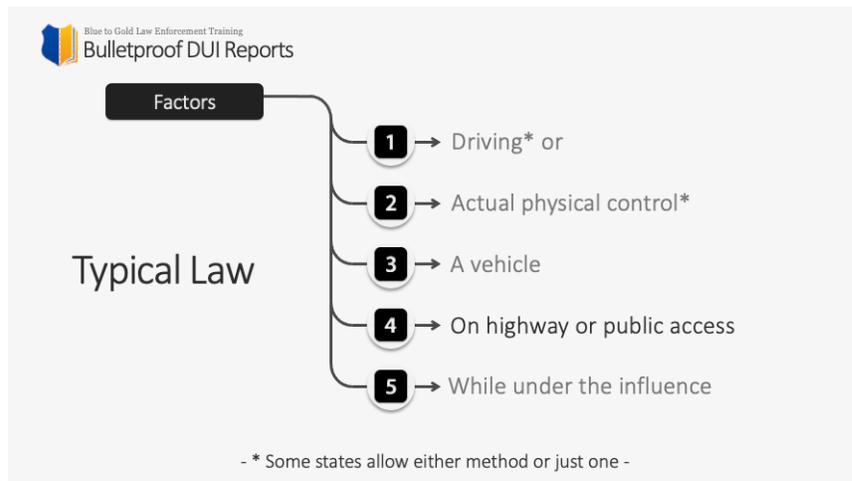
24) In deciding whether someone has existing or present restraint, directing influence, domination or regulation of a vehicle, the trier of fact must weigh a number of considerations, including where, and in what position, the person is found in the vehicle; whether the vehicle's engine is running or not; whether the occupant is awake or asleep; whether, if the person is apprehended at night, the vehicle's lights are on; the location of the vehicle's keys; whether the person was trying to move the vehicle or moved the vehicle; whether the property on which the vehicle is located is public or private; and whether the person must, of necessity, have driven to the location where apprehended.



25)

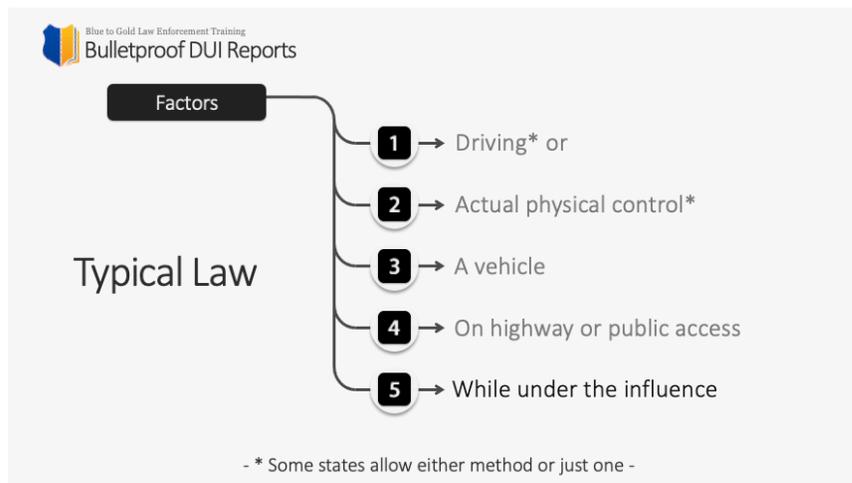
- \* Some states allow either method or just one -

- 26) **Legal Rule:** "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway except devices moved by human power.\* (typical statute)



27)

- 28) **Legal Rule:** Public access means locations which are open to the general public. Gated communities/businesses are usually included. But not private driveways, backyards, and farms.



29)

- 30) **Case Sample:** There are usually two way to prove "under the influence." BAC or alcohol affected the defendant "to a degree that renders them incapable of safely driving or exercising actual physical control of the vehicle."

- 31) **Pro Tip:** Virtually every state provides that the slightest impairment of the ability to drive safely is sufficient.
- 32) **However,** you still need evidence (FSTs, driving) to prove their driving was affected.

**Module Six: Transitions to DUI Investigations: - 10 minutes**

- 1) **Best Practice:** Do not tell drivers prematurely that they are not DUI.
- 2) **Video:** "DUI Stop"
- 3) **Legal Rule:** You need reasonable suspicion to ask a person to conduct FSTs
- 4) **Pro tip:** Articulate exactly when you transitioned a traffic stop to a DUI investigation along with bullet points.

[Previous report]

Based on the totality of the circumstances, I had reasonable suspicion at approximately 0125 hours that the driver was driving while intoxicated for the following reasons:

5)

- The driver failed to maintain his travel lane three times;
- He was following another vehicle at a distance of approximately 25 feet at 60 MPH;
- I smelled the strong odor of an intoxicating beverage emanating from the vehicle and/or the driver;
- The driver admitted that he consumed two beers before driving.

Therefore, I transitioned the traffic stop to a DUI investigation...

### Module Seven: BWC Articulation: - 5 minutes

- 1) **Best Practice:** If permitted by your DA, narrating facts and circumstances **not visible or detectible** on BWC may help
- 2) **Video:** "BWC Articulation"
- 3) **Best Practice:** Articulating a play-by-play may not be admissible in court.

### Module Eight Miranda: - 10 minutes

- 1) **Legal Rule:** Miranda only applies when there is arrest-like custody, like handcuffs, in back of car, transportation, etc.
- 2) **Case Sample:** An officer detained a driver in handcuffs and placed him in back of police car. Another officer arrived, took off handcuffs, and asked him about drug consumption.  
**Synopsis:** Cooper relies on *People v. Bejasa* (2012) 205

Cal.App.4th 26, 140 Cal.Rptr.3d 80 (*Bejasa*). There, officers arrived at the scene of an auto accident and found Bejasa, who had methamphetamine and syringes. He also was on parole. An officer handcuffed Bejasa, told him he was being detained for a possible parole violation, and put him in the police car. After other officers arrived, Bejasa was let out of the car and uncuffed. He was "interview[ed]," asked to do FSTs (including the Romberg test), and then arrested. (*Id.* at pp. 30-31, 140 Cal.Rptr.3d 80.) The appellate court concluded Bejasa's "incriminating statements regarding his use of drugs" made during questioning, as well as his performance on the Romberg test, should have been suppressed. The court noted officers already had probable cause to arrest Bejasa on a parole violation. (*Bejasa, supra*, 205 Cal.App.4th at pp. 33, 39-45, 140 Cal.Rptr.3d 80.) The officer's questioning went beyond general on-the-scene questioning; by the time the officer "contacted [Bejasa], [he] had moved past interrogation and into the realm of inculcation." (*Id.* at p. 40, 140 Cal.Rptr.3d 80.) Moreover, Bejasa's statement during the Romberg test was like Muniz's response to the question about the date of his sixth birthday: it required the suspect to make a calculation and "to communicate an implied assertion of fact or belief." (*Id.* at p. 43, 140 Cal.Rptr.3d 80.). **Held:** Drug statements suppressed because this was arrest-like custody.

- 3) **Note:** Tell the driver he's not in custody.
- 4) **Case Sample:** An officer asked an apparently intoxicated driver whether he drank or consumed drugs. He admitted that he did, and his statements were used against him. **Synopsis:** Specifically, in *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138 (1984), the Supreme Court found routine questioning during a traffic stop did not arise to the level of a custodial interrogation. In *Berkemer*, a police officer stopped a vehicle he saw weaving in the roadway. *Berkemer* exhibited signs of intoxication and failed a field sobriety test. *Berkemer* was then asked if he had been using intoxicants. *Berkemer* admitted to drinking alcohol and smoking marijuana. *Berkemer* was arrested and given a chemical test. *Berkemer* argued that his questioning should be suppressed because he was not given his Miranda warnings. In rejecting *Berkemer's* claim, the Supreme Court found the questioning of *Berkemer* did not rise to the level of a custodial

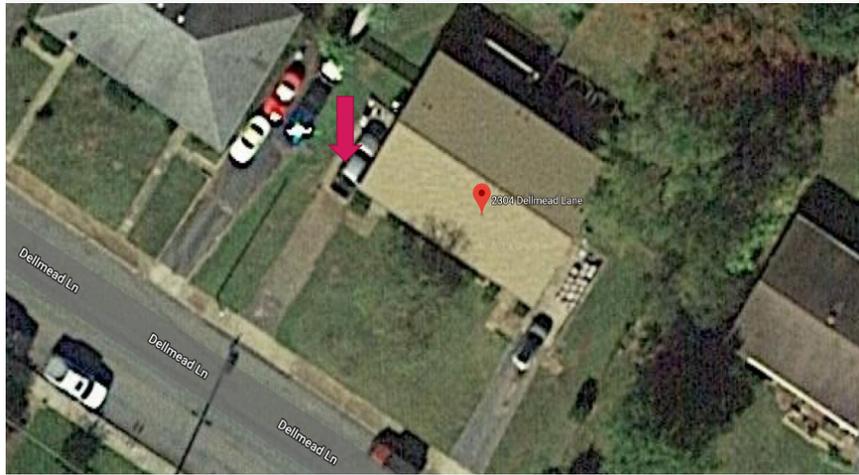
interrogation. In the absence of a custodial interrogation, no Miranda warnings are necessary. The Berkemer court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 468 U.S. at 428. The Court concluded questioning as part of a traffic stop does not constitute custodial interrogation. Nevada has adopted the Berkemer rationale. *Dixon v. State*, 103 Nev. 272, 737 P.2d 1162 (1987). **Held:** The driver was not in custody even though not free to leave.

- 5) **Pro Tip:** Note, Miranda only applies to "testimonial" evidence, not physical evidence like FST performance.
- 6) **Case Sample:** An in-custody driver was asked to perform FSTs without Miranda. **Synopsis:** *Muniz* forecloses Cooper's argument as to the first four of the six statements she lists in her brief. Asking a DUI suspect to perform physical tests is not an "interrogation." Colwart testified he explained each test, demonstrated several of them, asked Cooper if she understood, then asked her to perform the tests. Cooper volunteered her statements, claiming an inability to perform the tests and telling \*519 Colwart the nature of the "disability" she cited was none of his business. It is plain why the legal analysis Cooper proposes is not the law: A driver suspected of being under the influence could simply behave obstreperously at the scene, requiring officers to take her to the station for everyone's safety to perform the FSTs. The suspect then could claim—because she was now "in custody"—her *Miranda* rights attached and she had a Fifth Amendment right to refuse to perform the tests. Where—as here—officers \*652 did not yet have probable cause to arrest the suspect, but instead were trying to continue their investigation, they would have no choice but to release the suspect. **Held:** Her HGN test was not testimonial, but her performance under the Romberg test was.
- 7) **Pro Tip:** Remember, even if you plan to arrest the driver after FSTs, it's irrelevant as long as it's not communicated.

### **Module Nine: Hot Pursuit into Curtilage: - 10 minutes**



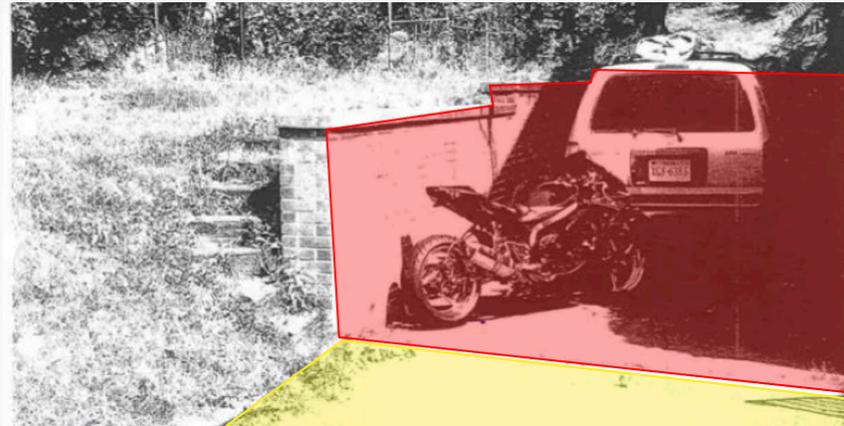
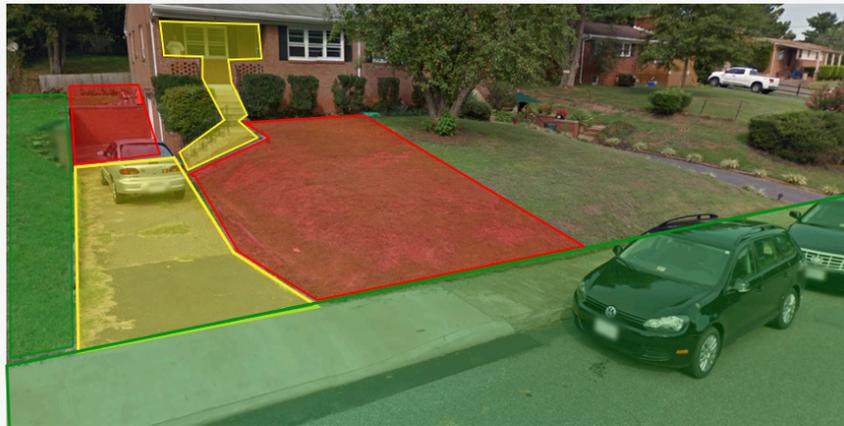
1)





During the investigation of two traffic incidents involving an orange and black motorcycle with an extended frame, Officer David Rhodes learned that the motorcycle likely was stolen and in the possession of petitioner Ryan Collins. Officer Rhodes discovered photographs on Collins' Facebook profile of an orange and black motorcycle parked in the driveway of a house, drove to the house, and parked on the street. From there, he could see what appeared to be the motorcycle under a white tarp parked in the same location as the motorcycle in the photograph. Without a search warrant, Officer Rhodes walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen by running the license plate and vehicle identification numbers, took a photograph of the uncovered motorcycle, replaced the tarp, and returned to his car to wait for Collins. When Collins returned, Officer Rhodes arrested him. The trial court denied Collins' motion to suppress the evidence on the ground that Officer Rhodes violated the Fourth Amendment when he trespassed on the house's curtilage to conduct a search, and Collins was convicted of receiving stolen property.

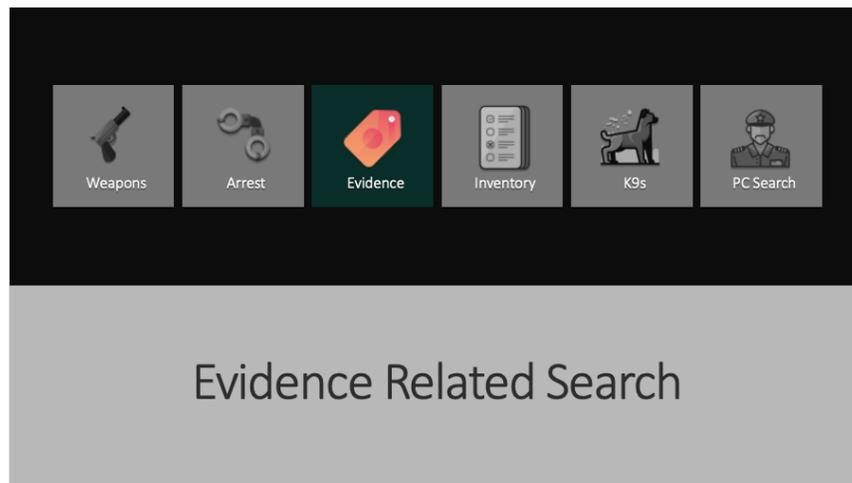
The Virginia Court of Appeals affirmed. The State Supreme Court also affirmed, holding that the warrantless search was justified under the Fourth Amendment's automobile exception. **Held:** The automobile exception does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein. Pp. 1669 – 1675.



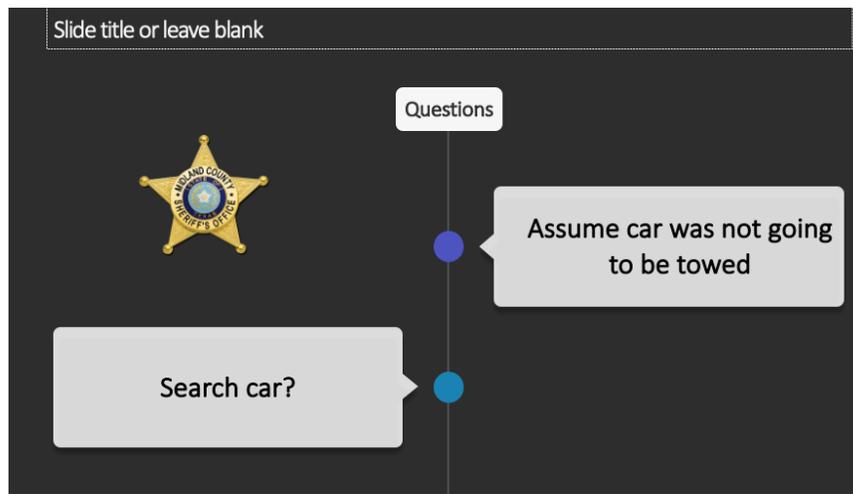
2) **Per the Iowa Supreme Court:** "Society has an interest in not rewarding the evasion of lawful police authority by

allowing suspects who made it to their homes steps ahead of law enforcement officers to claim sanctuary”

**Background:** Once inside the garage, Killpack asked Legg to come outside so that he could speak with her. She repeatedly stated, “I’m home.” Killpack noticed that her breath smelled of alcohol. He then gently pulled on her coat to “coax” her out of the garage. At that point he could see that her eyes were bloodshot and watery. In addition, Legg had difficulty keeping her balance and her speech was extremely slurred. When Killpack asked to see her license, Legg became angry and attempted to push the officer away from the door so she could go back inside. Killpack then told the defendant he was concerned about \*766 her intoxication and asked her to go with him to the law enforcement center. When she refused to cooperate, he placed her in handcuffs and informed her she was under arrest for operating while intoxicated (OWI). Once they arrived at the law enforcement center, Legg refused to perform field sobriety tests and refused to take a preliminary breath test.



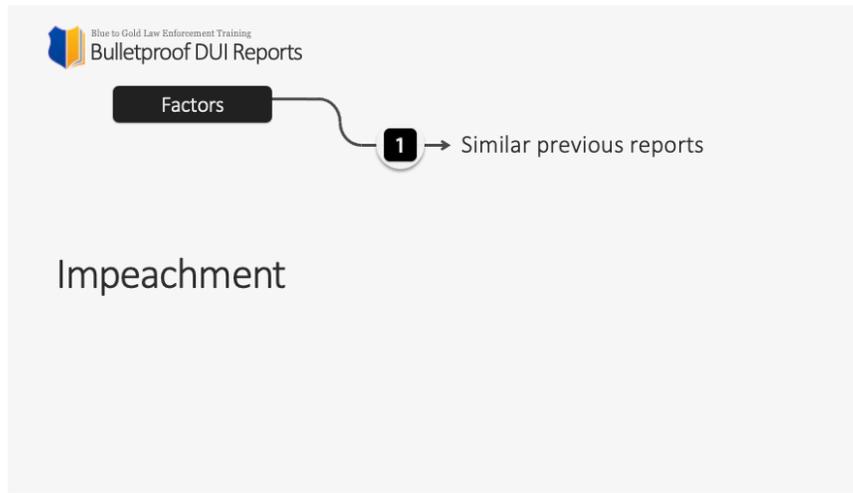
- 3)
- 4) **Legal Rule:** You may search a vehicle if you have **reason to believe** offense-related evidence is inside the vehicle. Note: This search is likely invalid in New Mexico.
- 5) **Question:** You arrested driver for DUI, can you search car for evidence? Need P.C.? **Probably.** If you just saw him leave a bar maybe not. Remember, search is limited in scope.
- 6) **Video:** “Traffic Stop” Warrant:



7)

- 8) **Best Practice:** Make it clear that you complied with the observation period and did not leave the room.

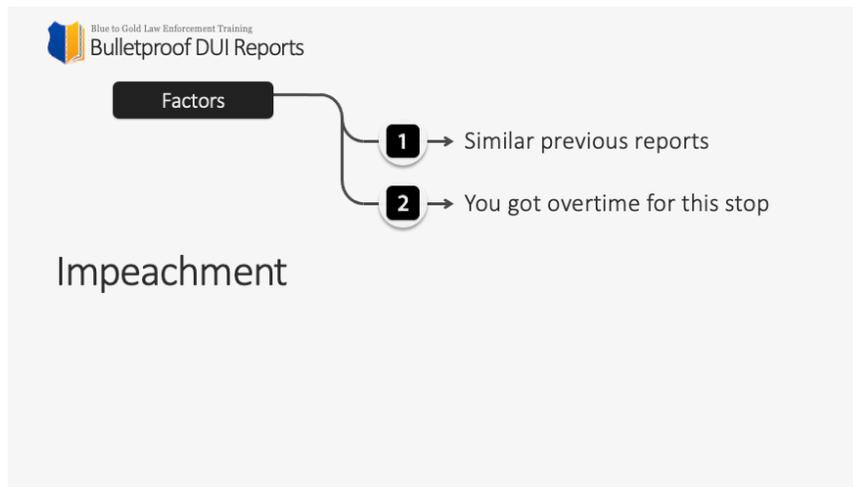
**Module Nine: Trial Strategies: - 5 minutes**



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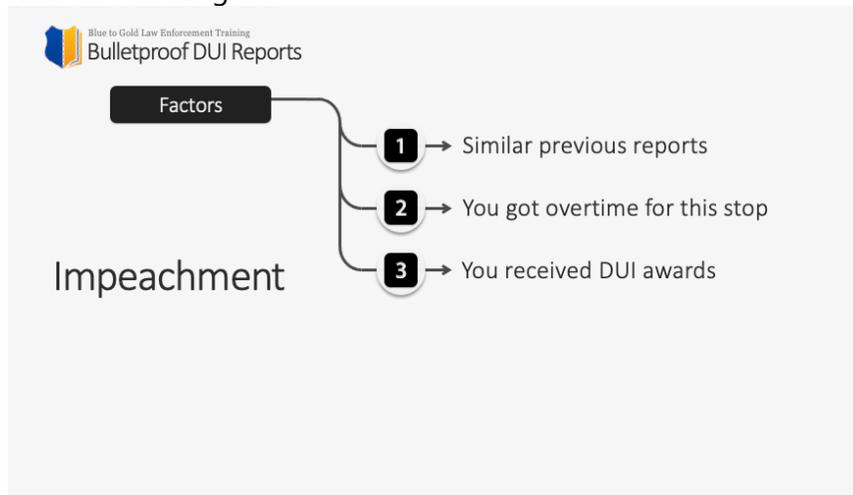
- 2) **Observation from Peter Johnson, Renown DUI attorney:** Although it is also the case that even honest and conscientious officers tend to observe many of the same symptoms and describe them in identical language...evidence of a “carbon-copy report” can be devastating; jurors find it very interesting that the officer on the stand always observes a suspect, for example, travel at 70 miles per hour, cross into the number 2 lane for two seconds and then back to the number one lane...

- 3) **Best Practice:** Save Templates as ready only.



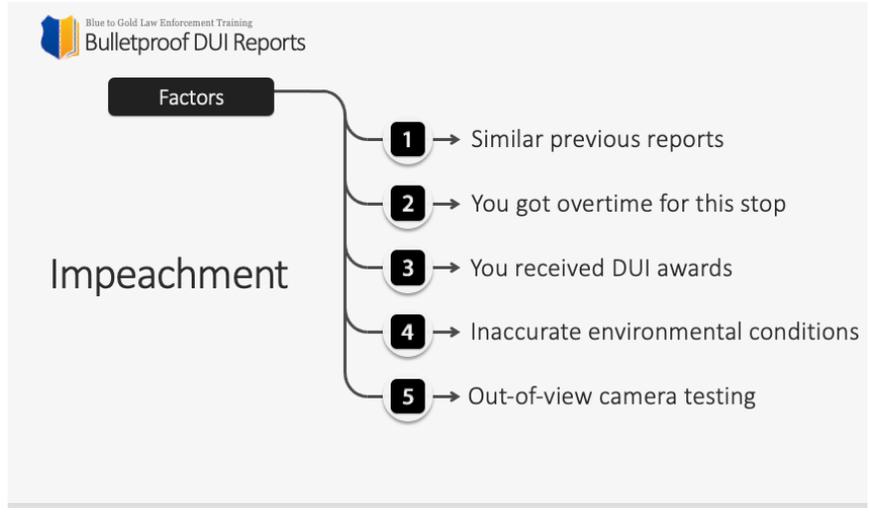
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- 5) **Best Practice:** If you made OT during the arrest, be prepared to state that you also arrested plenty of people while not making OT.



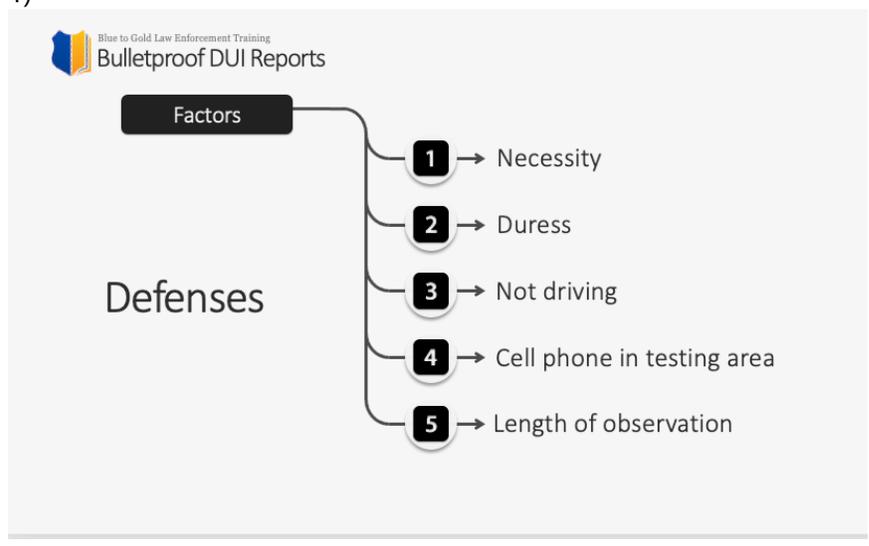
6)

- 7) **Best Practice:** If defense counsel tries to imply you are motivated to make sketchy DUI arrests because of a DUI award, respond that you are only motivated to save lives ruined by drunk drivers.



**Module Ten: Defenses that Work: - 10 minutes**

1)



**Module Eleven: Takeaways - 5 minutes**

1)

 Blue to Gold Law Enforcement Training  
How to Teach Search and Seizure

## Major Takeaways

-   
Teach the Golden Rules
-   
All Searches & Seizures Require C.R.E.W.
-   
Let B2G Help Make You an Expert

End of class.