

(X) REASONABLE SUSPICION STANDARD FOR DUI STOPS

Before a law enforcement officer may stop a vehicle for suspected driving under the influence, the officer must have reasonable articulable suspicion that the driver is impaired or has committed a traffic violation.

Reasonable suspicion means that the officer must be able to point to specific, objective facts that would lead a reasonable person to believe that criminal activity may be occurring. The officer's suspicion must be based on more than mere speculation, hunch, or intuition.

When evaluating whether reasonable suspicion existed for a DUI stop, you should consider:

- **Driving patterns observed:** Whether the defendant's driving exhibited specific behaviors that suggest impairment, such as weaving, swerving, erratic speed, or failure to maintain lane position;
- **Traffic violations:** Whether the defendant committed observed traffic violations that provided lawful justification for the stop;
- **Objective observations:** Whether the officer observed specific, articulable facts that would suggest impairment to a reasonable person;
- **Duration and nature of observation:** How long the officer observed the defendant's driving and under what conditions.

Important limitations:

- An officer may not stop a vehicle based solely on the time of day, the location of the driving, or the type of establishment the driver may have visited;
- The officer's subjective belief or "hunch" that someone is impaired, without objective supporting facts, is insufficient to justify a stop;
- The fact that a person was driving near or leaving an establishment that serves alcohol, by itself, does not create reasonable suspicion of impairment.

If you find that the initial stop was not supported by reasonable suspicion, you should consider that fact in determining what weight, if any, to give to evidence obtained as a result of that stop.

Authority: State v. Rodriguez, 854 P.2d 1292 (Utah 1993); U.S. Constitution Amendment IV; Utah Constitution Article I, Section 14.

PLEASE INCORPORATE THESE CASES INTO THE EXISTING JURY STATEMENTS MOTION

State v. Homan: Field Sobriety Tests not allowed to establish probable cause unless done correctly.

Knowles v. Iowa: Officers may not search beyond what is necessary for officer safety in a routine traffic stop.

U.S. v. Lambert: A defendant was seized while agents held his driver's license for 20 minutes.

U.S. v. Buchanan: The defendants were seized when the troopers separated them from their vehicle.

U.S. v. Mitchell: A defendant retains his privilege against self-incrimination through sentencing.

Florida v. J.L.: A seizure can not be made based on an uncorroborated anonymous tip.

Salt Lake City v. Garcia: The Horizontal Gaze Nystagmus (HGN) Test cannot be introduced as scientific evidence and cannot be used to determine the actual level of intoxication.

State v. Preece: Even though the statute says that you are guilty of a DUI if you have sufficient alcohol in your body that a chemical test given within two hours of the alleged operation or physical control shows that you have a blood or breath alcohol concentration of .08 grams or greater, there is no presumption that your blood alcohol level was .08 or higher at the time of driving just because it was taken within two hours. In other words, your breath test result can always be challenged and the validity of the test can be challenged.

Murray City v. Hall: Before the breath test result can be introduced as evidence against you, the state must have evidence that the intoxilyzer machine was working properly. In other words, if the state cannot produce affidavits showing the machine was working properly, or they cannot have a witness testify that the machine was working properly, then the breath test result cannot be introduced into evidence against you.

Salt Lake City v. Womack: Officers must observe the Defendant for 15 minutes prior to giving the breath test. This is Utah's "Baker Test". If you had gum or you burped before taking the breath test, the validity is compromised and the officer has to start the 15 minute observation period over.

TOMORROW'S HEARING SCRIPT

Opening Statement:

"Your Honor, the State's case depends entirely on evidence obtained through constitutional violations and unreliable scientific testing. Without the prior conviction, the Intoxilyzer result, and the statements obtained without Miranda warnings, the State has no case."

Closing on Motions:

"Your Honor, the defense has three simple requests: Follow the Constitution, follow the Rules of Evidence, and require proper scientific foundation. Each motion is compelled by established law. We ask this Court to prevent a trial by prejudice rather than proof."

STRATEGIC ANALYSIS

Your Strongest Pressure Points:

1. **Probable Cause Gap:** Video shows no traffic violation
2. **Miranda Timing:** Custodial interrogation without warnings
3. **Intoxilyzer Foundation:** Gap between August 16 and September 19 certifications
4. **Officer Bias:** Ernstsen's astronomical arrest rate (24x national average)

Fatal Weaknesses in Current Approach:

1. **Motions lack teeth** - Too brief, insufficient legal authority
2. **No coherent theory of defense** - You're throwing spaghetti at the wall

3. Dangerous jury instructions - Actually help prosecution

- *Your Honor, you're right about argumentative language. May I propose neutral scientific reliability standards instead?"*
- *"Jury needs objective criteria for evaluating technical evidence—not argument, but guidance."*

PROSECUTOR FREDLEY: "Your Honor, defendant's proposed instructions contain improper argument and misstate the law. Instruction 3 assumes facts not in evidence and advocates for the defense position. We request standard Utah Model Jury Instructions."

YOUR RESPONSE: "Your Honor, I'll withdraw the argumentative language. However, I respectfully request inclusion of scientific reliability standards given the technical evidence in this case. The jury needs guidance on evaluating breath test procedures under Utah Admin Code R714-500. If previous conviction is admitted, how much time would I have at trial to explain the details of the previous arrest as if closely mirrors elements of the current arrest?"

JUDGE'S LIKELY RULING: "Mr. Golub, I'll accept your basic instructions but not the argumentative portions. Mr. Fredley, provide standard DUI instructions. We'll use modified versions that include scientific evidence evaluation standards."

When Judge Criticizes Your Instructions:

1. *"Your Honor, you're absolutely right about the argumentative language. May I propose scientifically neutral instructions that simply guide the jury on evaluating technical evidence?"*

Your Revised Approach:

2. *"The jury needs guidance on scientific evidence reliability—not argument, but objective criteria for evaluation."*

THE KRIEGER POWER MOVES

1. THE PREEMPTIVE STRIKE

Before prosecution speaks: "Your Honor, before the State responds, may I clarify the specific statutory language at issue?"

2. THE CONSTITUTIONAL ANCHOR

For every motion: "This isn't just evidentiary—it's constitutional. The defendant's rights require this protection."

3. THE RECORD PRESERVATION

After adverse rulings: "Your Honor, I respectfully preserve this issue for appeal and request specific findings on the constitutional questions raised."

WHAT SUCCESS LOOKS LIKE

MINIMUM VICTORY:

- Prior conviction excluded
- Limiting instruction on scientific evidence
- Partial Miranda suppression

OPTIMAL VICTORY:

- All three motions granted

- Standard jury instructions with scientific reliability provisions
- State forced to retry case without key evidence

DISASTER PREVENTION:

- No personal attacks on officers
- No factual arguments during legal motions
- No revealing trial strategy prematurely

THE PSYCHOLOGY OF JUDICIAL PERSUASION

What Judges Want:

2. **Legal precision** over emotional appeals
3. **Specific citations** over general principles
4. **Constitutional grounding** over policy arguments
5. **Clear rulings** that survive appeal

What Judges Fear:

1. **Reversible error** on constitutional issues
2. **Bad publicity** from procedural violations
3. **Appellate criticism** for evidentiary mistakes
4. **Time-wasting** from unprepared lawyers