

Appendix I

DUI Predicate Questions



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ARRESTING OFFICER

Experience / Training

- Officer _____ , before we begin, please introduce yourself to the court and the members of the jury
- How are you currently employed?
- How long have you worked for the _____ police department
- What prior LEO experience do you have (only ask question if officer has prior LEO experience)
- What special training, if any, have you had in the field of detecting and apprehending drivers impaired by alcohol or drugs?

_____ Police Academy

_____ SFST training

_____ College courses

_____ Books read

_____ DRE Course

_____ Intoxilyzer training

- Approximately how many times have you stopped possibly impaired drivers?
- Do you arrest everyone whom you initially suspect of being impaired?
- Why not?
- How many DUI arrests have you made? [**Make sure you know the answer to this question ahead of time**]
- When you arrest someone who you believe is impaired, do you arrest for one sign of impairment?
[No]
- What do base your arrest on? [Totality of circumstances]

Driving Pattern

- During your training and experience, did you learn what type of driving patterns signify that a driver might be impaired? [MAY NOT WANT TO ASK IF THERE IS NO DRIVING PATTERN]
- Can you please describe for the jury what type of driving patterns might signify impairment?
- Do you recall the morning/evening of _____?
- What were you doing that morning/evening?
- On that date, at around _____, were you on duty?

- What were your duties that evening/morning?
- Where were you?
- Did you notice anything unusual?
- What did you see?
- What type of car?
- Did you follow it?
- For approximately how long?
- How far was that?
- EXPAND ON DRIVING PATTERN
 - Can you please tell the members of the jury what the car was doing during this time?
 - How many times did the car cross the line?
 - How far over the line did it cross over the line?
 - How fast was the car traveling? What is the posted speed?
 - How long did the car exhibit this activity?
 - How was your visibility?
 - How far were you from the car when you witnessed this activity?
 - Was there any other traffic on the road that could account for this driving pattern?
- What did you do? [pulled over the car]
- How long did it take the car to stop?
- Why did you stop the car? [possibility of impaired driver OR traffic infraction]

Identification

- Once the car stopped, what did you do?
- Who was driving?
- Did you see that person in the courtroom here today?
- Please point at the person and identify him/her by an article of clothing he/she is wearing.
- LET THE RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT

Venue

- What county did this stop occur in?
- Did everything you have testified about and are going to testify about occur in _____ County?

Defendant's Appearance

- Please tell the jury what you observed when you first approached the defendant.
- What did you do when you first approached the defendant?

_____ Asked for DL / Reg / Insurance

_____ How did the defendant produce these documents [Only ask question if defendant had trouble finding these documents]

_____ In your experience stopping cars for traffic infractions, is it common for person not to know where there DL and car documents are?

- Based on your training and experience, what type of physical characteristics do you observe in a person who may has been drinking [or ingesting drugs]?
- What does the odor of alcohol smell like?
- Does it smell like regular liquor from a bottle?
- Where did you learn to detect the distinct smell of this odor?
- What are drinking labs ?
- What do you learn in them?
- Could you please describe the defendant's physical condition and appearance when you first approached him?

_____ Odor

_____ Bloodshot eyes

_____ Slurred speech

_____ Flushed face

- Did you ask him/her to get out of the car?

_____ How did he/she get out of the car?

_____ Walk?

_____ How was their Balance?

_____ Did he/she lean against the car?

- Did he/she say anything unusual [**Make sure no Miranda problems**]?

Roadsides

- Did you have the defendant perform any Standardized Field Sobriety Tests (SFST's)?
- Do you have any special training in SFST's?
- Please describe your training.
- Were you taught what to look for during these exercises?

- Approximately, how many times have you conducted SFST's? [Make sure you know the answer]
- What is the purpose of SFST's? [measure divided attention skills]
- What are divided attention skills?
- How do SFST's measure divided attention skills?
- What does it mean when a person is not able to understand instructions? [Be careful if there are language issues]
- Does a person need divided attention skills to drive a car safely ?
- Why?
- How many tasks do you perform while driving?
- Are SFSTs standardized?
- How many are there?
- What are normal faculties?
- How does performance on SFST's relate to measuring a person's normal faculties?
- Through your training and experience, can you determine whether a person is under the influence by his/her performance on the SFST's? [If objection: goes to reliability, thus relevancy of test]
- Please describe the area where you gave these exercises in this case?

_____ Was the area well lit?

_____ Was the ground smooth and flat?

_____ Were you far enough from the flow of traffic so as not to distract the defendant?

- Which SFST's did you have the defendant perform?
- HGN * need an expert to establish the correlation between alcohol consumption and HGN
 - ⇒ What is HGN?
 - ⇒ Who established HGN?
 - ⇒ Are you trained to perform HGN?
 - ⇒ Did you perform the HGN test in accordance with your training?
 - ⇒ How many times have you conducted HGN?
 - ⇒ Do you keep logs [Make sure officer has logs]
 - ⇒ What things do you look for in the subject's eyes when HGN is being performed?
- _____ Cannot smoothly follow moving object
- _____ Distinct nystagmus at Maximum deviation
- _____ Onset of nystagmus occurs before 45 degrees
 - ⇒ What is Sharp's equation? [Only ask if there is a reading and the officer is accurate]
 - ⇒ What does it allow you to do?

- ⇒ What causes eyes to exhibit these motions?
- ⇒ Are these motions caused by things other than alcohol?
- ⇒ Are there different types of HGN?
- ⇒ Are these other types of HGN alcohol induced?
- ⇒ Could you compare the eye action of an impaired person's HGN to any other everyday occurrence so the jury may better understand the concept of HGN? [compare HGN to a windshield wiper on a dry windshield - the jerking motion of the wiper]
- ⇒ How did the defendant's eyes react when you performed this SFST?
- ⇒ Could this reaction be caused by anything else?

ASK THE NEXT GROUP OF QUESTIONS FOR EACH OF THE OTHER SFST'S PERFORMED

- ◇ What was the next test you administered?
- ◇ Did you instruct the defendant how to perform this exercise?
- ◇ How?
- ◇ Did he appear to understand the instructions?
- ◇ Did the defendant say anything or do anything to you before he/she performed the exercise that indicated to you that he did not understand your instructions?
- ◇ Did you ask the defendant whether he had any injuries?
- ◇ Did the defendant appear to have any injuries?
- ◇ Did you demonstrate the exercise to the defendant? Please step down and demonstrate for the jury how you demonstrated to the defendant that evening. [make sure the officer is capable of doing this]
- ◇ Please relate to the jury how the defendant performed on this exercise.
- ◇ How many clues did he miss on the exercise?
- ◇ How many clues indicate being unable to perform the exercise?
- ◇ If the defendant makes one or two mistakes does that automatically mean he is impaired?
- ◇ Does it automatically mean he will be arrested?
- ◇ Why not?
- ◇ What does the defendant's performance on this exercise have to do with divided attention skills?
- ◇ What does the defendant's performance on this exercise have to do with normal faculties?

_____ Walk and turn - did you use a real or imaginary line

After SFST's

- After administering the SFST's, what did you do? [arrested defendant]
- Who transported the defendant to the station?
- What was he like in the car? [Make sure no Miranda Issues]
- What was demeanor at the station verses the scene?
[if the officer testifies that he appeared better at the station, ask him what he attributes it to (i.e. sobering up). This line of questioning is critical in cases with a low reading because it will allow you to argue that his breath/blood reading was higher at the time of driving]
- Based on your training and experience the [driving pattern, defendant's physical appearance, odor, and the defendant's performance on SFST's] do you have opinion as to whether the defendant was too impaired to drive a car that night?
- What is that opinion?

If Video

- Was a video taken of the defendant back at the station
- How long after the arrest was that video taken
- Were you present when the video was made?

OR

Have you had an opportunity to watch that video?

- Could you compare the defendant's appearance at the arrest location to his appearance on the video
- Could you tell us why the defendant looked better on video than he did at the scene? [passage of time / absorption]

IF SFST'S WERE DONE ON VIDEO AT THE SCENE...

- Were FSE's done on video?
- Could you compare the defendant's performance on the SFST's at the station to his performance of the tests at roadside?
- Could you tell us why the defendant looked better on video than he did at the scene?

THANK YOU. NO FURTHER QUESTIONS

BREATH TEST OPERATOR

Experience / Training

- Officer _____ , before we begin, please introduce yourself to the court and the members of the jury
- How are you currently employed?
- How long have you worked for the _____ police department?
- What prior LEO experience do you have (only ask question if officer has prior LEO experience)
- What special training, if any, have you had in the field of detecting and apprehending drivers impaired by alcohol or drugs?

_____ Police Academy

_____ SFST course

_____ College courses

_____ Books read

_____ DRE Course

_____ **Intoxilyzer training**

- Approximately how many times have you stopped possibly impaired drivers?
- Do you arrest everyone whom you initially suspect of being impaired?
- Why not?
- How many DUI arrests have you made? [Make sure you know the answer to this question ahead of time]

Breath Test Qualification / Relevance to Present Case

- Did you learn how to operate the breath testing instrument?
- As an operator, are you responsible for fixing or maintaining the instrument?
- How many breath tests have you administered?
- Have you been trained in the instrument used in **this** case?

ID / Venue

- Were you on duty on _____ at around _____?
- Where were you assigned?

- On that evening did you come into contact with someone who later became known to you as _____ ?
- Do you see that person in the courtroom today?
- Please identify him by an article of clothing.
- LET THE RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT
- What county were you in when the breath test was administered to the defendant?
- Did everything you are about to testify to happen in _____ County?

20 Minute Observation

- Please explain to the jury how you came into contact with this defendant.
- Officer, on _____ did you have the opportunity to administer a breath alcohol test to _____ ?
- Did you watch the defendant continuously for 20 minutes prior to the administering test?
- Why is it necessary to watch the subject for 20 minutes?
- Did the defendant regurgitate, burp, or put anything into his mouth during that time?
- What is that important?

Defendant's Appearance

- How did the defendant appear to you.

_____ Breath

_____ Eyes

_____ Face

_____ Speech

_____ Attitude

_____ Appearance

_____ Walked

_____ Balance

Implied Consent

- During that 20 minute period, did you read the defendant the implied consent law?
- What is the implied consent law?
- Did you fill out any paperwork regarding this law?
- YOUR HONOR, MAY I APPROACH THE WITNESS. [SHOW DOCUMENTS TO DEFENSE COUNSEL]

- Officer, I am showing you what has been previously marked as State's exhibit _____ for identification. Do you recognize it?
- How do you recognize it
- What is it?
- If there a signature? Whose?
- What date was the document produced?
- Did you write the name of the person who you read the IC law to?
- Who is that person?
- Is this document a **record of your reading the implied consent law to the defendant?**
- Is this document filled out in the regular course of police Business?
- Is this document in the same or substantially the same condition as the night you filled it out?

AT THIS TIME, I WISH IN ADMIT STATE'S EXHIBIT ____ FOR IDENTIFICATION INTO EVIDENCE? [Business Records Exception]

- Please read to the jury the implied consent law just as you read it to the defendant that morning/evening.
- Did the defendant appear to understand the implied consent law as read?
- Did he sign the implied consent paperwork?
- Did he read it himself?

Taking the test

- How did you prepare the machine for the administration of the breath test?
 - ◊ Push the Start Test Button on the instrument.
 - ◊ Insert the evidence card.
 - ◊ Make sure the instrument automatically ran an "air blank"
- Please tell the jury what an "air blank" is.
- The instrument read 0.000 after running the air blank.
 - ◊ The instrument displayed the "please blow" message.
 - ◊ Connected the mouth piece.
- Did the defendant blow into the mouth piece until the tone stopped
- Did the defendant provide a deep lung air sample?
- How do you know?
- Did the instrument "air blank" again?
- Did the instrument display "please blow" again?

- Did the defendant blow into the instrument again?
- How much time elapsed between the first and the second blow?
- Without telling us the readings, were the results within plus or minus .02 of each other?
- What is the significance of that? [ONLY ASK QUESTION IF OPERATOR IS EXPERT OR YOUR PRETRIED AND YOUR WITNESS KNOWS THE ANSWER]

Operational Checklist / Foundation for Admitting into Evidence

- Did you complete an operational checklist?
- What is the purpose of the checklist?
- Did you attach the evidence card printout generated by the instrument to the checklist?
- Did you record the defendant's breath test?
- What is the serial number of the Intoxilyzer 8000 which you administered this test on?
- YOUR HONOR, MAY I APPROACH THE WITNESS. SHOW DOCUMENTS TO DEFENSE COUNSEL
- Officer, I am showing you what has been previously marked as State's exhibit _____ for identification. Do you recognize it?
- How do you recognize it
- What is it?
- If there a signature?
- Whose?
- What date was the document produced?
- Do you write the name of the person whose BAC this reflects
- Who is that person?
- Is this document a **record of your results** produced from the test you performed on that person?
- Are these documents made in the regular course of police Business?
- Is this document in the same of substantially the same condition as the night the instrument generated this card?

Questioning Section of DUI Report

- **ONLY DO THIS SECTION IF HE WAIVED MIRANDA AND SPOKE TO OFFICER**
- Did you read the defendant Miranda?
- Did you tell him that he had the right to remain silent?
- Did you tell him that anything he said could be used against him in court?

- Did you tell him he had the right to an attorney?
- Did you explain to him that if he could not afford a lawyer that one would be provided for him?
- Did he knowingly, voluntarily and intelligently waive his rights?
- Did you ask the defendant
 - ◊ Are you ill?
 - ◊ Taking any medication?
 - ◊ Any Drugs? If YES, when was his last dose?
 - ◊ Whether he was injured?
 - ◊ How much he slept in the last 24 hours?
 - ◊ Whether he'd been drinking?
 - ◊ What?
 - ◊ How much?
 - ◊ When did he start?
 - ◊ When did he stop?
 - ◊ What time is was? What was the actual time?
 - ◊ Whether he was driving?

If there is a Video

- Officer ____, I am showing you what has been previously marked as State's exhibit ____ for identification
- Do you recognize it?
- How?
- What is it?
- Have you viewed this videotape?
- Does this tape fairly and accurately depict the defendant's condition on the night of his arrest?
- Does the police dept. make such tapes in the regular course of its business?
- Are these tapes ordinarily kept in the regular course of its business?
- AT THIS TIME WE MOVE STATE'S EXHIBIT ____ FOR IDENTIFICATION INTO EVIDENCE AS STATE'S EXHIBIT ____
- PUBLISH TO JURY
- GO THROUGH THE TAPE AND ASK HIM TO EXPLAIN

Closeout Question

- Based on your training and experience and your observations of the defendant's performance, do you have an opinion whether the defendant was under the influence of alcohol or drugs that evening making him too impaired to drive a car?
- What is that opinion?

PUBLISH ALL DOCUMENTS TO JURY.

THANK YOU. NO FURTHER QUESTIONS.

BREATH TEST SPECIALIST

SENIOR OPERATOR CERTIFICATION

When going to trial have the following documents:

- * Breath test specialist permit (A.R.M. 23.4.216)
- * Laboratory certification (A.R.M. 23.4.214)
- * Field certification for month before and month after (A.R.M. 23.4.213)
- * Notice of approval of alcohol standard (A.R.M. 23.4.213 (1)) (lot # found on field certification report form)
- * Breath analysis report form(results) (A.R.M. 23.4.201)

Experience / Training

- Officer _____ , before we begin, please introduce yourself to the court and the members of the jury
- How are you currently employed?
- How long have you worked for the _____ police department
- What prior LEO experience do you have (only ask question if officer has prior LEO experience)
- What special training, if any, have you had in the field of DUI?

_____ Police Academy

_____ College courses

_____ Books read

_____ DRE Course

_____ Intoxilyzer training - Operation and Maintenance

- Do you have a permit to operate the Intoxilyzer 8000?
- Are you a Senior Operator?
- What is the significance of being a Senior Operator?
- How did you become the Senior Operator?
- Are you familiar with Intoxilyzer 8000 Serial Number _____
- Where is this instrument kept?
- Is this in _____ County?

- Are you familiar with the room where the instrument is kept?
- Please describe it?
- Is the area clean? Dry? Dust free?
- Is the instrument secured?
- Why?
- Who has access to the instrument?
- Could you briefly tell us how the instrument works?

I AM SHOWING YOU WHAT HAS PREVIOUSLY BEEN MARKED AS STATE'S COMPOSITE
 _____ FOR IDENTIFICATION

Annual Inspection

- Let me direct your attention to the composite again. Is there a document which references the annual inspection?
- What is it?
- How do you recognize it?
- Is that the annual inspection for Intoxilyzer _____ ?
- When was that inspection done?
- How often is that inspection to be done [Once every calendar year]
- Is it an original or a photocopy?
- Is it a true and exact copy of the original?
- Is there a signature at the bottom of the document?
- Do you recognize it?
- How?
- Who did _____ work for at the time he signed it?
- Is that a state agency?
- Why is the document prepared? **What is contained on that document? e.g. Number of tests**
- How is this different from the monthly inspections?

Annual Inspection for Months Before and After

- Are there documents in the composite, which reflect monthly maintenance?
- What are they?
- How do you recognize them?

- The tests referred to in those documents were done on which instrument (serial number _____)?
- Are they originals or photocopies?
- Are they true and accurate copies of the original?
- Are they records or data compilation?
- What are they records of ?
- When were the tests done?
- Where they prepared at or near the time the tests were done ?
- Who did the tests?
- Who prepared those forms?
- Are those forms kept in the regular course of business by the _____ police department?

Certificates of Assurance

- Does the composite contain Certificates of Assurance for the Alcohol Reference Solutions?
- What are Certificates of Assurance (COA)?
- Are they originals or photocopies?
- Are they true and exact copies of the originals?
- Is there a signature on these documents?
- Whose signature [name]?
- For whom did name work at the time he signed these documents?
- Is this a state agency?

THANK YOU. NO FURTHER QUESTIONS

TOXICOLOGIST

Training /Experience

- Please introduce yourself to the members of the jury.
- What is your occupation? (forensic toxicologist)
- What is forensic toxicology?
- What does a forensic toxicologist do?
- What is your educational background?
- What training and experience do you have in the field of forensic toxicology?
- What training and experience do you have that enables you to test blood specimens for the presence of drugs?
- How are you currently employed?
- How long have you been so employed?
- Where were you previously employed? How long?
- How long have you been a forensic toxicologist?
- Do you do both bench testing and supervising?
- What other substances do you test for the presence of drugs?
- How many cases does the laboratory test annually?
- How many blood tests have you run in your career?

IF YOUR WITNESS TEACHES -

- Have you taught in the field of forensic toxicology?
- Have you published any articles in the field?
- Have you written any articles on the field?
- Are you a member of any Professional Organizations? Please name them.
- How did you become a member of these professional organizations?
- To which forensic toxicology groups do you belong?
- Have you held any offices or positions of responsibility in these organizations?
- Do you attend seminars and conferences held by these professional organizations?
- Have you ever interpreted the results of a blood test in a court of law?
- Have you ever been qualified by a court of law as an expert in the field of toxicology?
 - ◊ Specifically in the field of testing blood and blood?

◇ Specifically in the effect of controlled substances on the body?

- How many times?
- In which courts were you qualified as an expert?
- Were they Civil or Criminal proceedings?
- Have you ever been called to testify as a defense expert?

“AT THIS TIME THE STATE WOULD LIKE TO TENDER _____ AS AN EXPERT IN THE FIELD OF FORENSIC TOXICOLOGY”

- How many toxicologists are on staff at the lab?
- How many usually testify in court?
- Why doesn't everyone come to court?

Admitting Results Into Evidence

- Showing you what has previously been marked as State's Exhibit ____ [blood report] for identification, do you recognize it?
- How do you recognize it? [bears his signature]
- Whose blood results does this report contain?

Safeguards for Blood / Chain of Custody

- How is it that you came to test the blood of this defendant?
- In what condition was the blood sample and kit when you received it at the lab? [Sealed]
- Was there any evidence of tampering?
- When the sealed sample was received, was it identified in any way by the lab?
- How was it identified?
- Is the lab a secured environment?
- What security features does the lab maintain?
- Does the lab have limited access?
- Without discussing the results of the testing, what if anything was done with the blood sample when you received it at the lab?
- From the time the seal was broken on the sample until the sample was re-sealed, was the sample continuously in the care, custody and control of your lab?
- How do you know that?
- What do you do with the blood kit after you test it?
- Was there a leftover sample for the defendant to do his own testing? [only ask if known]

- As the lab director, are you responsible for all activities of the lab?
- Do you approve all procedures used to test and report results?
- Do you personally review all data generated that results in a positive report?
- Once you have reviewed the analytical data and approved it, what is the next step in the testing procedure? [a lab report is prepared]
- Was a lab report prepared for the sample of defendant _____ ?

Testing

- What is the testing procedure used to analyze this sample?
- Is this testing procedure accurate and reliable?
- Is this testing procedure generally accepted in the scientific community?
- What is considered the best testing method in forensic blood drug testing? Why is this so?
- Is this the same method used in toxicology labs throughout the nation?
- Was the instrument reading accurately and reliably during the analysis of this sample?
- How do you know?

Business Record Predicate

- Turning your attention back to State's Exhibit ____ for identification, was this document made at or near the time of the test?
- Was it made in the ordinary course of the lab's business?
- Are these reports usually kept in the ordinary course of your business?
- Is it a copy or the original?
- It is a true and accurate copy of the original?

MOVE LAB REPORT INTO EVIDENCE PURSUANT TO BUSINESS RECORD EXCEPTION

- Showing you what has been marked as State's Exhibit _____ (lab report), did you review all aspects of the testing of this sample before signing the report?
- What were the results of the laboratory analysis of the defendant's blood sample?
- Are you familiar with the drug _____?
- How are you familiar with this drug _____?

- Is it a chemical substance under MCA or a controlled substance under MCA?
- Are controlled substances divided into categories?
- What is the purposed of these categories?
- What signs and symptoms does the drug_____ produce in the body?
- If “under the influence” is defined as the ability to operate a motor vehicle safely is diminished, can the drug _____cause a person to be under the influence?
- Are you familiar with the term “psychoactive”?
- What does it mean?
- How long would ____ drug be “psychoactive” in a person’s system?
- Can you determine how much _____ was in the defendant’s blood sample?
- Does that have any impact on whether a person is DUI?
- What is a “cutoff”?
- Why is that important in reporting your test results?
- What level are the Crime Lab’s cutoffs set at?
- Does having a cutoff hurt or help a defendant?

IF HAVE MORE THAN ONE DRUG IN SYSTEM

- What other drugs did the defendant have in his/her system?
- Are you familiar with the term “synergistic” effect?
- What does it mean? [multiplier effect]
- Are you familiar with the term “additive” effect”
- What does it mean?
- Would this combination of drugs have an additive effect?

DRE Program and Results

- Are you familiar with the DRE program?
- Do you believe that 12 step DRE protocol can allow properly trained officers to DETECT what categories of drugs a person has in his/her system?
- Do you believe the DRE protocol can allow a properly trained officer to DETECT what categories of drugs may be impairing a person?
- Have you had an opportunity to review the reports prepared by the police officers in this case regarding the Defendant’s arrest for DUI?

- Have you had an opportunity to hear the officer's testimony regarding the defendant's condition at the time of the arrest and during the DRE evaluation?
- Is this behavior consistent with drug impairment?
- Based on your knowledge and experience, can consuming these drugs produce symptoms described by the officers in their testimony and written reports?
- Does the positive blood toxicology report corroborate the signs and symptoms as described in the testimony and written reports of the officers?
- Based on your knowledge, training and experience and your review of the officer's reports and testimony, do you have an opinion as to whether the defendant was under the influence at the time of driving?
- What is that opinion?

Poppy Seed Defense

- How much morphine was in the defendant's blood specimen?
- Is it possible for a person to consume poppy seeds, for example, a poppy seed bagel, and test positive for Morphine?
- How many bagels would a person have to consume to test positive for the amount of morphine?

CHEMIST

- Please introduce yourself to the members of the jury.
- How are you employed and by whom?
- How long have you been so employed?
- Could you please describe your education?
- Could you please describe your background and training in analytical chemistry and or forensic toxicology?
- Where do you generally conduct blood and blood testing?
- What is your primary duty at the Montana Crime Lab?
- Is this a secured environment?
- What security features does the lab maintain?
- Showing you what has been previously marked as States Exhibit ____ [blood kit] for identification, do you recognize this?
- How do you recognize it?
- What was the condition of State's Exhibit ____ [blood kit] for identification when it was received into the lab? (sealed blood kit in a plastic bag)
- Was there any evidence of tampering?
- When the specimen was received, was it identified in any way by the lab?
- How was it identified?
- What if anything was done with the specimen? [Specimen was removed from secured refrigerator storage, sealed checked and the box is opened. The specimen cup and its seals are checked and the information on the seal is compared with the information on top of the box. A sample of blood is removed for screening purposes. After the screening sample is removed, the original specimen cup is returned to its box and then returned to the refrigerator for storage]
- Did there come a time in which you removed the sample from the refrigerator for testing?
- Without describing the testing procedure or the results of such testing, what if anything, was then done with the sample? (sample was re-sealed and stored in the refrigerator)
- Did there come a time when you removed State's Exhibit ____ (blood kit) for identification from the refrigerator for further testing?
- Was the blood kit in the same condition as when you stored it after testing?

- From the time you broke the seal until the time that you completed your testing, was the sample continuously in your care, custody or control?
- What, if anything, did you do with the blood kit? [resealed sample and placed in refrigerator]
- Is the kit in the same or substantially the same condition as it was when you received it in the lab?
- What testing procedure was used to analyze the blood?
- What are your qualifications in regards to this testing?

BLOOD – ARRESTING OFFICER

Experience / Training

- Officer _____ , before we begin, please introduce yourself to the court and the members of the jury
- How are you currently employed?
- How long have you worked for the _____ police department?
- What prior LEO experience do you have? (only ask question if officer has prior LEO experience)
- What special training, if any, have you had in the field of detecting and apprehending drivers impaired by alcohol or drugs?

_____ Police Academy

_____ College courses

_____ Books read

[_____ DRE Course]

[_____ Intoxilyzer training]

Identification

- On _____ date, did you happen to come into contact with someone who later became known to you as _____?
- Did you see that person in the courtroom here today?
- Please point at the person and identify him/her by an article of clothing he/she is wearing.
- LET THE RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT

Venue

- What county did this incident occur in?
- Did everything you are going to testify about occur in Dade County?

Officer Coming onto Scene / APC Issues

- Please relate to the jury how you came into contact with the defendant.
- Was the defendant in the car when you came into contact with him?
- If not, where was he in relation to the car when you came into contact with him?
 - Did he have the keys in his possession?

- Was the car registered to him?
- Did he have injuries consistent with driving?
- Did he exert ownership over the car in any way?
- Was there anyone else in the car?
- Was there anyone else injured?
- What was the defendant's condition?
 - Was the defendant injured: face, limbs, vomiting, conscious?
 - Was there blood on defendant's face?
 - Did the defendant require any medical treatment?
 - Why?
 - Was the defendant taken, or did he go to the hospital? In an ambulance?
 - Was a breath test impracticable or impossible?
 - Why?
- What was the passenger's condition?
 - Was the passenger injured: face, limbs, vomiting, conscious?
 - Was there blood on passenger's face?
 - Did the passenger require any medical treatment?
 - Why?
 - Was the passenger taken, or did he go to the hospital? By ambulance?

Consensual Blood Draw

- Did you ask the defendant to submit to a blood test?
- Did he agree?

Forced Blood

- Was anyone injured in the accident?
- How badly?
- How did you know that?
- Did you discuss the nature of the injury with _____ [the victim]?
- What did he/she say?
- Did you discuss injuries with a paramedic / rescue personal / other officers?
- What did they say?

- Did you believe that someone involved in the accident was seriously or permanently injured [or dead]?

Collecting Blood

- MARK THE BLOOD SPECIMEN KIT
- I am showing you what has previously been mark as State's exhibit ____ for identification. Do you recognize it?
- How? (Defendant's name, date, time, drawer's initials, evidence tape)
- What is it?
- What does a blood kit contain?
 - Gray topped tubes which contain anticoagulants
 - Betadine solution swab (non-alcoholic swab so as to not contaminate sample)
 - Needle and vacotainer
- What do you do with the paperwork and vials in the blood kit?
 - Officer fills out all seals and has appropriate parties sign
 - Officer fills out property receipt forms and blood draw request form with the vamp's information (and has the defendant sign the consent form if applicable)
- Did you draw the defendant's blood?
- Who did?
- And who is?
- Where or for whom does this person work?
- Do you know of their medical training?[Only ask if you know answer]
- Did you instruct him to withdraw a blood sample using the contents of the blood kit?
- Did you watch him withdraw the blood?
- Was the blood immediately placed in sealed tubes from the kit?
- Did you put the tubes back in the blood kit?
- Did you seal the entire kit with evidence tape and write identification information on the kit or tape?
- Did you bring the kit to the police property room or other appropriate place? (where)
- What was done with the blood sample after it was collected?
- Was the sample in your sole care, custody and control from the time you took possession of it until the time it left your custody?
- How was it stored?

- Is the blood kit in substantially the same condition as when you last saw it?
- What is different?

THANK YOU. NO FUTHER QUESTIONS.

BLOOD DRAW

- Please introduce yourself to the jury.
 - How are you employed?
 - For how long have you been employed there?
 - What is your occupation?
 - How long have you had this occupation?
 - Could you please tell the jury your medical training and experience?
-

If Paramedic

- Did you respond to the scene of an accident at _____ on _____ (date) at _____ (time)?
- At that time did you come into contact with a person who later became known to you as _____?
- Did you draw blood from this person?
- Do you see that person here in court today?
- Please point out that person and identify them for the record by an article of clothing.

LET THE RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT.

If Nurse

- Were you working at the hospital on _____ (date)
- On that date, did you come into contact with a person who later became known to you as _____ (defendant)?
- Did you draw blood from this person?
- Do you see that person here in court today?
- Please point out that person and identify them for the record by an article of clothing.

LET THE RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT

- Were you requested by a law enforcement officer to draw blood from that person?
- What was the procedure to draw the blood?
 - Swab arm with non-alcoholic antiseptic

- Drew blood
- Put sample in gray-topped and vacuum-sealed tube
- What does the tube contain?
 - Tube contains anticoagulant
- Why?
 - To preserve the sample and prevent clotting
- Did Officer _____ watch you draw the blood?
- What did you do with the blood sample?
- Do you know the method of storage / transport used?
- I'm showing you what has been marked as State's Exhibit _____ for identification (blood kit). Do you recognize it?
- How? (name of defendant, initials)
- What is it?
- Is in substantially the same condition as when you last saw it?
- What if anything is different?

THANK YOU. NO FURTHER QUESTIONS.

BLOOD – TOXICOLOGIST

TRADITIONAL SCIENTIFIC PREDICATE (UNDER STATE V. BENDER)

QUALIFY WITNESS AS EXPERT IN BLOOD ALCOHOL TESTING/FORENSIC TOXICOLOGY

PRONG 2

TEST PERFORMED BY QUALIFIED OPERATOR

- Please introduce yourself to the jury.
- How are you employed?
- What is a forensic toxicologist?
- For whom do you work?
- How long have you worked in that position?
- Please describe your educational background and training.
- Describe the training you received in the area of testing blood alcohol content.
- Describe your training testifying in court about blood alcohol content in samples you have tested or supervised testing on.
- Have you ever been qualified as an expert to analyze blood for alcohol content?
- How many times?
- How many times have you conducted tests of blood to determine its alcohol content?
- How often do you conduct tests of blood to determine its alcohol content?

OFFER AS EXPERT IN AREA OF BLOOD ALCOHOL TESTING / FORENSIC TOXICOLOGY

PRONG 2

TEST PERFORMED WITH THE PROPER EQUIPMENT

- What type of instrument do you use to test blood samples?
- What is the Gas Chromatograph?
- Can you describe how it works?
- What procedure do you follow when you test a blood sample?
- Do you use any controls during your analysis?
- What controls do you use?

- Why you use controls?
- How do the controls work?
- Is the Gas Chromatograph generally accepted in the scientific community as a reliable method for testing for alcohol content?
- Do other States use the Gas Chromatograph for blood alcohol testing?

PRONG 1 - TEST IS RELIABLE

- On or about _____, did you test a blood sample taken from _____?
- I am showing you what has been marked as State's Exhibit Number _____ for identification purposes. (blood kit and defendant's blood samples) Do you recognize it?
- How?
- Whose blood is this?
- How do you know?
- How did that exhibit come into your possession?
- How was it packaged and marked?
- Was it in a sealed container?
- Was the seal intact?
- Can you describe its condition when you received it? (Came in sealed blood kit)
- Where do you store blood kits prior to testing?
- Were the defendant's blood samples stored in that area?
- Who has access to that area?
- Did you test the defendant's blood sample using the gas chromatograph?
- Was the defendant's blood coagulated when you ran the sample?
- How could you tell?
- What does coagulated mean?
- Why does it matter whether the defendants blood was coagulated?
- What procedures did you use to ensure that the gas chromatograph results in this case were reliable?
- Was the gas chromatograph working properly?
- How did you know?
- What did you do with the blood sample when you finished?
- From the time you opened the blood kit until the time you tested the samples were the defendant's blood samples in your care custody and control?

- Is State's exhibit number _____ for identification in substantially the same condition as when you finished sealing it?

MOVE BLOOD KIT INTO EVIDENCE

- I'm showing you what has been marked as State's Exhibit Number _____ for identification (lab results). Do you recognize it?
- How?
- What is it?
- Who's blood results does this report contain?
- Who made this report?
- Was it made at or near the time of the test?
- Are these reports made in the usual course of business?
- Is it part of your regular lab practice to make such reports?
- Is this report a copy or the original?
- Is this a true and exact copy of the original?

MOVE LAB REPORT INTO EVIDENCE [BUSINESS RECORD PREDICATE]

- Please tell us the results of the test.
- Do you have an opinion as to whether these blood test results are reliable?
- What is that opinion?
- Why do you have that opinion?

PRONG 3 - THE MEANING OF THE TEST AS EXPLAINED BY THE WITNESS

- Why is there only one blood test result?
- What does _____ (blood test result) mean?
- What does grams of alcohol per 100 milliliters of blood mean (*Prety witness*)?
- What is the legal limit in the State of Montana for blood alcohol levels?
- Again, what was the defendant's blood alcohol result?

DRUG RECOGNITION EXPERT (ABB. VERSION)

Background / Training

- Officer _____ , before we begin, please introduce yourself to the court and the members of the jury.
- How are you currently employed?
- How long have you worked for the _____ police department?
- What prior LEO experience do you have? (only ask question if officer has prior LEO experience)
- What special training, if any, have you had in the field of detecting and apprehending drivers impaired by alcohol or drugs?

_____ Police Academy

_____ College courses

_____ Books read

_____ DRE Course

_____ Intoxilyzer training

- Have you ever participated in drinking labs?
- How many times?
- What is the purpose of a drinking lab?
- During these labs, did you have an opportunity to administer field sobriety exercises to people and then compare your opinions regarding their level of impairment to other officers and the subject's actual breath alcohol level?
- Were you able to accurately and reliably discern their level of alcohol impairment?
- Have you participated in any labs where subjects were provided illegal or illicit drugs?
- What not? [That would be illegal]
- Approximately how many times have you stopped possibly impaired drivers?
- Do you arrest everyone whom you initially suspect of being impaired?
- Why not?
- How many DUI arrests have you made? [Make sure you know the answer to this question ahead of time]
- When you arrest someone who you believe is impaired, do you arrest for any one thing? [No]
- What do base your arrest on? [Totality of the circumstances]

DRE Testimony

- Are you familiar with the national Drug Recognition Evaluation Program?
- What is it?
- What is the National Highway Traffic and Safety Administration?
- How is NHTSA involved with the DRE program? [sponsors the program]
- How many states participate in the DRE program? Countries?
- Are you a certified DRE?
- Who certified you?
- Do they issue you a certification card? [You may introduce a copy if you have one]
- When were you certified as a DRE?
- How does a police officer become certified as a DRE? [120 hours of training]
- Please explain to the jury what is involved in that 120 hour training period. [SFST's, pharmacology, human physiology, written exam, perform and draft DRE reports in the field under instructor supervision]
- What procedures do DRE's use to determine whether or not someone is under the influence of drugs? [administer a drug influence exam]
- What is a drug influence exam? [SFST's, medical history (blood pressure, body temperature, pupil size, reaction to light), etc.]
- Is this evaluation standardized?
- Is the DRE protocol generally accepted to be an accurate and reliable means of identifying drug influence and impairment? [Yes: US Dept. Of Transportation, ACLU, American Bar Association, International Association of Chiefs of Police]
- How many people have you evaluated for drug influence and impairment?
- Approximately how many times have you determined that a DUI suspect was under the influence of drugs?
- Have you ever confirmed your opinions by taking blood samples?
- Based on your training and experience, can you accurately and reliably determine whether someone is under the influence of drugs?
- Based on your training and experience, can you accurately and reliably identify the particular drug category causing a person's impairment? [Yes]
- How many drug categories are there? [7]
- How are drugs grouped? [Drugs are grouped according to common or shared effects, known as signs or symptoms]

- What are the seven categories? [CNS depressants, CNS Stimulants, Hallucinogens, PCP, Inhalants, Narcotic Analgesics, Cannabis]

DRE Protocol

- Please explain to the jury how a drug influence evaluation is performed?
 - ◊ Breath Test
 - ◊ Interview of Arresting Officer
 - ◊ Preliminary Exam and First Pulse
 - ◊ Eye Exam
 - ◊ Divided Attention Psychophysical Tests
 - ◊ Vital Signs and Second Pulse
 - ◊ Dark Room Examination
 - ◊ Examination of Muscle Tone
 - ◊ Check for Injection Sites and Third Pulse
 - ◊ Suspect's Statements and Other Observations
 - ◊ Opinions of Evaluator
 - ◊ Toxicological Examination

1. BAC

- Officer please describe the first component of the evaluation.
- Was the defendant given a breath test in this case?
- Are you familiar with the defendant's breath test results?
- How?
- What experience do you have in recognizing a person who is under the influence of alcohol?
- Based on your training was the breath reading consistent with the level of impairment displayed by the defendant?
- If you suspect drugs in an individual why is a breath reading necessary?

2. Interview of Arresting Officer

- Please tell us about the second phase of the evaluation.
- Did you interview the arresting officer?

- What did he tell you? [You will probably get an objection for hearsay]
- Were his observations consistent with the defendant's breath reading?

3. Preliminary Exam and First Pulse

- Please describe the third phase. [ask series of standardized questions, look at speech, coordination, breath, face]
- What is the purpose of the preliminary exam?
- Did you conduct the preliminary exam on the defendant in this case?
- Did you ask the defendant a series of questions?
- Please tell us what you asked the defendant and what answers he gave.
 - ◊ What time did he indicate it was?
 - ◊ When did he last sleep?
 - ◊ How long did he sleep?
 - ◊ Was he sick or injured?
 - ◊ Did he indicate that he is a diabetic?
 - ◊ An epileptic?
 - ◊ That he suffered from allergies?
 - ◊ That he was taking insulin?
 - ◊ Whether he had any physical defects?
 - ◊ Whether he was under the care of a doctor?
 - ◊ Taking any medication or drugs?
- What observations did you make of the defendant?
 - ◊ Speech?
 - ◊ Eyes?
 - ◊ Face?
 - ◊ Breath?
 - ◊ Balance?
- Based on your training and experience, what did the results of the preliminary exam mean to you?
- Did you rule out the possibility that the defendant was suffering from a medical problem?

4. Eye Examination

- Please explain to the jury what the fourth phase of the evaluation is.
- HGN

- ◇ What is HGN?
- ◇ How is HGN performed?
- ◇ Did you perform HGN on the defendant?
- ◇ Who established HGN?
- ◇ Are you qualified to perform HGN?
- ◇ How many times have you conducted HGN?
- ◇ Do you keep logs? [Make sure officer has logs]
- ◇ What things do you look for in the subject's eyes when HGN is being performed?

_____ Cannot smoothly follow moving object. What is a lack of smooth pursuit?

_____ Distinct nystagmus at Maximum deviation. How long do you hold his eye at the outer corner?
(4 seconds)

_____ Onset occurs before 45 degrees. What does it mean if onset is before 45 degrees?

- ◇ What is Tharp's equation? [Make sure officer knows answer]
- ◇ What causes someone's eyes to behave in this way?
- ◇ Can HGN occur naturally?
- ◇ Could you compare the eye action of an impaired person's HGN to any other everyday occurrence so that the jury may better understand the concept of HGN [compare HGN to a windshield wiper on a dry windshield - the jerking motion of the wiper]
- ◇ Did you perform this exercise on the defendant?
- ◇ Which eye did you do first?
- ◇ How did the defendant's eyes react when you performed this field sobriety exercise?
- ◇ Based on your training and experience with HGN, what did the defendant's performance on the exercise mean to you?

- VGN

- ◇ What is the second eye exam you conducted?
- ◇ What is VGN?
- ◇ How is it performed?
- ◇ Did you perform VGN on the defendant?
- ◇ What did you observe?
- ◇ Based on your training and experience, what did this performance indicate to you?
- ◇ Is the presence of VGN specific to certain drug categories? What about HGN?

- Lack of Convergence [Convergence Exam]
 - ◊ What is the third exam you performed?
 - ◊ What is the convergence test?
 - ◊ How is it performed?
 - ◊ Did you perform this test on the defendant?
 - ◊ What did you observe?
 - ◊ Based on your training and experience, what did this indicate to you?
 - ◊ Is LOC naturally occurring in a percentage of the population?

5. Divided Attention Psycho-physical Tests

- Please describe the fifth component of the Drug Influence Evaluation. [SFST's]
- Are these exercises designed to test divided attention skills?
- What are divided attention skills?
- What do divided attention skills have to do with operating a car?
- Are these exercises used only in drug evaluations? [No]
- What are the SFST's that you performed on the defendant? [Romberg Balance, Walk and Turn, One Leg Stand, Finger to Nose]
- ASK ALL OF FOLLOWING QUESTIONS FOR EACH OF THE FSE'S PERFORMED
 - ⇒ What was the [first] exercise you administered to the defendant?
 - ⇒ Did you instruct the defendant on how to properly perform this exercise?
 - ⇒ Did you demonstrate this exercise? [Make sure this was done]
 - ⇒ Would you please explain and demonstrate this exercise as you did for the defendant on that day in question?
 - ⇒ Did you fully explain and demonstrate the exercise to the defendant?
 - ⇒ Did they defendant appear to understand you?
 - ⇒ Did he appear to have any injuries that would prevent him from performing this exercise?
 - ⇒ What do DRE's look for when the defendant is performing this exercise? *[Below are the qualifications for each exercise]*
 - ⇒ Romberg Balance
 - * Body Tremors
 - * Eyelid Tremors
 - * Sways (distance and direction)
 - * Muscle rigidity / flaccidity

- * Statements
- * Speech Patterns
- * Number of seconds estimated as 30

⇒ Walk and Turn

- * Keeps balance during the instruction phase
- * Starts too soon
- * Steps off line
- * Raises arms while walking
- * Misses heel to toe
- * Stops walking
- * Wrong numbers of steps
- * Improper turn
- * Body Tremors
- * Muscle rigidity / flaccidity
- * Statements
- * Speech patterns

⇒ One leg Stand

- * Raises arms
- * Sway
- * Hopping
- * Puts foot down
- * Standing still and straight during instructions
- * Body tremors
- * Muscle rigidity / flaccidity
- * Statements
- * Speech Patterns

⇒ Finger to Nose

- * Fingertip or pad of finger used to touch nose
- * Defendant misses nose and hits other parts of face
- * Sway
- * Body Tremors
- * Eyelid tremors
- * Abnormal muscle tone

- * Statements

- * Speech patterns

- ⇒ Did the defendant perform this exercise?
- ⇒ How did the defendant perform?
- ⇒ What clues in the exercise did the defendant miss?
- ⇒ How many clues are necessary to indicate the defendant could not perform the exercise?
- ⇒ Do you allow for mistakes?
- ⇒ What signs of impairment did the defendant exhibit?
- ⇒ Based on your training and experience, what did this indicate to you?

6. Vital Signs and Second Pulse

- Please describe the sixth phase of the examination.
- What is the [first] vital sign that DRE's check?

A. Pulse

- ◆ How do DRE's check a subject's pulse rate?
- ◆ How do DRE's know that they are feeling an artery rather than a vein?
- ◆ Do you have medical training to administer this evaluation as part of the DRE training?
- ◆ How often do DRE's take a subject's pulse?
- ◆ Is there a normal range in which most people's pulse rates fall?
- ◆ What is the normal range? [60-90 beats per minute]
- ◆ Is this a medically acceptable range of normal?
- ◆ Did you take the defendant's pulse?
- ◆ How many times? [3]
- ◆ Did you use the same procedure you just described?
- ◆ What were the results?
- ◆ Based upon our training and experience, what if anything did this indicate to you?

B. Blood Pressure

- ◆ What is blood pressure?
- ◆ What instrument do DRE's use to measure blood pressure?
- ◆ What training do DRE's have in the use of this instrument?

- ◆ How do DRE's use this device?
- ◆ How do you know when the blood begins to spurt within the vein, as opposed to when it is flowing? [Use a stethoscope]
- ◆ Is there a normal range in which most people's systolic and diastolic blood pressures fall?
- ◆ What is the normal range for a person's systolic blood pressure? [120 to 140 mmHg]
- ◆ What is the Normal range for a person's diastolic blood pressure? [70-90 mmHg]
- ◆ Is this a medically accepted range?
- ◆ Did you take the defendant's blood pressure?
- ◆ What were the results?
- ◆ Based upon your training and experience, what if anything did this indicate to you?

C. Temperature

- ◆ How do you determine the subject's body temperature?
- ◆ Do DRE's rely on a range of normal in to which most people's body temperature falls?
- ◆ What is the normal range? [97.6-99.6]
- ◆ Is that a medically accepted range of normal?
- ◆ Did you take the defendant's body temperature?
- ◆ What were the result's?
- ◆ Based on your training and experience, what if anything did this indicate to you?

7. Dark Room Examination

- Please describe the 7th component of the drug influence evaluation. [Eye examinations and nasal and oral examinations]
- *Eye Examinations:*
 - How do DRE's determine the size of a person's pupils? [eye gauge]
 - How does an eye gauge work?
 - Under what lighting conditions do DRE's examine people's eyes?
 - ⇒ Room Light
 - ⇒ Darkness
 - ⇒ Indirect Light
 - ⇒ Direct Light
 - ⇒ ASK THE NEXT GROUP OF QUESTIONS FOR ALL LIGHTING CONDITIONS

- * How do DRE's perform the {room light} portion of this test?
- * Did you perform the {room light} exam?
- * What did you observe?
- * Was there anything distinctive about the size of the defendant's pupils?
- * Based on your training and experience, what if anything did this indicate to you?
- *Nasal and Oral Examinations*
 - When do you check the nasal and oral cavities? [During the dark room examination]
 - What kinds of things do DRE's look for in the nose and mouth?
 - What do those things indicate?
 - Did you examine the nasal and oral cavities?
 - What did you observe?
 - Based on your training and experience, what if anything did this signify?

8. Examination of Muscle Tone

- Please describe the 8th component of the DRE evaluation.
- How do DRE's examine muscle tone?
- Did you examine the subject's muscle tone in this case?
- What did you observe?
- Based on your training and experience, what did this indicate to you?

9. Check for Injection Sites and Third Pulse

- What is the 9th component of the DRE evaluation? Please describe it.
- How do DRE's check for injection sites?
- What is the DRE procedure to inspect for injection sites? [run hands over arms, neck and feel for bumps]
- How do DRE's determine whether the bumps were caused by a needle or other things? [using a light and a magnifying lens]
- Did you examine the defendant for injection sites?
- What did you observe?
- Based on your training and experience, what did this indicate to you?

SKIP THIS SECTION IF THE DEFENDANT DID NOT WAIVE MIRANDA. MAKE SURE TO INSTRUCT OFFICER NOT TO MENTION THIS SECTION!! ALSO, DO NOT COUNT

THE NUMBER OF STEPS IN YOUR QUESTIONS IF YOU ARE GOING TO BE SKIPPING THIS. IT WILL BE OBVIOUS.

10. Suspect's Statements and Other Observations

- Please describe the 10th phase of the DRE exam.
- Did you read the defendant Miranda?
- Did you tell the defendant he has the right to remain silent?
- Did you tell the defendant that anything he said could be used against him in a court of law?
- Did you tell him that he had the right to an attorney?
- Did you explain to him that if he could not afford a lawyer, one would be appointed for him at no cost?
- Did he voluntarily, knowingly and intelligently waive his rights?
- Did you ask the defendant a series of questions?
- I'm going to go through the questions you asked. Please tell the jury his response to each question.
 - ⇒ Have you eaten today?
 - ⇒ When?
 - ⇒ What have you been drinking?
 - ⇒ How much?
 - ⇒ Time of last drink?
 - ⇒ Time now? What was the actual time?
 - ⇒ When did you last sleep?
 - ⇒ How long?
 - ⇒ What medicine or drug have you been using?
 - ⇒ How much?
 - ⇒ Time of use?
 - ⇒ Where were the drugs used?
 - ⇒ Were you driving? [Do not ask question if defendant answered "No" - self-serving hearsay]
 - ⇒ Do you feel that you are under the influence? [Do not ask question if defendant answered "No" - self-serving hearsay]

11. Opinions of Evaluator

- Please describe the 11th component of the DRE evaluation.
- Did you form an opinion in this case?

- What is that opinion?
- What are you basing that opinion on?
- IF THERE IS A CONFIRMATION IN THE TOX REPORT ASK THE FOLLOWING QUESTIONS
- Officer, are you familiar with the drug ____?
 - ⇒ Is that drug within the drug category that you believe was under the influence of?
 - ⇒ How long does it take for that drug to have an effect on the body once the defendant has ingested it?
 - ⇒ How long will the effects of that drug last?

12. Toxicological Examination

- Please describe the 12th component of the DRE evaluation.
- Did you request a blood sample?
- Did you inform the defendant of the implied consent law?
- What is the implied consent law?
- Did the defendant provide a blood sample?
 - No
 - ⇒ Why not?
 - Yes
 - ⇒ Please describe how you obtained the sample.
 - ⇒ Did you witness the taking of the sample?
 - ⇒ What did you do with the blood sample after you obtained it?
 - ⇒ What happened to the blood sample after you logged it in?
 - ⇒ How did you complete your evaluation of the defendant?

DUI/DRE PREDICATES (EXTENDED VERSION)

Article I.

(i) I. EXPERIENCE/TRAINING/GENERAL BACKGROUND

Officer _____, before we discuss today's case, I'd like to take a few minutes to introduce you to the court and the members of the jury.

1. Please introduce yourself.
2. How are you employed?
3. How long have you worked for the _____ police department?
4. What prior LEO experience do you have?
(Determine if he or she has any before asking the question)

5. What special training and/or experiences, if any, have you had in the field of detecting and apprehending drivers impaired by alcohol or drugs?

_____ Police Academy

_____ College courses/formal degrees

_____ Books read

_____ Narcotics training

_____ Drug Alcohol Recognition Technician (D.A.R.T.) Course

_____ DRE Course/certification

_____ DRE Instructor Course

_____ Specialized conferences

_____ Published articles/classes taught (by the DRE)

6. Have you ever participated in a “drinking lab”?
7. How many times?
8. What is the purpose of a drinking lab?
9. During the lab(s), did you have an opportunity to administer field sobriety tests to people and then compare your opinions regarding their levels of impairment to their actual breath alcohol levels?
10. Were you able to accurately and reliably discern their level of alcohol impairment?
11. Have you participated in any labs where subjects were provided illegal or illicit drugs?
12. Why not?

*It would be illegal and dangerous.
13. Approximately how many people have you stopped for DUI?
14. Did you arrest everyone you stopped whom you initially suspected was DUI?

*No. (Check with the witness prior to asking this question).
15. Why not?

*If a person passes the field sobriety tests, I do not arrest him or her.
16. How many times have you administered the field sobriety tests?
17. How many people have you arrested for DUI?
18. After you arrested them, did you have an opportunity to give them breath tests?

19. Did you compare your opinions regarding the arrestees' levels of impairment to their actual breath alcohol levels?
20. Based on that comparison, could you tell us whether you were able to make good arrest decisions using the field sobriety tests?

(II) II. THE INSTANT CASE

21. Calling your attention to _____ (date of arrest). Were you working on that date?
22. Where were you at approximately _____?
23. On that date and at that time, did you perform a Drug Influence Evaluation on someone who later became known to you as _____?
24. Do you see that person in the courtroom today?
25. Please point at that person and identify him/her by a unique article of clothing that he/she is wearing.

LET THE RECORD REFLECT THAT OFFICER _____ HAS IDENTIFIED THE DEFENDANT, _____.

(III) III. DRE TESTIMONY

26. Are you familiar with the national Drug Evaluation and Classification Program, also referred to as the DRE Program?

*Yes.

27. What is the DRE Program?

*The national Drug Evaluation and Classification Program, is a NHTSA sponsored program which allows specially trained police officers, called Drug Recognition Experts (Evaluators), or DREs, to accurately and reliably determine whether a person is under the influence of drugs, and, if so, what category of drugs.

28. What is NHTSA?

*NHTSA is the National Highway Traffic Safety Administration. It is a federal agency which operates under the auspices of the United States Department of Transportation.

29. How many states participate in the DRE Program?

*Check with State DRE Coordinator for current information.

30. How does NHTSA provide for the education and training of DREs?

*NHTSA sponsors DRE schools around the country. NHTSA also sponsors the publication of DRE manuals and other materials.

31. Are you a certified DRE?

*Yes.

32. Who certified you?

*The International Association of Chiefs of Police (IACP).

33. Did they issue you a certification card?

*Yes.

34. I'm showing you what has been marked as State's exhibit _____ for identification. Do you recognize this exhibit?

(WARNING: Do NOT introduce the officer's original card into evidence. If you do, the officer may NOT get the card back [though most judges would grant a motion to substitute a copy for the original]).

*Yes

35. Can you tell us what it is?

*Yes. It is my certification card.

36. Is it an original or a photocopy?

*Photocopy.

37. Is it a true and exact copy of the original?

AT THIS TIME, THE STATE MOVES STATE'S EXHIBIT _____ FOR IDENTIFICATION INTO EVIDENCE AS STATE'S EXHIBIT _____

38. When were you certified as a DRE?

39. How does a police officer achieve certification as a DRE?

*Check with State DRE Coordinator for current information.

40. What procedures do DREs use to determine whether or not someone is under the influence of drugs?

*We administer a drug influence evaluation.

41. What is a drug influence evaluation?

*The drug influence evaluation incorporates the DRE protocol. The drug influence evaluation is a standardized and systematic process for identifying drug influence and impairment. It utilizes a variety of readily observable signs and symptoms that medically are accepted as reliable indicators of drug influence. The examination includes a brief medical history, pulse, blood pressure, body temperature, pupil size and reaction to light. The process allows a trained Drug Recognition Expert to determine whether or not someone is under the influence of a drug or drugs and, if so, what category of drugs. The process is systematic because it is based on a complete set of observable signs and symptoms that are known to be reliable indicators of drug impairment. The process is standardized because it generally is conducted in the exact same way by every DRE for every subject.

42. Is the DRE Protocol generally accepted to be an accurate and reliable means of identifying drug influence and impairment?

*Yes. In fact, that national DRE Program is recognized by the United States Department of Transportation, the ACLU, the American Bar Association and the International Association of Chiefs of Police. The 1988 Surgeon General's Workshop on Drunk Driving Panel on Law Enforcement also endorsed the program. Miami-Dade County's DRE Program is endorsed by the Dade County Medical Association, the Broward County Medical Association and the Broward County Psychiatric Association.

43. How many people have you evaluated for drug influence and impairment?

44. Approximately how many times have you determined that a DUI suspect was under the influence of drugs?

45. Have you ever confirmed your opinions by taking blood samples?

46. Based on your training and experience, can you accurately and reliably determine whether someone is under the influence of drugs?

47. Based on your training and experience, assuming a person is impaired, can you accurately and reliably identify the particular drug category causing a person's impairment?

*Yes.

48. How many drug categories are there?

*Seven (7).

49. How are the drugs grouped?

*Drugs are grouped according to common or shared effects, known as signs and symptoms.

50. What are the seven (7) drug categories?

*They are:

- 1) Central Nervous System (CNS) Depressants
- 2) CNS Stimulants
- 3) Hallucinogens
- 4) Phencyclidine (or PCP)
- 5) Inhalants
- 6) Narcotic Analgesics
- 7) Cannabis

IV. THE DRE PROTOCOL

51. Can you briefly describe how a drug influence evaluation is performed?

*There are twelve (12) stages in a DRE evaluation. They are:

- 1) Breath Alcohol Test
- 2) Interview of the Arresting Officer
- 3) Preliminary Examination and First Pulse

- 4) Eye Examination
- 5) Divided Attention Psychophysical Tests
- 6) Vital Signs and Second Pulse
- 7) Dark Room Examination
- 8) Examination for Muscle Tone
- 9) Check for Injection Sites and Third Pulse
- 10) Suspect's Statements and Other Observations
- 11) Opinions of Evaluator
- 12) Toxicological Examination

A. Breath Alcohol Test

52. Officer, please describe the first component of the DRE evaluation?

*During the first phase, an officer administers a breath test to the suspect for the purpose of determining the suspect's breath alcohol level (BrAC). Based on the suspect's BrAC, we can determine whether alcohol may be a contributing cause or the sole cause of the suspect's observable impairment.

53. Was the defendant given a breath test in this particular case?

54. Are you familiar with the defendant's breath test results?

*Yes, I am.

55. How are you familiar with his/her results?

*I reviewed the breath alcohol test results evidence card that the instrument generated when the defendant blew into it.

56. What experience, if any, do you have in recognizing alcohol-induced impairment?

57. What did the breath alcohol test results indicate to you as to whether or not alcohol was the sole cause or a contributing factor to the defendant's impairment?

*The test indicated that alcohol was/was not a sole/contributing factor.

(iv) B. Interview of the Arresting Officer(s)

58. Please tell us about the second phase of the DRE examination.

*During the second phase, we discuss the circumstances of the arrest with the arresting officer(s). We ask the arresting officer(s) about the suspect's behavior, appearance, and driving pattern. We also ask the arresting officer(s) whether the suspect made any statements and whether the arresting officer(s) found any other relevant evidence like a small pipe or a baggie.

59. Did you interview the arresting officer in this case?

*Yes.

60. Did the arresting officer tell you how the defendant behaved and what, if anything, he said?

*Yes.

(IF THE JUDGE ALLOWS YOU TO DO SO, ASK THE DRE WHAT, IF ANYTHING, THE DEFENDANT'S ACTIONS OR STATEMENTS MEANT TO HIM)

(v) C. Preliminary Examination and First Pulse

61. Please describe the third phase of the DRE evaluation.

*During the third phase, we ask the suspect a series of standard questions relating to the suspect's health and recent ingestion of food, alcohol and drugs. We make observations regarding the suspect's attitude, coordination, speech, breath and face. We also determine

whether the suspect's pupils are equal in size and whether the suspect's eyes can track equally and follow a moving stimulus. Finally, we look for HGN and take the suspect's pulse for the first of three times.

62. What are the purposes of the preliminary examination?

*There are two (2) main purposes of the preliminary examination. First, we determine whether the suspect may be suffering from an injury or other condition unrelated to drugs. If we believe that this is a possibility, he must seek medical help immediately. If we believe that the suspect's condition is drug related, we continue with the evaluation. Second, we obtain information and make observations which assist us in coming to a conclusion later on.

63. Did you conduct a preliminary examination in this case?

*Yes.

64. Did you ask the defendant some questions?

*Yes.

65. Please tell us what questions you asked the defendant and what answers the defendant gave.

NOTE: You may need to refresh the witness' recollection by having the witness refer to the drug influence evaluation form. If such is the case, use the following predicate:

- a. Would the Drug Influence Evaluation refresh your recollection?
- b. I'm showing you what is marked as State's exhibit _____ for identification.
- c. Do you recognize it?
- d. What is it?

*The Drug Influence Evaluation I filled out in this case.

e. Is your memory refreshed?

f. Please tell us what questions you asked and the answers the defendant gave.

*What time is it now?

Defendant's answer: _____

*When did you last sleep?

Defendant's answer: _____

*How long did you steep?

Defendant's answer: _____

*Are you sick or injured?

Defendant's answer: _____

(NOTE: The questions relating to medical conditions and treatments are important because they allow us to exclude alternate medical explanations for the impairment)

*Are you diabetic?

Defendant's answer: _____

*Are you epileptic?

Defendant's answer: _____

*Do you suffer from allergies?

Defendant's answer: _____

*Do you take insulin?

Defendant's answer: _____

*Do you have any physical defects?

Defendant's answer: _____

*Are you under the care of a doctor or dentist?

Defendant's answer: _____

*Are you taking any medication or drugs?

Defendant's answer: _____

66. What observations, if any, did you make of the defendant during the preliminary examination?

_____ Speech

_____ Eyes

_____ Face

_____ Breath

_____ Balance

67. Based upon your training and experience, what did the results of your preliminary examination mean to you?

(vi) D. Eye Examination

68. Please describe the fourth phase of the DRE evaluation.

*During the fourth phase, we examine the suspect for horizontal gaze nystagmus, vertical gaze nystagmus, and a lack of convergence.

1. HGN Test

69. What is the first eye test DREs administer?

*The horizontal gaze nystagmus test, also referred to as the HGN test.

70. How is the HGN test performed?

*There are three (3) parts to this test. During the first part, we examine the subject's smooth pursuit. We examine the subject's smooth pursuit by moving an object, usually a pen or small flashlight, from a point near the person's nose outwards towards the side of his face so that the eyeball follows it from one side of the eye to the other.

71. What do you mean by "smooth pursuit?"

*Normally, a person's eyes smoothly track moving objects just as a car's windshield wipers move across a wet windshield. However, if a person is under the influence of depressants, including alcohol, inhalants or phencyclidine, his eyes may exhibit a jerking or tugging motion to the center as his eyes track a moving object. The motion is similar to windshield wipers moving across a dry windshield.

72. Why is this test important?

*It's important because HGN is an impairment of the eyes' ability to track. In the context of driving, it means that a person may have difficulty observing and tracking other cars or pedestrians.

73. Can you please demonstrate the smooth pursuit portion of the test to the court?

*We hold a pen or other stimulus twelve (12) to fifteen (15) inches from the subject's face. We move the pen from side to side to see and observe whether or not the subject is able to smoothly follow the moving object.

- 74. Did you perform this part of the test on the defendant?
- 75. Did you perform this part of the test on the defendant's left eye?
- 76. What observations, if any, did you make?
- 77. Did you perform this part of the test on the defendant's right eye?
- 78. What observations did you make?
- 79. What is the second part of the HGN test?

*During the second part of the test, we examine the subject's eye for distinct jerkiness at maximum deviation. We hold the pen steady and look to see if the subject's eye jerks at that position. Jerking at this deviation is considered an indicator if it is "distinct".

- 80. How long do DREs have a subject hold his eye at the outer corner?

*About four (4) seconds.
- 81. Did you perform this portion of the test on the defendant's left eye?
- 82. What observations did you make?
- 83. Did you perform this portion of the test on the defendant's right eye?
- 84. What did you observe?

85. What is the third part of the HGN test?

*During the third part of the test, we determine if and at what angle from the nose the eye begins to jerk.

86. How is this test performed?

*Again, we place the pen twelve (12) to fifteen (15) inches from the subject's face and slowly move the pen toward the outer corner of his eye. We always start with the left eye. If we see any jerking, we stop moving the pen and hold it steady. We make sure that the eye is really jerking. If it is not, we start moving the pen further towards the outer portion of the eye and again look for jerking. If the eye jerks, we locate the point at which the jerking begins and estimate the angle of onset.

87. Why do you estimate the angle of onset?

*Research demonstrates that a person's breath or blood alcohol level can be estimated to within 0.02 by subtracting the angle of onset from fifty (50).

88. Did you perform this portion of the test on the defendant's left eye?

89. What did you observe?

90. Based upon your training and experience, and your familiarity with HGN related research, what, if anything, does this indicate to you?

91. Did you perform this portion of the test on the defendant's right eye?

92. What did you observe?

93. Based upon your training and experience, and your familiarity with HGN related research, what, if anything, did the defendant's performance on the HGN test indicate to you?

2. VGN Test

94. What is the second eye test that DREs perform?

*The vertical gaze nystagmus test.

95. How do DREs perform the VGN test?

*We ask the subject to look at a stimulus and move the stimulus straight up. We check to see whether the subject's eyes jerk while gazing upward.

96. Did you perform the VGN test in this case?

97. What did you observe?

98. Based upon your training and experience, what did this indicate to you?

3. Convergence Test

99. What is the third eye test that DREs administer?

*The convergence test.

100. How is this test performed?

*We hold a pen or other stimulus about fifteen (15) inches from the subject's face and point the tip of the pen toward the subject's nose. We ask the subject to hold his head still and follow the pen with his eyes. We then move the pen in a slow circle. Once we determine the subject is following the pen, we bring it in slowly and steadily towards the bridge of the subject's nose. We look to see if the subject's eyes converge. A subject's eyes are said to lack convergence if his eyes are unable to converge on the stimulus.

101. Did you perform this test in this case?

102. What did you observe?

103. Based upon your training and experience, what did this indicate to you?

E. Divided Attention Psychophysical Tests

104. Please describe the fifth component of the drug influence evaluation.

*During the fifth phase of the evaluation, we administer four (4) psychophysical tests: the Romberg Balance; the Walk and Turn; the One Leg Stand; and the Finger to Nose. We can accurately determine whether a suspect is impaired by administering these tests.

105. Are these tests divided attention tests?

*Yes.

106. What is a divided attention test?

*A divided attention test is an examination which assesses a subject's ability to perform a mental and a physical task at the same time. For example, on the One Leg Stand, we ask the subject to count out loud while holding one foot six inches off of the ground.

107. Why are divided attention tests important?

*Driving requires people to perform mental and physical tasks simultaneously all of the time. For example, when a driver approaches a yellow light he needs to consider distance, speed and the traffic at the same time, or shortly afterwards. He may need to remove his foot from the accelerator and begin to brake. Thus, examinations that test a driver's divided attention skills tell us a lot about the driver's ability to safely operate a motor vehicle.

108. Are these psychophysical tests used exclusively by DREs?

*No. DUI officers traditionally rely on these same tests to identify alcohol influence and impairment. In addition, medical doctors have relied upon these or similar tests for decades.

1. Romberg Balance Test

109. What is the first psychophysical test that DREs administer?

*The Romberg Balance Test.

110. Do DREs instruct each subject how to properly perform the test?

*Yes.

111. Do DREs demonstrate the test to each subject?

*Yes.

112. Would you please explain and demonstrate the test for the court in the same manner that DREs do for each subject?

*We ask the subject to stand straight with his feet together and his arms down at his sides. We tell the subject to remain in this position until we tell him to begin. We then ask the subject whether he understands this instruction. This is important because an inability to follow instructions is indicative of impairment.

We then tell the subject that when we say to begin, he should tilt his head back slightly and close his eyes. We tell the subject that once he closes his eyes and tilts his head back, he is not to open his eyes until he thinks that thirty (30) seconds have elapsed. We then ask the subject if he understood the directions and tell the subject to begin.

113. What do DREs look for when administering this test?

*We look for:

_____ Body tremors

_____ Eyelid tremors

_____ Sway (distance and direction)

_____ Muscle rigidity/flaccidity

_____ Statements or sounds

_____ The number of seconds that the subject estimates as 30.

114. Did you administer the Romberg Balance Test in this case?

115. Did you fully explain and demonstrate the test before asking the defendant to perform?

116. In the same manner you described and demonstrated earlier?

117. Did the defendant perform this test?

118. How did the defendant perform?

119. Based upon your training and experience, what did this indicate to you?

2. Walk and Turn Test

120. What is the second psychophysical test that DREs administer?

*The Walk and Turn Test.

121. Do DREs instruct each subject how to properly perform the test?

*Yes.

122. Do DREs demonstrate this test to each subject?

*Yes.

123. Can you please explain and demonstrate the test for the court in the same manner that DREs do for each subject?

*We tell the subject to place his right foot on the line ahead of his left foot with the heel of the right foot against the toe of the left foot. We tell the subject to put his arms down against his sides and keep them there throughout the test.

We then make sure that the subject understands these directions. We instruct the subject that when we tell him to begin, he is to take nine (9) heel to toe steps up the line. We tell him that, on the ninth step, he is to leave his front foot on the line and turn around, taking a series of small steps with the other foot. We instruct him to take nine (9) heel to toe steps back after he completes the turn. We instruct him to watch his feet as he walks and to count off the steps out loud from one to nine. Finally, we tell him that once he begins, he is to keep walking until the test is completed. We then ask him if he understands the instructions.

124. What do DREs look for when administering the Walk and Turn Test?

*We look for:

- _____ Keeps balance during the instruction phase
- _____ Starts too soon
- _____ Steps off of the line
- _____ Raises arms while walking
- _____ Misses heel to toe
- _____ Stops walking

- _____ Wrong number of steps
- _____ Improper turn
- _____ Body tremors
- _____ Muscle rigidity/flaccidity
- _____ Statements/sounds

125. Did you administer the Walk and Turn Test in this case?
126. Did you fully explain and demonstrate the test before asking the defendant to perform?
127. In the same manner you described and demonstrated earlier?
128. Did the defendant perform this test?
129. How did the defendant perform?
130. Based upon your training and experience, what did this indicate to you?

3. One Leg Stand Test

131. What is the third psychophysical test that DREs administer?

*The One Leg Stand.

132. Do DREs instruct each subject how to properly perform the test?

*Yes.

133. Do DREs demonstrate this test to each subject?

*Yes.

134. Can you please explain and demonstrate the test for the court in the same manner that DREs do for each subject?

*We ask the subject to stand straight with his feet together and his arms down at his sides. We tell him to maintain this position while we give him the instructions and emphasize that he is not to start the test until we instruct him to begin. We ask him if he understands.

We then tell him that when we tell him to begin, he is to raise his right foot in a stiff leg manner and hold the foot about six (6) inches off of the ground, with the toes pointed outward. We instruct him to keep his arms at his sides and keep looking directly at his foot while counting out thirty (30) seconds as follows: one thousand and one, one thousand and two, etcetera. We then ask him once again if he understands. Finally, we tell the subject to begin. After he completes the test while raising his right leg, we then ask him to perform the test again while raising his left leg.

135. What do DREs look for when administering the One Leg Stand Test?

*We look for:

- _____ Raises arms
- _____ Sway
- _____ Hopping
- _____ Puts foot down
- _____ Standing still and straight during instructions
- _____ Body tremors
- _____ Muscle rigidity/flaccidity
- _____ Statements/sounds

136. Did you administer the One Leg Stand in this case?

137. Did you fully explain and demonstrate the test before asking the defendant to perform?

138. In the same manner you described and demonstrated earlier?

139. Did the defendant perform this test?

140. How did the defendant perform?

141. Based upon your training and experience, what did this indicate to you?

4. Finger to Nose Test

142. What is the fourth psychophysical test that DREs administer?

*The Finger to Nose Test.

143. Do DREs instruct each subject how to properly perform the test?

*Yes.

144. Do DREs demonstrate this test to each subject?

*Yes.

145. Can you please explain and demonstrate the test for the court in the same manner that DREs do for each subject?

*We ask the subject to place his feet together and stand straight. We then tell him to put his arms by his sides and close his hands. We instruct him to extend his index fingers and to remain in that position until we tell him to begin. We then tell the subject that when we tell him to begin he is to tilt his head slightly back and close his eyes.

We instruct the subject that when we tell him to begin, he is to bring the tip of his index finger up to the tip of his nose. We further tell him that as soon as he touches the tip of his nose, he is to return his arm to his side immediately. We tell the subject that we will call out "left" or "right." If we call out "right," he is to bring his right hand index finger forward to his nose; when we tell him "left," he is to move the left hand index finger to his nose. We then ask the subject if he understands the instructions. We then instruct the subject to tilt his head back and close his eyes and to keep them closed until we tell him to open them. We then call out "left ... right ... left ... right ... right ... left."

146. What do DREs look for when administering the Finger to Nose Test?

*We look for:

- _____ Fingertips touch nose or other parts of face
- _____ Sway
- _____ Body tremors
- _____ Eyelid tremors
- _____ Abnormal muscle tone
- _____ Statements/sounds

147. Did you administer the Finger to Nose Test in this case?

148. Did you fully explain and demonstrate the test before asking the defendant to perform?

149. In the same manner you described and demonstrated earlier?

150. Did the defendant perform this test?

151. How did the defendant perform?

152. Based upon your training and experience, what did this indicate to you?

(vii) E. Vital Signs and Second Pulse

153. Please describe the sixth phase of the DRE examination.

*During the sixth phase, we take the suspect's blood pressure, temperature and pulse. Some drug categories may elevate the vital signs. Others may lower them. Vital signs thus provide considerable evidence of the presence and influence of a variety of drugs.

1. Pulse

154. What is the first vital sign that DREs check?

*The subject's pulse rate.

155. How do DREs check a subject's pulse rate?

*We check the pulse by placing our fingers on the subject's skin next to an artery. We press down slightly to feel the artery expand as the blood surges through. Each surge is a pulse. We count the pulses that occur in thirty (30) seconds and multiply by two (2) to give us the pulse rate in beats per minute.

156. How do DREs know that they are feeling an artery rather than a vein?

*Because you can't feel the surge or pulse in a vein.

157. How often do DREs take a subject's pulse?

*Three (3) times. We take it during the preliminary examination, we take it following the Finger to Nose Test and we take it again during the vital signs examination.

158. Is there a normal range in which most peoples' pulse rates fall?

*Yes.

159. What is the normal range?

*From sixty (60) and ninety (90) beats per minute.

160. Is this a medically acceptable range of normal?

*Yes.

161. Did you take the defendant's pulse?

*Yes.

162. How many times?

*Three (3).

163. Did you use the same procedure you just described?

164. What were the results?

165. Based upon your training and experience, what did this indicate to you?

2. Blood Pressure

166. What is the next vital sign that you checked?

*Blood pressure.

167. What is blood pressure?

*Blood pressure is the force that the circulating blood exerts on the walls of the arteries.

168. What do DREs use to measure a person's blood pressure?

*An instrument called a sphygmomanometer.

169. What training, if any, do DREs have in the use of this instrument?

*We are trained how to use the instrument during the classroom instruction phases of DRE Pre-School and School.

170. How do DREs use this device?

*We wrap a special cuff that is attached to the device around the subject's arm. We apply a stethoscope to the subject's brachial artery pulse point and inflate the blood pressure cuff with air. As we pump the air in, the cuff squeezes the subject's arm. When the pressure is high enough, the cuff squeezes the artery completely shut so that no blood flows through it.

We then slowly release the air in the cuff until we can hear the blood spurting through the artery when the subject's heart contracts. The point at which we can first hear the blood spurting is the systolic level and the pressure that this occurs is called the systolic blood pressure.

We continue to release the air from the cuff until it drops down to the point where the blood flows continuously through the artery. This level is called the diastolic level and the pressure reading at this point is called the diastolic blood pressure.

171. How do DREs know when the blood started to spurt, as opposed to when it was flowing?

*We listen to the spurting blood using the stethoscope. When there is no blood flowing, we can't hear anything through the stethoscope. When we release the air from the cuff, we start hearing a spurting sound when the blood starts to spurt. As we continue allowing the air to escape, the blood surges become steadily longer. When we reach the diastolic pressure, the blood flows steadily and the sounds cease.

172. Is there a normal range in which most peoples' systolic and diastolic blood pressures fall?

*Yes.

173. What is the normal range for a person's systolic blood pressure?

*From 120 to 140 mmHg.

174. What is the normal range for a person's diastolic blood pressure?

*From 70 to 90 mmHg.

175. Are these medically accepted ranges of normal?

*Yes.

176. Did you take the defendant's blood pressure?

*Yes.

177. Using the same procedure you just described?

178. What were the results?

179. Based upon your training and experience, what did this indicate to you?

3. Temperature

180. What is the next vital sign that you checked?

*Body temperature.

181. How do you determine a subject's body temperature?

*We measure body temperature with a thermometer.

182. Do DREs rely on a range of normal in which most peoples' body temperature falls?

*Yes.

183. What is that range?

*Between 97.6 and 99.6 degrees.

184. Is that a medically accepted range of normal?

*Yes.

185. Did you take the defendant's body temperature?

*Yes.

186. Using the same procedure you described earlier?

187. What were the results?

188. Based upon your training and experience, what did this indicate to you?

(viii) F. Dark Room Examinations

189. Please describe the seventh component of the drug influence evaluation.

*During the seventh phase of the evaluation, we estimate the size of the subject's pupils under four (4) different lighting conditions to determine whether the subject's pupils are dilated, constricted, or normal. Some drugs increase pupil size. Others may decrease pupil size. We also check the eyes' reaction to light. Certain drugs may slow the eyes' reaction to light.

Finally, we examine the suspect's nasal and oral cavities for signs of ingestion.

1. Eye Examinations

190. How do DREs determine the size of a suspect's pupils?

*We estimate pupil size with an eye gauge.

MARK AND INTRODUCE THE EYE GAUGE

191. How does the eye gauge work?

*The eye gauge has a series of dark circles. The diameters of the circles range from 1.0 mm to 9.0 mm, in half mm increments. We hold the eye gauge alongside the subject's eye and move the gauge up or down until we identify the circle closest in size to the subject's pupil.

192. Under what lighting conditions do DREs examine a person's eyes?

*We examine each subject's eyes under three (3) different lighting conditions: room light, near total darkness, and direct light.

a. Room Light

193. How do DREs perform the room light portion of this test?

*We simply estimate the size of the subject's pupils in room light.

194. Did you perform the room light portion of the test in this case?

195. Using the same procedure you just described?

196. What did you observe?

197. Based upon your training and experience, what did this indicate to you?

b. Darkness

198. How do DREs perform the near total darkness portion of the evaluation?

*We take the subject into a room that is almost completely dark. We then wait 90 seconds to allow the subject's eyes to adapt to the dark. We then examine the subject's eyes with a penlight. We cover the tip of the penlight with his finger so that only a reddish glow

emerges. We move the glowing tip of the light toward the subject's left eye and estimate it. We then repeat the process on the right eye.

- 199. Did you perform the near total darkness portion of the test in this case?
- 200. Using the same procedure you just described?
- 201. What did you observe?
- 202. Based upon your training and experience, what did this indicate to you?

c. Direct Light

- 203. How do DREs perform the direct light portion of the test?

*We shine a penlight into the subject's left eye and estimate the pupil. We then repeat the test on the right eye.

- 204. Did you perform the direct light portion of the test in this case?
- 205. Using the same procedure you just described?
- 206. What did you observe?
- 207. Based upon your training and experience, what did this indicate to you?

2. Nasal and Oral Examination

- 208. You stated earlier that DREs also check each subject's nasal and oral cavities during the dark room examination. What do you look for?

*We look for signs that the subject has been using drugs.

- 209. What kinds of things do DREs look for?

*We examine the tongue to see if the taste buds are raised. We check to see if the tongue is coated and what color it is. We look for residue in the teeth, gums and nose. We look for nasal irritation and septal perforation.

Different categories of drugs have different effects. For example, certain kinds of drugs will have a distinct odor. Others may cause the nose to run. The existence or absence of any of these signs is helpful in determining what category of drugs may be causing a subject's impairment.

210. Did you examine the defendant's nasal and oral cavities?

211. What did you observe?

212. Based upon your training and experience, what did this signify to you?

(ix) G. Examination for Muscle Tone

213. Please describe the eighth component of the DRE evaluation.

*During the eighth phase, we examine the subject's muscle tone. Certain categories of drugs may cause the muscles to become rigid. Other categories may cause the muscles to become very loose and flaccid.

214. How do DREs examine the subject's muscle tone?

*We examine the subject's arms, legs and neck visually and by touch.

215. Did you examine the defendant's muscle tone?

216. Using the same procedure you just described?

217. What did you observe?

218. Based upon your training and experience, what did this indicate to you?

(x) H. Check for Injection Sites and Third Pulse

219. What is the ninth component of the DRE evaluation?

*During the ninth phase of the evaluation, we examine the suspect for injection sites. Injection sites may indicate the recent or patterned use of certain types of drugs. We also take the suspect's pulse for the third and final time.

225. How do DREs examine a subject for injection sites?

*We check the subject's arms and neck. We look for needles marks.

220. Specifically, what procedure do DREs use?

*We run our hands over the subject's arms and necks and feel for bumps because bumps may indicate needle marks. Once we locate a possible injection site, we verify it by using a lighted magnifying glass to see if the bump is from a needle.

221. How do DREs determine whether bumps were caused by a needle or other things?

*By using a light and a magnifying lens.

222. Did you examine the defendant for injection sites?

223. What did you observe?

224. Based upon your training and experience, what did this indicate to you?

(xi) I. Suspect's Statements and Other Observations

225. Please describe the tenth component of the drug influence evaluation.

(WARNING: Skip to Section J, Opinions of the Evaluator, if the defendant did not waive Miranda)

*During the tenth phase, we read Miranda, if we have not done so previously, and ask the suspect a series of questions. We also confirm our prior observations.

226. Did you read the defendant his Miranda rights?

227. Did you tell the defendant that he has a right to remain silent?

228. Did you tell the defendant that anything he said could be used against him in court?

229. Did you tell him that he has a right to an attorney?

230. Did you explain to him that if he could not afford a lawyer, one would be appointed for him at no cost?

231. Did you ask him whether or not he understood these rights?

232. What did he say?

233. Did he voluntarily, knowingly, and intelligently waive these rights?

234. Did you ask the defendant a series of questions?

*Yes.

235. Please tell us what questions you asked the defendant, and what answers the defendant gave.

(NOTE: If the DRE is unable to remember the questions and answers, you should refresh his memory as described under Section C, Preliminary Examination)

*Have you eaten today?

Defendant's answer: _____

*When?

Defendant's answer: _____

*What have you been drinking?

Defendant's answer: _____

*How much?

Defendant's answer: _____

*Time of last drink?

Defendant's answer: _____

*Time now?

Defendant's answer: _____

(ASK THE OFFICER WHAT THE ACTUAL TIME WAS)

*When did you last sleep?

Defendant's answer: _____

*How long?

Defendant's answer: _____

*Were you driving?

(THIS QUESTION SHOULD NOT BE ASKED IF THE DEFENDANT SAID NO. IF THE DEFENDANT SAID "NO", THE PROSECUTOR SHOULD EXCLUDE THE DEFENDANT'S ANSWER PRETRIAL ON THE BASIS THAT IT IS SELF-SERVING EXCULPATORY HEARSAY)

Defendant's answer: _____

*Do you feel that you are under the influence?

(THIS QUESTION SHOULD NOT BE ASKED IF THE DEFENDANT SAID NO. IF THE DEFENDANT SAID "NO", THE PROSECUTOR SHOULD EXCLUDE THE DEFENDANT'S ANSWER PRETRIAL ON THE BASIS THAT IT IS SELF-SERVING EXCULPATORY HEARSAY)

Defendant's answer: _____

*What medicine or drug have you been using?

Defendant's answer: _____

*How much?

Defendant's answer: _____

*Time of use?

Defendant's answer: _____

*Where were the drugs used?

Defendant's answer: _____

(xii) J. Opinions of the Evaluator

236. Please describe the eleventh component of the DRE examination.

*During the eleventh phase, we form an opinion, based on the totality of the evaluation, as to whether the suspect is impaired. If we determine that the suspect is impaired, we indicate what category or categories of drugs may explain the suspect's impairment.

237. Did you form an opinion in this case?

238. What is that opinion?

239. What are you basing that opinion on?

(IF THERE IS A POSITIVE TOXICOLOGICAL RESULT, OR THE ARRESTING OFFICER FOUND A PARTICULAR DRUG ON THE DEFENDANT OR THERE IS CIRCUMSTANTIAL EVIDENCE AS TO WHICH DRUG THE DEFENDANT CONSUMED, THE PROSECUTOR SHOULD ASK THE FOLLOWING QUESTIONS. IF

NOT, THE PROSECUTOR SHOULD PROCEED TO SECTION K, TOXICOLOGICAL EXAMINATION)

240. Officer, are you familiar with the drug _____?

*Yes.

241. Is that drug within the category of drugs that you believe was influencing the defendant?

NOTE: Pre-try the witness on the following two questions:

242. How long does it take for that drug to have an effect on an individual, once he has taken it into his body?

243. How long will the effects of that drug last?

(xiii) K. Toxicological Examination

244. Please describe the twelfth component of the DRE evaluation.

*During the twelfth phase, we request a blood sample from each suspect. We then send the sample to the toxicology lab for analysis.

245. Did you request a blood sample in this case?

246. Did you inform the defendant that, if he refused, he would lose his license for six (6) months for a refusal?

247. Did you obtain a blood sample?

(IF NO, ASK THE OFFICER WHY NOT? IF YES, PROCEED TO THE NEXT QUESTION)

- 248. Please describe how you obtained the sample?
- 249. Did you witness the defendant provide the sample?
- 250. What did you do with the blood sample after you obtained it?
- 251. What happened to the blood sample after you logged it in?
- 252. Did this complete your evaluation of the defendant?

NOTES:

There are numerous cases supporting the admissibility of DRE testimony and evidence. See State v. Baity, 140 Wash.2d 1, 991 P.2d 1151 (Wash. 2000); State v. Sampson, 6 P.3d 543 (Or. App. 2000); United States v. Everett, 972 F.Supp. 1313 (U.S.D.C. Nev. 1997); Williams v. State, 710 So. 2d 245 (Fla. 3d DCA 1998); State v. Klawitter, et al, No. 92065882 et seq. (Minn. Cty. Ct. 1993); State v. Johnson and Rodriguez, Nos. 90056865 and 90035883 (Ariz. City Ct. Nov. 2, 1990), rev. denied, Dayton Johnson, et al. v. Honorable Rita Jett, (real party in interest, City of Tucson) 90056865 et seq.; CV-91-0488-SA (Ariz. May 7, 1992); People v. Quinn, 153 Misc.2d 139, 580 N.Y.S.2d 818 (N.Y.D.C. 1991); People v. Hernandez, No. 92M181 (Colo. Cty. Ct. Aug. 14, 1992). Cf State v. Squire, No. 892099008 (Md. Cir. Ct. 1992). For a good summary of the case law, see Sandler, D., Expert and Opinion Testimony of Law Enforcement Officers Regarding the Identification of Drug Impaired Drivers, 23 U. Hawaii LR 151 (Winter 2000).