

How to Beat a Drunk Driving Arrest

Never Plead Guilty

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Introduction

The biggest myth about drunk driving is that you can't beat a drunk driving case. It is possible to get out of a drunk driving conviction after you have been arrested. I like to say never

plead guilty. The reason I say that is I know for sure that 100% of all drunk driving cases that plead guilty are convicted. 100%! There are actually many strategies to defend a Drunk Driving case. OWI stand for Operating while intoxicated. That is the most common in Michigan. There are other names for Drunk Driving like DUI, DWI, OUI, and Impaired driving. Most of these are common slang. In Michigan you are going to deal with OWI, OWI with a high BAC, OWI 2nd, OWI 3rd, impaired driving, driving under the influence of drugs, and child endangerment.

An OWI is the most common. It means operating under the influence. The elements of this crime are that the state has to prove two things. 1. That you operated a vehicle. 2. At the time you operated the vehicle your blood alcohol content (BAC) was a 0.08 or higher. At first glance it seems pretty cut and dry. But is it? That is what this book is about.

I will intentionally keep this eBook short and simple. Remember, I am a lawyer so I want to get deep into case law and the finer points of the law. It is an effort to reframe myself. This book is intended to guide a person that has just been arrested for OWI of what defenses are available. Also, if you have read this book and come see me for an appointment you will understand why I am asking what questions. I am not going to get deeply into the science that is used to challenge a blood draw or the science of a DataMaster breath test only to mention that challenging these can be a very successful defense. Let's get started.

Who Am I?

I am attorney Doug Dern. I have been a drunk driving attorney and criminal defense attorney for 20 years. I became a lawyer to fight drunk driving cases. I am located in Hartland Mi. My phone 248-882-0838 my email is dougdern@gmail.com and I am always available to discuss your case.

People often ask me how can I defend drunk drivers? There are a number of reasons. 1. I believe everyone has a right to the best defense. 2. I believe a large percentage of people arrested for drunk driving are innocent. 3. I believe the police make mistakes. I also believe that when the police make mistakes rarely do they admit it. 4. I believe that when it comes to drunk driving it is assembly line justice. 5. People in the system need the best help available. 6. The public wants to hang drunk drivers. And this is the big one- drunk driving is a very serious crime that most lawyers just want to plead you to an impaired. If you plead to an impaired you still have a conviction on your record. Remember this, if you get a second OWI your license will be revoked and 3 in a lifetime is a 1 to 5 year felony. Serious stuff. Take it seriously.

I believe that people that come to me have a problem. My objective is to solve the problem. I fight to get your case dismissed. And I use the methods discussed below.

Probable Cause to stop

The first thing every attorney must check is was there probable cause to stop you. This is called a Terry stop. The police must have a reason to stop you. They cannot stop you for suspicion. That must be able to articulate some criminal activity. Anything. A civil infraction, a taillight out, crossing the fog line, erratic driving, light on the license plate out, speeding or any number of driving infractions. Remember now a days the attorney can get the in-car video and verify the officer's statements. In my experience, I have seen videos that did not match the police report.

Bottomline, if the police do not demonstrate that had probable cause to stop you your case can get dismissed.

Probable Cause to Investigate

You want to step out of the vehicle? Did you know they must have probable cause to ask you to step out of the vehicle? In Michigan, under Rizo, to ask you to step out of the vehicle that must have a second Terry standard. Just because you were speeding isn't probable cause to ask you to step out. Courts have ruled that the smell of alcohol is enough. And certainly, most police reports says, " I smelled alcohol and ask them to step out of the vehicle." But some don't. I have seen a police report where a new cop said he suspected the driver was intoxicated and ask him to step out. What was the probable cause? He didn't have one. Granted this defense is rare, but it does happen. Every lawyer on every arrest must investigate it.

Probable Cause for Arrest

This is the big one. In order to arrest you for drunk driving they must have probable cause to arrest. It is my opinion; this is where the police make the most mistakes. By the time they have decided to give you a field sobriety test they have already made up their mind they were going to arrest you. This is where the police do the field sobriety test. Walk and turn, nystagmus test, one legged stand, etc. A good lawyer can investigate this and punch holes in the police field sobriety tests. Also, the PBT which stands for preliminary breath test. This is an

on-site breath test they give you to determine probable cause. Almost always improperly administered.

Video evidence of the field sobriety test can be very helpful in putting together a defense. It can also be very harmful. If the video shows you falling down and swaying then it might be a good idea to leave that one out of your defense weaponry.

Challenging the Blood Draw

If you are given a blood draw most of the time the police will get a search warrant to draw your blood. The search warrant must state probable cause and articulate facts that merit a blood draw.

There are always procedure challenges available for a blood draw. For instance, did the nurse use the right type of iodine, or was the officer present in the room when the blood was drawn, were the test kits expired, and the list goes on. Just know that challenging a blood draw is a defense to a drunk driving case.

To challenge of the blood draw at trial you can hire your own scientist to testify that your blood test given by the police was inaccurate. A private pharmacologist or toxicologist who is an expert in police procedure can rebut the results from the police crime lab, this is usually a great defense. The problem is that it is very expensive for a long trial and hiring a scientist. Most OWI first offense or second offense do not want to deal with that kind of expense. If it is an OWI 3rd where you are looking at prison it is certainly worth the money.

My personal opinion is that blood tests are very slanted in favor of the police and a good scientist can beat the police. I personally have my doubts about the accuracy of blood tests. I promised not to get into the science of blood.

Another good defense to blood is retrograde extrapolation. The theory is your blood alcohol content was not over the legal limit at the time you were driving, but there was alcohol in your stomach and by the time your blood was taken say an hour after you were driving it was absorbed into the blood stream. This can be a valid defense in some cases.

Challenge the Breath Test

This breathalyzer test is the big one that everyone thinks you can't beat. There is a myth that if you fail the breath test its hopeless. There are ways to challenge their accuracy.

Remember this, when you are sitting in the police station about to take a DataMaster breath test the police have a vested interest in your failure of it. I always watch the video to make sure they followed proper procedure. They must observe you for 15 minutes to make sure you did not burp, regurgitate, put anything in your month. If they do not so this the results can be deemed inaccurate. You can ask the court to throw the results out and not be used as evidence in a trial.

You can challenge the accuracy of the machine used to give you a breath test. You can request all the maintenance records of the DataMaster. If a machine has problems a jury might need to know that before they decide reasonable doubt.

There are other ways to challenge a breath test. Did the operator have a current certification, was the machine operated properly, was there radio frequency interference, was

the machine properly calibrated, or was there any food in the month? All these things can create an improper reading. Remember, this is a machine. Machines are prone to errors. A good lawyer will do their due diligence,

Miscellaneous Defenses

There are a number of other defenses that come up on a regular basis. I am going to throw out a few of them without explaining them. They should be self-explanatory. Wasn't driving. I just had one where they arrested the defendant who had a seatbelt on in the passenger seat. They arrested the wrong person. There was an accident and the defendant left the scene and the police picked them up hours later. It wasn't a vehicle. Blood in the mouth and they gave a breath test. Not in the car and no accident. If they ask you if you were driving, I recommend you exercise your right to remain silent. No control of the keys. Corpus delecti. I once unsuccessfully argued entrapment. I claimed that the police were tailgating the defendant's car causing black and white fever and made him nervous and caused him to swerve. I had good case law from other states, but the judge didn't buy it. There is also a whole slew of arguments of rights being violated. These are just a few of the defenses available to a good lawyer.

The Downside

These defenses are used everyday in a court of law. The average joe is not aware of these defenses. And to be honest a lot of lawyers are not aware of them. The problem is there is a such a taboo around drunk driving that judges are reluctant to dismiss a case even when

your rights have been violated. Jurys do not feel comfortable coming back with not guilty verdicts. I know I am telling you this after just writing an eBook of defenses. My point is that it is always an up-hill battle. You sometimes have to attack more than one angle. It is hard to beat an OWI but I believe you have to make the State prove its case. I believe if the police did not follow procedure they need to be exposed and your case should be dismissed. I believe if the evidence isn't there you should be acquitted.

Why You Should Fight to Win Your Case

An OWI conviction can have a devastating effect on your life. Your insurance will increase. You will get between 4 and 6 points on your driver's license. If you get a second one within 7 years your license will be revoked (meaning you may never drive again). If you get 3 OWI's in a lifetime it is a felony. A felony OWI is a 1 to 5 years with mandatory jail plus the likelihood of ever driving again is slim.

Here is something that bothers me about the legal process of an OWI. A person gets stopped for an OWI. Goes to a lawyer. Goes to court. The prosecutor looks at the record and sees not priors, looks at the defendant has a good job, family and offers an impaired driving. The attorney goes back and tells the defendant I got you a great deal they are going to reduce it to an impaired and you will not go to jail and you get a restricted license. You then pay a fine around a \$1,000 and do a year's probation and you're on your way. Everybody is happy. At least until you start probation and have that one slip up and off to jail you go. Then you get a letter from your insurance company telling you that you are high risk. But if you get a second OWI that carries mandatory jail. If you don't accept the deal of an impair and roll the dice and lose. The difference isn't that great. You will have a hard suspension of your license for 60 days

then a 4-month restriction. The fine will more and the probation longer. That is what you are gambling by taking the hard approach to fighting and getting a dismissal or an acquittal. I think it is worth the risk. Having an OWI conviction is not much fun. Having probation controlling your life is not much fun.

Of course, if your case is more severe than a first offense OWI you will want to fight every aspect. Like an OWI 2nd, or a felony OWI, or a child endangerment, or an OWI causing death or great bodily harm. These cases must be fought all the way.

In Conclusion

I hope this little eBook has helped you a bit. My purpose was for you to understand there are defenses. Just because the police said you are arrested for drunk driving doesn't mean you have to just give up. You have rights. And one of those rights you have a right to call witness at a trial. You have a right to challenge evidence. You have a right to make the State prove their case.

Thank you for reading my book. I am always available at 248-882-0838 or dougdern@gmail.com. Visit my website at www.owi-dui-drunkdrivingattorneymichigan.com