

SOUTH CAROLINA DUI ARREST?

(Useful Info Revealed That May Help You
Defend Your Charges)

2nd Edition



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Written by:

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Defend Your Charges)

By Ronnie M. Cole, Esq.
Michael O. Hallman, Esq.

DISCLAIMER:

This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

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Client Testimonials

“Ronnie Cole and his associates are very good at representing someone like me with a DUI from an accident. The outcome of this shows how well they take care of their clients. He got my charges reduced and my life can go on without the DUI on my record. Everyone at the office kept me informed of the progress and I didn't even have to go to court one time. I will and have recommended his firm to a lot of people with the need for a good lawyer in a DUI.”

– John

.....

“Cole Law Firm was awesome. They worked so hard on my case; it made me feel like I was their only client! That's how much work they put into you, you never feel like you're just another number. They work with you personally, and the first time I met with him he was honest and didn't even pressure me into hiring him. I would recommend him ANY DAY.”

– DUI client Sept 2013

.....

“I was charged with several questionable charges in one incident. I am sure that without Cole Law Firm I would have been convicted with bad results for me going forward. Cole Law Firm did a great job and managed to get all charges dropped.”

–Tyler

.....

“The Cole law firm is outstanding to say the least. My case was handled professionally and executed perfectly. I will recommend Ronnie Cole to anyone and everyone seeking help with their case. I am highly impressed and satisfied with Cole Law Firm, they are the best.”

–John

Every case is different, and the result achieved on behalf of one client in one case does not necessarily mean similar results will be achieved for other clients.

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WHO IS THE EXPERIENCED DUI DEFENSE TEAM AT COLE LAW FIRM?

Ronnie M. Cole, Esquire

Ronnie M. Cole received his BBA in 1973 from the University of Georgia and his Juris Doctorate in 1976 from the University Of South Carolina School Of Law. Mr.

Cole is a Founding Member and Instructor for the National College of DUI Defense;

Founding member of SCACDL, member of NACDL,



IACT and the South Carolina Bar. He is an Instructor for the South Carolina Court Administration for DUI/DUS Training for Magistrates and Municipal Judges.

Mr. Cole's professional training includes:

Coordinator of Breathalyzer School for Lawyers;

Attending numerous schools on subject of Alcohol Testing; BAC Data Master Training - 1992; BAC Data

Master Training - 1993; BAC Data Master

Maintenance & Electrical Training - 1993; Indiana University Tests for BAC in Highway Safety

Programs: Supervision and Expert Testing - 1994;

NHTSA - Standardized Field Sobriety Testing - 1994;

BAC Data Master – Supervisor/Field Maintenance Training Course – 1995; BAC Data Master Maintenance and Repair – 1997; Instructor 3 day Data Master Certification Course – June, 1998; Speaker at Data Master User’s Meeting – 1998 IACT Conference; and Speaker or Moderator in more than 50 seminars dealing with Traffic Law. He has also taught Legal and Judicial Ethics and produced a training video for Judicial Ethics and for 20+ years has been an instructor in DUI law for the South Carolina Court Administration’s Magistrate and Municipal Judges Orientation.

His practice areas include Criminal Defense, Traffic Violations, Drug Charges and other criminal violations. In addition, he has been interviewed by numerous television stations and newspapers, including USA Today.

Michael O. Hallman, Esquire

Michael O. Hallman is a graduate of Wofford College and received his Juris Doctorate from the University Of South Carolina School Of Law. Mr. Hallman began his practice with the Office of the 13th Circuit Solicitor as an Assistant Solicitor for 3 years before opening his own general law practice as a sole practitioner handling civil and criminal cases. Mr. Hallman also served as the Municipal Judge for the City of Greer, S.C. for 12 years. In addition to his private practice, Mr. Hallman was an Assistant Solicitor under contract with the Office of the 13th Circuit Solicitor from 2003 through 2008.



Mr. Hallman co-authored both South Carolina Traffic Lawyers' Tool Kit 1st and 2nd Editions, and South Carolina Drug Case Tool Kit 1st and 2nd Editions.

Mr. Hallman is now in private practice with Mr. Ronnie M. Cole at the Cole Law Firm in Anderson and Greenville, S.C. where he has successfully negotiated and tried cases to favorable outcomes.

For more information about Mr. Hallman visit our website www.ColeLawFirmSC.com.

RONNIE M. COLE, Esquire publications include:

South Carolina Radar Defense Manual

South Carolina DUI Defense Manual, 1st, 2nd and 3rd Editions

co-authored "Lack of Bladder Voiding as a Defense in DUI/DWI cases"

co-authored *Field Sobriety Tests - Are They Failure-Designed?*

The South Carolina Collision Investigation Tool Kit 2009

Lead author *Handling Traffic Cases in South Carolina* (1st, 2nd, 3rd, 4th & 5th Editions)

and co-author of the recently published 6th Edition

RONNIE M. COLE, Esq. & MICHAEL O. HALLMAN, Esq. publications include:

South Carolina Traffic Lawyers' Tool Kit (1st& 2nd Editions)

South Carolina Drug Case Tool Kit (1st& 2nd Editions)

Interviewer: How long have you been in practice?

Ronnie Cole: I am now in my 38th year.

Interviewer: In that time, how many cases do you think you have handled in the DUI arena?

Ronnie Cole: I am sure it is several thousand.

Interviewer: What sparked your interest working with people arrested for DUI?

Ronnie Cole: I kind of fell into it by accident when I just graduated from law school in 1976. Of course, I was starving and took anything that walked in the door.

At that time, there wasn't emphasis on practices very much. You might have a real estate firm that did property; and such as that. But most of the time, sole practitioners would handle domestic cases, civil cases and criminal cases.

I had a particular bench trial before a judge. Having just gotten out of law school, I remembered what reasonable doubt meant. As a young lawyer, I was

sure that judge would find the defendant not guilty. But that did not happen.

Those days most states had a machine called a 900 or a 900A breathalyzer. I bought the breathalyzer, learned about it and trained to operate it. When I got out of school, there were only a couple of books written. We had nowhere to go to learn this.

Interviewer: Did you have to learn it on your own?

Ronnie Cole: Yes, it was trial and error.

I have taught in a variety of states. When I teach, I tell a lot of young lawyers that we did not know anything about standardized field sobriety testing. We didn't know how to attack it. We didn't know how to attack the machine. Also, we didn't know anything about blood testing.

All I heard in law school- and I think this is about the way it still is today- is there is a statute that says: In the state of South Carolina, it is against the law to drive under the influence of alcohol, drugs or a combination.

IN SOUTH CAROLINA, WHO ARE THE PEOPLE ARRESTED FOR DUI? ARE THEY ALL GUILTY?

Interviewer: Getting back to the people you represent, is there a particular type of person who gets arrested for DUI? Are there more men or women? Are they older people or younger people?



Ronnie Cole: There isn't really a type. It is what I call an equal opportunity offense. When I started 38 years ago, we had only a handful of women charged. We see more women now. But occupation wise, we have represented everybody from beauty queens, to porn stars, to evangelical ministers, to airline pilots, to construction workers, to waitresses, doctors, nurses and even other lawyers. It is an equal opportunity offense.

Interviewer: Of the people arrested, how many are truly "drunk drivers" with a high blood alcohol level; or is it more people who are close to the .08 limit?

Ronnie Cole: The reading is the last thing this firm looks at. The reason is: That is the letter Z in the alphabet, and there are 25 other letters the prosecution has to go through. An attorney handling these types of cases needs to make the prosecution jump or pass through those other 25 letters.

Interviewer: Society paints people as drunk drivers. Are a lot of people typically drunk, or are they just somewhat impaired but the law gets them?

Ronnie Cole: No, they are not. There is a difference between a drinking driver and a driver who is under the influence or intoxicated. It is not against the law in any state, as far as I know, to have something to drink and drive unless you are under the influence; at least based on the statutes I have looked at.

Interviewer: People should not feel they are the only ones. In the counties you serve, how many DUI arrests are there every year; ballpark?

Ronnie Cole: In the counties I practice, I would say there are between 5,000 and 10,000, approximately.

Interviewer: That is a lot.

When people come to see you, do you hear a common story, such as, “Oh, I just had two beers?”

Ronnie Cole: I used to hear the two beers story, years and years ago. When somebody comes in now and tells the two beers story, it is my feeling they are normally telling the truth. Some of them will have their credit card receipt, a tab or something to show what they had. So you look at the timeframes they were drinking and so forth, and it makes a difference.

The thing I see more and more now, at least in South Carolina, is that there are more innocent people being arrested for DUI more than any other crime.

Interviewer: In the many years you have been doing this, how has DUI changed? Has it gotten more aggressive? Are there more arrests? What have you seen?

Ronnie Cole: There has been an increase in officer training. All the officers now going through our academy, regardless of who they work for, must have training on the machine we use- the Data Master, DMT; and standardized field sobriety test training.

ONCE CHARGED WITH A DUI, WHAT IMPORTANT TIMEFRAMES SHOULD YOU BE ON TOP OF?

Interviewer: Once someone is arrested for DUI and then released, what are some of the first things he or she needs to do regarding their case?



Ronnie Cole: The first thing I would do if I was arrested for DUI is be at the office of some attorney who knows or is familiar with handling DUI cases. Some people just do not realize there are certain timeframes in which you must do something.

It varies depending on whether it is an administrative hearing, revocation, the DUI trial itself or a preliminary hearing. They may have waived that right. So it is important for people to see an attorney as soon as possible.

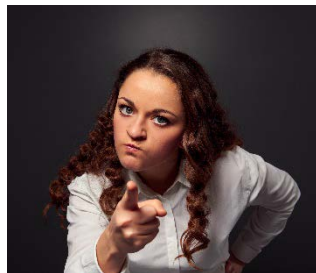
Interviewer: Looking at timelines when someone is arrested and charged, what issue has the shortest timeline and needs to be addressed first?

Ronnie Cole: Most of the time, it will be the initial appearance on the blue ticket or bond documents. However, an administrative hearing has to be requested within 30 days from the date of the arrest. So you have an administrative hearing that is 30 days out, but your court date to appear in the actual criminal case is 45 days out.

Somebody may inadvertently waive their right to the administrative hearing because they were more focused on the court date; and did not read all the documents.

DO YOU KNOW YOU ARE FACING DUI CRIMINAL CHARGES AND SUSPENSION OF YOUR LICENSE?

Interviewer: For people who do not know what the administrative hearing is, it is in regards to your driver's license being suspended for blowing .15 or above or refusing breath, urine or blood testing.



Ronnie Cole: Yes. In 1998, South Carolina became the 49th state to have a law that says: If you refuse to

blow or blow a certain amount, we take your license on the spot. Massachusetts was the 50th state.

Basically, it was tied to federal highway funds. We had to pass that law that year. I was on the committee to help rewrite the bill that year; and again, it was something we had to do. Obviously if we were the 49th state to do it, we held out as long as we could.

Interviewer: So is this administrative hearing a hearing to discuss the suspension of your driving privileges?

Ronnie Cole: Yes, it is. If your license is suspended, you have a right to request an administrative hearing; or, as it is now called, CCH-contested case hearing. It is handled by South Carolina's Administrative Law Court.

Interviewer: Are people generally aware of what is going on, that they are facing criminal charges plus this administrative charge; or are they confused about what is happening?

Ronnie Cole: I find people to be very confused about it. Normally, I spend 30 minutes to an hour during

the initial consultation talking to someone about their case.

Like a broken record, I hold up two pieces of paper. One is the blue ticket and the other is the administrative revocation. I wave them and say, "Look, neither one of these things has anything to do with the other. One is criminal. One is civil."

Interviewer: So that would be a misconception that people are just facing one charge. They are facing criminal charges, plus a civil charge.

Ronnie Cole: That is correct.

Interviewer: So there are two different timelines at work that people have to be aware of both. That is why they should not sit around and procrastinate. They should address the items immediately.

Ronnie Cole: Yes, that is right.

Just a couple of months ago, someone hired us who refused to blow on a DUI. The person came in here on the 31st day after his arrest. We could not request the administrative hearing.

WHY IS IT CRUCIAL TO GET AN ATTORNEY AND FIGHT DUI CHARGES?

Interviewer: What other misconceptions do people have about being arrested for DUI that you regularly have to address?



Ronnie Cole: There are misconceptions, but there is also a complete lack of education. It is not necessarily the public's fault. Law enforcement or the government has not let them know.

Just the arrest for a DUI can affect your ability to enter a country on your passport. It can affect your ability to go out and get a life insurance policy, for a number of years. It can affect schools, jobs and careers. So it is not necessarily confusion at that point. It is things that people just do not know can happen to them.

Interviewer: After being arrested, what mistakes do people make with their case that causes it to not come out as well as it could?

Ronnie Cole: The biggest mistake I have seen people commit, at least in the South, is they just roll over and play dead. They were arrested and just because they were arrested or blew a certain amount, they think the case is hopeless. It could be, but in many instances it is not hopeless at all. The mistake I see people make is just not getting to an attorney, talking to somebody and getting some good advice.

Interviewer: Why are people afraid to even talk to an attorney? You said some people feel doomed and just give up. What other reasons prevents people from talking to an attorney?

Ronnie Cole: Shame and guilt are other reasons. Some people come in to the office just feeling like they are the lowest form of insect, or something, on the earth. They hang their heads. They think the end of the world is here.

Interviewer: Are there any other reasons people are afraid?

Ronnie Cole: Like I said, there are a lot of people afraid to lose their jobs. We represent a lot of people

who have homeland security clearances and a DUI conviction is not tolerated.

Interviewer: How public is a DUI charge? Will friends and family and work find out, or can you keep it quiet if you need to?

Ronnie Cole: It is getting harder and harder to keep it quiet. They say good news travels fast, but bad news travels faster in my opinion. A variety of newspapers, especially some of the smaller town newspapers, will print it. Also, various magazines on sale at convenience stores throughout the state show the mug shots of people every week, and what these people are charged with.

This has become a popular practice. We've had a number of clients who actually brought those publications to our office. They are just in shock that their picture is in something like that.

Interviewer: That's terrible.

As part of your service, are you able to get their faces off those websites?

Ronnie Cole: Not really, these publications are just sold. Furthermore, sometimes if it is anybody of any notoriety, you have radio or TV to deal with. We have seen clients videotaped by news stations as they exited a detention center.

Interviewer: Some people ask, “Do I even need a lawyer? Can’t I just handle this myself?” What is your answer?

Ronnie Cole: My opinion is: No one should defend themselves. This is not a speeding ticket. One of the biggest misconceptions people have in the public, and even clients who come in here, is that these cases are simple. They are not simple. I do not think they ever were, and they certainly are not simple now.

No one envisioned getting out of law school and having to learn blood testing, urine testing, toxicology, pharmacology and all these things; along with breath testing, field sobriety testing and DRE-drug recognition examination. None of that was even thought of years ago. But now that is what you need to learn, and it is a constant learning process.

Interviewer: If someone still tries to go in and defend themselves, are they just looking to get run over?

Ronnie Cole: They are, to an extent. I advise anyone if they can't afford an attorney, go see the public defender. Most of those offices in our area do a very good job. I routinely refer people to the public defender if they simply can't afford an attorney and if they qualify.

HOW CAN TAKING PRESCRIPTION DRUGS AND DRIVING BE A VIOLATION OF THE LAW?

Interviewer: How many of your cases are alcohol related versus prescription drug or illegal drug related?



Ronnie Cole: Drugged driving as we call it is more common today. I know years ago I rarely ever had a drug case, unless it was an illegal substance. Now, people are so medicated. They are given multiple medications, and most of the time it is from the same physician.

People think just because medications are prescribed by a physician and filled by a pharmacist, the ingestion of these drugs and then driving is not a violation of the law. That is the biggest misconception I see the public has. It is on the rise. Then you have to consider the effects, if any, that drug has alone or with alcohol, for example, the synergistic effect.

Interviewer: Approximately how many cases have some drug components in them?

Ronnie Cole: That is still hard to determine in South Carolina because normally if you blow .08 or above, they do not bother to take you for a urine test. So unless the defendant has told them that he or she had Xanax today and/or Klonopin, then they are not going to know it. So that data would be extremely hard to quantify.

Interviewer: Are these cases harder to defend or more complicated than just straight up alcohol cases?

Ronnie Cole: They can be and they can't be. One of the things you have to look at is whether it is a legally prescribed drug. My experience has been that a jury

and/or a judge are more sympathetic to someone who has followed the directions on a bottle of medication prescribed to them.

Illegal drugs are a little bit different. That is when we get into metabolites and whether those metabolites are active or inactive. That is critical.

There is a book called, "Disposition of Toxic Drugs and Chemicals in Man," by Randall C. Baselt. It is about 2,000 pages of basically every drug: legal, illegal, prescription and over the counter. It gives you information about them and certainly about metabolites.

The last thing an attorney wants is to have someone who reads a .02, who is not under the influence, be convicted because he or she has a metabolite in their system which may be inactive.

Interviewer: Does the law in South Carolina look at, not just the level of a drug in the blood, but whether its metabolites are active compounds or inactive metabolites?

Ronnie Cole: Yes. That is a job for the defense attorney to try to determine whether there is any

effect on that person's body, as a result of the ingestion of a substance when only metabolites are present.

WHAT BLOOD ALCOHOL LEVELS LEAD TO CONVICTION?

Interviewer: Are there different DUI laws that address people who blow below a .08?

Ronnie Cole: In South Carolina, the inference level is .08. The law has always been, since I've been practicing, that you could be convicted if you blow anything or had a blood alcohol level of anything above .05. Now it's not done that much; but, yes you could be convicted at that level.

Interviewer: Is everyone subject to the .08 limit, including commercial drivers & people under age 21?

Ronnie Cole: The limit is the same for everybody whether they are 16 years old, 60 years old or have a CDL. The law pertaining to CDL's is unique. In fact, I am working on a book that will be out next year on commercial driver's licenses.

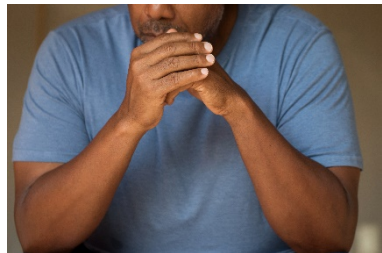
But you have to know the ramifications. You have to know if the person was driving the CDL vehicle or if he was driving a personal vehicle, such as his automobile. You have to know when something applies, and when it does not apply.

Interviewer: Do underage people have the same limits?

Ronnie Cole: Absolutely under our DUI laws.

WHAT CIRCUMSTANCES ENHANCE A DUI CHARGE OR MAKE IT A FELONY DUI?

Interviewer: Are there factors that either aggravate or enhance the DUI charge in South Carolina, such as an accident or hitting a car?



Ronnie Cole: We do not use the term aggravate. We have enhanced charges for subsequent events. We also have a felony DUI law. In some states, if you get three DUI's it is a felony. That is not true in South Carolina. Our felony DUI statute covers death or serious bodily injury, as defined by that statute.

But the answer to that question is yes, you can get extra penalties. A lot of times, we have a second or third offense that comes in. They plead guilty to the first two and now they are in a different ballgame with a third offense.

Interviewer: What factors will enhance it, whether it is the first, second or third time? What if you have an underage person in the car? Will that affect you?

Ronnie Cole: With an underage person in the car, we have a child endangerment statute that could apply depending on the age of the driver and the age of the passenger.

Interviewer: With the blood alcohol reading, do you have like a super drunk or high? For instance, if you are above a .15, do you have a different set of charges?

Ronnie Cole: There is not a different set of charges. The penalties are more, the more you read or blow.

Interviewer: Are there any specific number thresholds?

Ronnie Cole: We have three tiers of penalties. If you refuse or blow below .10, that is one tier; .10 to .15 is the second tier; and .16 or above is the third tier. With each tier the punishments are enhanced. The 2nd is higher than the 1st, the 3rd is higher than the 2nd.

WHAT CIRCUMSTANCES WARRANT A BLOOD OR URINE TEST AFTER A BREATH TEST?

Interviewer: If someone is pulled over and there is suspected alcohol intoxication and drug intoxication, will a different type of police officer be called in? Will different types of tests be run?



Ronnie Cole: It would be the same police officer in the vast majority of the cases. He or she would probably, after a breath test, take that person to a hospital or medical facility to request urine. Some states allow blood to be drawn on the side of the road. We do not allow that in South Carolina.

Interviewer: After taking the initial breath test, are people confused to be taken to the hospital for additional testing?

Ronnie Cole: Yes. Some people will submit to the breath test and some people will not. It is just a choice they have to make. A lot of it depends on the conduct of the arresting officer who administers the breath test.

If the defendant is antagonized, he or she may be reluctant to cooperate. In some cases we see people demanding a blood test, as they have a statutory right to a blood test. In some cases, it has helped out.

Interviewer: Are people allowed to choose the type of test they take?

Ronnie Cole: In South Carolina, you normally are allowed a blood test. Now as a practical matter sometimes we send people when they get out of jail- people who have been accused of being on drugs- immediately for a drug test which can be urine.

We had one the other day. We actually had a girl whose hair was pulled to analyze. So each case is

kind of on its own four legs. You just have to evaluate them as they come in the door.

WHAT ARE THE CONSEQUENCES OF REFUSING A BREATH OR BLOOD TEST?

Interviewer: Are you seeing people refuse the breath test or the blood test?

Ronnie Cole: You can refuse anything in South Carolina unless it is a felony DUI with death, or bodily injury. Then, they can forcibly draw it from you.



In light of the McNeely case from Missouri, the law is up in the air in South Carolinas to whether or not blood tests will be done in cases other than felony DUI's; or if someone is injured in a wreck and they go to the hospital. Our law provides that they could obtain a sample of blood.

Interviewer: Do people say to you, "I didn't refuse but they marked me as refusing anyway?"

Ronnie Cole: Yes, and generally that happens in the breath test room where someone is attempting to blow. The unique thing about South Carolina is with the DataMaster DMT we can track your actual breath pattern by chart.

We had one case not too long ago where we found the woman was supplying the requisite air, pursuant to the parameters of the acceptance of it. However, the officer told her the wrong way to blow. So although she actually did not refuse, this officer just told her the wrong way and she was written up as a refusal.

Interviewer: Do you have cases where someone refuses and then change their minds; and the police say “too bad” because you initially refused?

Ronnie Cole: Yes. If you refuse and then you say you want to take it, in South Carolina the officer can allow you to do it but they are not required to.

Interviewer: Suppose you take the breath test and then they want you to do a blood or urine test. Then, you say, “I took one already. I don’t want to take another one.” Is that considered a refusal?

Ronnie Cole: Yes, that would be a refusal but only for urine after a breath test.

Interviewer: How many tests can you be asked to take? Can they just keep asking you to take more? Does that happen?

Ronnie Cole: That does not happen in South Carolina. It is limited by statute. Some states require the two test rule on the breath test, within say five minutes of each other; and they must be within .02. We do not have that.

I went to school one time at a program in Indiana, with some of the people from North Carolina's program. They were laughing. They said their record was a guy blowing I think 31 or 32 times before the officer got two numbers close enough, within minutes to qualify. So I did not think too much of that test.

Interviewer: Do you have people with physical problems that prevent them from blowing properly? Are people affected by acid reflux, asthma or hyperventilating?

Ronnie Cole: Oh yes; and we actually on occasion have had clients go to SLED, our state law enforcement division in Columbia to be tested. We had physicians over the years using a spirometer to test those people. It takes about 1.5 plus liters of air to register in the DataMaster DMT, and if you get a soft drink bottle which is two liters, you can tell how much air must go through that little tip.

HOW CAN THE RESULTS OF A FIELD SOBRIETY TEST BE CHALLENGED?

Interviewer: I know each case is different, but is there a common defense you are making over and over lately? What are some of the things you can attack?



Ronnie Cole: Well, our goal is to try to attack the entire case. Sometimes that may be smart; sometimes not smart. I think one of the key things now is the standardized field sobriety testing.

Again, all of our officers have to go through that course to be law enforcement officers in this state. All the lawyers with the Cole Law Firm have been through the same field sobriety testing course that law enforcement officers have been through.

Interviewer: When you say the field sobriety test, is that what the police ask you to do on the side of the road like follow the pen with your eyes and/or walk the line?

Ronnie Cole: Yes, the field sobriety tests include HGN- Horizontal Gaze Nystagmus, Walk and Turn and One Leg Stand.

Interviewer: Are those the three common tests used?

Ronnie Cole: Yes, those are the standardized ones that came about as a result of research by Dr. Marceline Burns and some others in the 1970's. Essentially, the federal government wanted them to standardize; consider all the sobriety tests apparently known on earth and come up with a standardized battery.

Interviewer: What problems have you found in certain cases with field sobriety tests?

Ronnie Cole: First of all, they have to be administered to you properly. They have to be explained and demonstrated. Essentially, with the One Leg Stand and the Walk and Turn, one of the biggest attacks you can make is the way the officer conducted the test.

Sometimes the officer starts the person on the wrong foot, which leads us at the end of the walk to a term called wrong footing. If that is the case, you can't pivot without being awkward.

Another issue is we've had cases where people with prosthetic eyes have been told they have HGN. Well, do you have HGN with a prosthetic eye? Also, I have seen cases with people with prosthetic devices having to walk up hill. In many cases, the officer never asks, "Do you have any physical disabilities or infirmities that might affect your ability to complete these tasks?"

One case, I had a guy walking heel to toe at night on a side road. He stepped on a five foot black snake and it curled up around his foot and ankle. Then the guy jumped up and down, trying to shake it off.

Interviewer: That's funny. Did the police still say he did the test wrong? What happened?

Ronnie Cole: No, that was years ago. We didn't have video then but he wasn't found guilty. That is just a little side note.

Interviewer: Can you refuse the tests you are asked to do by the side of the road?

Ronnie Cole: Yes, you certainly can. Most people think if they complete these tasks, then they are going to go home. Well, that is rare in my 38 years. It is extremely rare. The litmus test many times is simply: Do they smell alcohol on you? A lot of times, your fate is sealed.

But most people who are decent people want to cooperate with law enforcement. They do not understand that in a DUI case you are giving them all the evidence yourself when you do these tests.

HOW CAN VIDEO BE USED TO CHALLENGE DUI CHARGES?

Interviewer: What other areas will you attack in a case? Do you look at the way the person was stopped initially?

Ronnie Cole: Yes. We visit a lot of the things if we are not familiar with them. I just like to do that. But you have to look at the way the person was driving.

In South Carolina, we became the first state in 1998 with mandatory videotaping. Again, I was one of the co-authors of that bill; and we beefed it up a bit. Somebody from Illinois called me last year and wanted to introduce one that was, he said, almost identical to ours. I never did check to see if it was introduced.

But we wanted it for two reasons: One, it keeps everybody honest and two, if the cop does make a mistake we have it on tape. There are times you will see that.

In our breath test room, now we send those tapes to the internet. Each person has on their data master form a subject ID and passcode. They can download

their own video or give it to their attorney to download.

The video from the car obviously may have 10 stops or 100 stops on it. Now there are some exceptions to the cars having cameras; perhaps a new car, the camera is broken or something like that. But videotaping is extremely important.

Interviewer: Do you find that videotapes help or hurt?

Ronnie Cole: It can be a two edged sword. It is important, as we were talking earlier, whether somebody was really trying to blow or just faking a blow; putting their tongue over the mouthpiece or something.

I think it is important for a jury and/or a judge to see that the person was blowing. I think it is important for them to see the conduct, the demeanor, the voice. Sometimes you see a case and you wonder: Why was this person arrested? Why was this person even in this breath test room?

With video, you can tell whether they are coherent. A lot of times people have no slurred speech at all. You

hear that all the time. The video does not show slurred speech; and the person will be very coherent and asking intelligent questions.

HOW HAVE DUI CASES AND CHALLENGES CHANGED THROUGH THE YEARS?

Interviewer: We talked about the stop, field sobriety tests and the breath tests. Are there other areas of a DUI case that you look for defenses?



Ronnie Cole: There was an expert that taught around the country. He is retired now, but he said the reason people are lawyers is because lawyers could not pass a math or science course; joking of course.

But I was thinking about it and not too many of us have a big scientific background. I find it intriguing as I thought I'd be the last person to own phlebotomy books; or books on drugs, blood testing, gastromatography or infrared testing.

But that is the era we are in. The DUI case today is completely 180 degrees different from when I started in 1976.

Interviewer: Are you saying it was all traditional lawyering and witnesses and now it is mostly science?

Ronnie Cole: Well, I think witnesses can still be important. One of the advantages of videotaping, at least from our perspective, is we rarely put our clients on the stand. In South Carolina, you get last argument to the judge or jury if you do not put up evidence.

You may have a case where the prosecution does not want to show the jury those video tapes. You can bet a defense attorney would want to show exculpatory evidence, without question.

Interviewer: How else have cases changed, besides the videos and the heavy science bias now?

Ronnie Cole: I think there are more cases made today, obviously.

Departments go up and down in their arrest ratios when they get federal or state grants. They get them for something like HEAT cars. I don't know if you all call them that around the country, but HEAT stands for heavy enforcement of aggressive traffic.

Police departments and agencies can get those cars if they use them for DUI enforcement. Of course, obviously, I am sure they are used for other things.

But when those grants run out, instead of having a force out there you essentially no longer have that presence. Then, that is when the public gets the word, and they do, that there is no enforcement going on.

That is not a reason for them to drive drunk or feel they can. But the fact remains that enforcement is a very effective tool if you are going to save lives.

Interviewer: Are there any diversion programs or alternative punishments that you can help people get into so they do not have to maybe go to jail or face the traditional problems of a conviction?

Ronnie Cole: We do not have any diversion programs in South Carolina for DUI or DUAC, which is driving with an unlawful alcohol concentration.

We have a program called PTI, Pretrial Intervention. It is set up by statute and enumerates which offenses can enter that program. A DUI or a DUAC is excluded by statute.

EMMA'S LAW?

Interviewer: What is Emma's Law?

Ronnie Cole: It is a new law that changes many things in South Carolina.

Interviewer: When does it go into effect?

Ronnie Cole: October 1, 2014.

Interviewer: Who does it affect the most?

Ronnie Cole: Those charged with a first offense DUI.

Interviewer: Is it complicated?

Ronnie Cole: Yes, especially on Implied Consent and a conviction.

Interviewer: I understand you helped write it. Is that correct?

Ronnie Cole: Yes. In fact, I've helped write every DUI law since 1998.

Interviewer: Does it take a long time to explain Emma's Law to a client?

Ronnie Cole: Oh yes. But we take time with a client. They deserve our time.

EMMA'S LAW - RETROACTIVE

Interviewer: I understand since the first publication of this book the laws have been amended.

Ronnie Cole: Yes, that's correct.

Interviewer: You have been very active in writing traffic laws in South Carolina and I understand you helped amend Emma's Law.

Ronnie Cole: Yes. I drafted legislation introduced in both the South Carolina House and Senate. I'm proud to say the law passed and what went into effect October 1, 2014 is now retroactive.

Interviewer: What exactly does retroactive mean?

Ronnie Cole: It means now that many people under suspension for drinking driving violations may be able to get a license now.

Interviewer: What should someone in that position do?

Ronnie Cole: They need to call us and let us review their ten year driving record. It is free. If we can help we will charge a nominal fee.

HOW CAN COLE LAW FIRM HELP PEOPLE CHARGED WITH DUI?

Interviewer: I know every case is different, but what are some of the ways you can improve someone's situation? Are you able to get charges reduced or dismissed, or fines taken off? Do people get any alternative punishments, like house arrest? What tools are available to help?

Ronnie Cole: Many people who contest charges will be found not guilty. Sometimes there can be plea negotiations to reduce it to some other charge.

When you get past the first offense, penalties increase. You say okay, we need to focus on reducing the amount of jail time or the amount of the fine. Even then, each one of these things is unique. When you think you have seen everything you could see in a DUI case, there will be something different just about every week.

WHAT MATERIALS DOES COLE LAW FIRM NEED TO DEFEND YOU?

Interviewer: Can you take me through your overall skeleton process of how you start working with people once they have retained you? What do you do when you go through their case and start preparing defenses?

Ronnie Cole: We obviously get all the discovery we can. We spend time on those video tapes. You can compare the officer's notes to the video tapes. Sometimes you will see what is shown on the video tape is different from the incident report. That can be good for cross examination.

Interviewer: So you review the videotapes, visit the scene oftentimes and ask for discovery. Do you ask for every shred of evidence there is in the case?

Ronnie Cole: Yes, we have discovery motions basically to use and gather that information.

Interviewer: What kind of information do you gather?

Ronnie Cole: We want to know anything in that incident report, what the defendant allegedly said or did. Then compare that to the videotape evidence.

You have to understand the NHTSA, the National Highway Traffic and Safety Administration. You have to go through their manuals and see what is required in each test. Then, determine whether the test was demonstrated and instructed properly. It is time consuming.

The misconception people have is that DUI and traffic law is simple. In my opinion, it is far from simple.

Interviewer: What else do you do to prepare for a DUI defense?

Ronnie Cole: We talk to our clients generally numerous times, either on the phone or in consultations. What happens when somebody calls this office? Well, first of all we ask them to bring all of their paperwork. Sometimes they have it all, and sometimes they do not.

Also, we have an initial two page questionnaire. In addition to bringing their paperwork and the

questionnaire, if it is a second or subsequent offense I want a 10 year driving record. That will be a loose puzzle, but it will still give me an idea of what we are looking at.

So for example, if they do not have their administrative suspension notice, we have to get one. We have to get another copy of it so we can request an administrative hearing and get a temporary license.

Interviewer: So you work on both the license and the criminal portion, you get documents and discovery, you have multiple meetings and then the case continues.

Ronnie Cole: That is right. It is just that you want to try to do the best you can for that person. They put their confidence in you and it is different.

Some of my friends ask me, "How do you go to court? Aren't you nervous? Aren't you scared?" I say, "No, I love it. I'm nervous doing a real estate closing, and that's why I don't do that."

Interviewer: That's funny.

HOW LONG DOES IT TAKE TO RESOLVE A DUI CASE?

Interviewer: How long does the process take normally, whether you go to trial or make a plea?



Ronnie Cole: That is the 64 million dollar question in South Carolina. We have some jurisdictions where the courts are ready for a trial before we want it, believe me. Then again, we have some where we have a few years out there waiting.

I think court administration is trying to do something about that. It is important to some people because of their job setting. We make requests for speedy trials because their employer may say, "You have so many months to take care of this, or you're fired."

I've had this happen.

In other instances, you have someone going into the military, that can't go in to the military or a military school with a DUI conviction. You have all kinds of factors.

I think we've checked with about a dozen embassies in the last couple of years to see if people can even enter a country with a DUI arrest or conviction. I know you can't into Canada. We had a young man who was a student at a university last summer, going to London for an internship. We had to contact the British Embassy to see if he could enter England.

So that is what I alluded to earlier. There are so many of these ramifications that people have no idea about. And why should they? This is not their job. They don't do this every day. They are not concerned with this.

WHY IS IT WISE TO GET AN ATTORNEY EVEN FOR A VERY FIRST DUI OFFENSE?

Interviewer: Well, it seems that even a first offense should be treated very seriously. If you let yourself be convicted or you think it's the first one and no big deal, it seems to set you up for a lot of problems later on.

Ronnie Cole: It does. I am asked, sometimes quite often, whether a fourth offense is harder to win than a first. The answer is no. The only distinction is the

penalty would be far more severe. But it is determined by the facts of the case.

I have seen this plenty over the years, where somebody will come in with a DUI second, third or fourth. If I have time, I ask about those cases and I think: Why did you plead guilty to all of them?

Now you are in a situation where, regardless of who your attorney is, their back is against the wall sometimes because of what you have done to yourself.

Interviewer: Is it then extremely important to really fight most of all on the first case?

Ronnie Cole: At the very least, get it evaluated by an attorney familiar with DUI laws.

WHAT IS THE TIMEFRAME FOR SOMEONE TO BE CONSIDERED A REPEAT OFFENDER?

Interviewer: How many of your cases are first timers versus repeat offenders?

Ronnie Cole: In South Carolina, the DMV keeps it on your record 10 years for enhancement. If you had one

11 years ago and then get one today, it would still be a first offense.

But I would say the vast majority are going to be first offenses. Now with alcohol/drug programs, we still see repeat offenders; and they are in trouble when they get to a certain level. Still, most of the offenses are going to be first offenses: either it is their first offense, or they had one or two over ten years ago. So it is not a second or third.



HOW CAN YOU HELP YOUR CASE? WHAT IS THE NATURE OF THE ATTORNEY CLIENT RELATIONSHIP?

Interviewer: Is there anything people can do to help their case along, such as voluntarily going for drug and alcohol screening? Is there anything they can do before the court case gets too far, to make a good showing and improve their chances of a good result?

Ronnie Cole: You can do that and I certainly encourage people, who have problems, to do that. But I also say: If you are doing it for the sole purpose

of trying to impress, that is the wrong reason to do it. Do it also to help yourself.

The other thing I preach to my clients is you have to cooperate with me. You have to make sure I have your phone number and it is not disconnected. You haven't moved without telling me. You filled out a 30 page questionnaire within a week, and you got it back to me.

We need you for appointments. We're not just asking you to come in because we want to talk to you and see how your weekend was. We are asking you to come in because we are working on your case and we need your assistance. It is the thing that some people unfortunately do not grasp.

Interviewer: How much of the burden of a case are you able to take off someone's shoulders? Let's say they normally would have to appear in court five times, can you appear for them? Once hired, what can you do to reduce the impact on a client?

Ronnie Cole: We try to inconvenience our clients as little as possible. That is why when we say we need your assistance, when we call you, when we need

you to do something for us; it is something we feel has to be done.

Interviewer: For people who do not want to miss work, are you able to appear for them so they do not have to appear in court?

Ronnie Cole: It depends; sometimes they are required to be there. It can vary with jurisdictions. It can vary with solicitors within jurisdictions. In South Carolina, it is just not a standardized thing like you have standardized field sobriety tests, for example.

Interviewer: What is the best way people can get through a case and move on with their life in good mental health?

Ronnie Cole: Regardless of outcome and obviously we want a good outcome, I caution everyone who has gone through one of these. I simply say just don't drink and drive. That is the old cliché, but don't.

I have a friend in North Georgia where I have a house, and she has a taxi service. It's sort of like that Visa card commercial. She says a drink \$5.75; DUI \$8,000; safe ride home priceless. So I would much

rather spend \$10 or \$20 on a cab if they are available in a particular area, than to have to go through this.

But then again, as I said, not everybody who is pulled over is under the influence.

Interviewer: Why should prospective clients seek an initial consultation with you?

Ronnie Cole: I have done this for 38 years. Just visit our website and see the experience.

If I was looking for an attorney in any field, and let's use DUI as an example, I would ask that attorney how many cases he or she has handled; or handles a year or month. I would want to know how many they actually tried, from start to finish.

One of my friends in another state told me about a lawyer who handles about 150 a year, and virtually all of them are pled guilty. Our firm motto is: Friends don't let innocent friends plead guilty.

Interviewer: So you want to find someone who has trial experience.

Ronnie Cole: Yes, I would want somebody who does that work and has experience doing it. If I want a good divorce lawyer, I am going to find somebody experienced in that field.

For example, I get a lot of referrals from lawyers in other fields. Basically, you don't go to an orthopedic surgeon to have your heart surgery done. So I don't do real estate work because, besides the fact that I despise it, I am not trained in it now.

Interviewer: So you want someone who has a lot of experience in that particular area of law.

Ronnie Cole: I always tell people to be very leery of an attorney who tells you he or she can guarantee you something. That is a legal impossibility.

DISCLAIMER:

This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

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NOTES:

SOUTH CAROLINA DUI ARREST?

(Useful Info Revealed That May Help You
Defend Your Charges)

“Ronnie Cole and his associates are very good at representing someone like me with a DUI from an accident. The outcome of this shows how well they take care of their clients. He got my charges reduced and my life can go on without the DUI on my record. Everyone at the office kept me informed of the progress and I didn't even have to go to court one time. I will and have recommended his firm to allot of people with the need for a good lawyer in a DUI.” – Jack

“I was charged with several questional charges in one incident. I am sure that without Cole Law Firm I would have been convicted with bad results for me going forward. Cole Law Firm did a great job and managed to get all charges dropped.” – Peter

“The Cole law firm is outstanding to say the least. My case was handled professionally and executed perfectly. I will recommend Ronnie Cole to anyone and everyone seeking help with their case. I am highly impressed and satisfied with Cole law firm, they are the best.” – John

“Cole Law Firm was awesome. They worked so hard on my case, it made me feel like I was their only client! That's how much work they put into you, you never feel like you're just another number. They work with you personally, and the first time I met with him he was honest and didn't even pressure me into hiring him. I would recommend him ANY DAY.” – Symonds

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