2018 ADVANCED DUI

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DUI JURY SELECTION AND JURY INSTRUCTIONS

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Jury Selection in Marijuana and Prescription Drug Cases

How to win (or lose) a trial before you even begin.

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Right to Jury Sources

1. United States Constitution

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed . . .

Right to Jury Sources

2. Arizona Constitution

A. Article 2, § 23

The right of trial by jury shall remain inviolate. . .

B. Article 2, § 24

In criminal prosecutions, the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed

Right to Jury Sources

3. Arizona Revised Statutes

A.R.S. § 13-114

In a criminal action defendant is entitled:

1. To have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

* * *

Jury Selection

Jury selection is possibly the most important part of your trial.

This is the only chance you get to find out who will be deciding your case.

Cases are won and lost in jury selection!

#	Job	V of Crime	Convict. Crime	Married	Kids	Age	Education	Notes
1	Hardship ☐ ☐ ☐ ☐		DUI ☐	M☐ S☐ D☐				Years in MCC: ___ & ___
#	Job	V of Crime	Convict. Crime	Married	Kids	Age	Education	Notes
2	Hardship ☐ ☐ ☐ ☐		DUI ☐	M☐ S☐ D☐				Years in MCC: ___ & ___
#	Job	V of Crime	Convict. Crime	Married	Kids	Age	Education	Notes
3	Hardship ☐ ☐ ☐ ☐		DUI ☐	M☐ S☐ D☐				Years in MCC: ___ & ___
#	Job	V of Crime	Convict. Crime	Married	Kids	Age	Education	Notes
4	Hardship ☐ ☐ ☐ ☐		DUI ☐	M☐ S☐ D☐				Years in MCC: ___ & ___

Alcohol/Illegal Drugs vs. Prescription Drugs/Marijuana

There are some major differences.

- Its much easier to get your jurors on board with a .25 alcohol DUI or a meth case.
- Alcohol and illegal drugs aren't generally prescribed by a doctor.
- Signs of impairment are (likely) going to be more subtle and rely on complicated science.

Scientific Evidence

- In alcohol DUIs, jurors just need to determine whether or not the BAC was above a .08, .15, or .20.
- Prescription drug cases and marijuana DUIs are likely going to discuss the ng/ml amounts in relation to studies, other states, and therapeutic ranges.
- Jury selection is a great time to prep your jury for this type of evidence.

Do you consider the occupation of potential jurors?

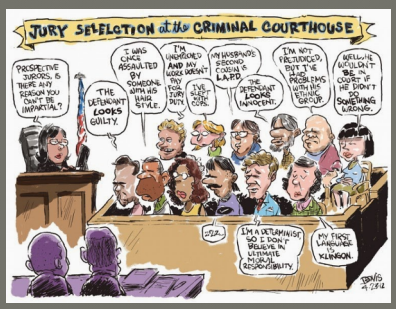
THINGS TO CONSIDER

- Do certain occupations lend themselves to sympathy towards the Defendant or the State?
- Do some jurors have experience with prescription drugs, blood draws, or other scientific evidence?

OCCUPATIONS

- Doctors: may have familiarity with prescribing drugs or how drugs affect the human body
- Nurses: similar to doctors and often draw blood
- Teachers: work with children and may have sympathetic leanings
- Engineers/scientists: experience with scientific or technical systems

Your potential jurors.

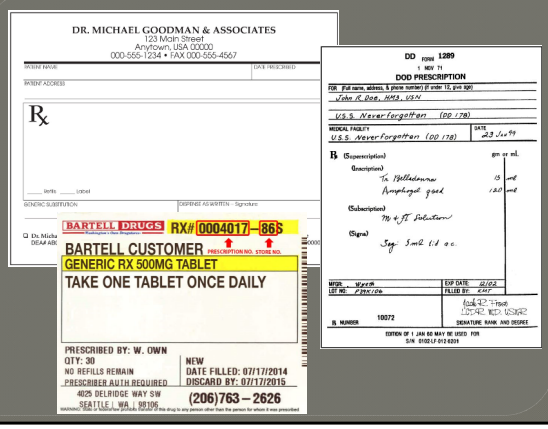


Prescription Drug Cases

But my doctor prescribed it…

Prescription Drug Challenges

- Some members of jury pool probably take the same drugs as the Defendant
- Everyone on your panel has either taken a prescription drug or knows someone who has
- Defendant may be using a prescription defense and bringing in an expert
- There are likely medical issues that could be conflated with impairment



What information do you want to know about your jurors?

- Prior prescription drug use
- Prior DUI convictions
- Prior DUI jury service
- Feelings about prescription only DUIs
- Understanding of prescriptions and drug warning labels
- Leanings towards DUIs that don't involve alcohol

How are you going to get this information?

- Some of your questions will be covered in general voir dire.
- Jurors will often volunteer information.
- ASK!
- The only way you will definitely get the information you want is to ask.

Prescription Drug DUI Scenario

- Charged with A1 and A3 DUI
- Facts: weaving, running a red light, drowsy, slurred speech.
- No DRE
- Blood results: Diazepam, nordiazepam, and alprazolam.
- Has a prescription for alprazolam.

Who is going to be sitting in the jury box?

What do you want to know about your potential jurors?

Possible Voir Dire Questions

- Does anyone on the panel today believe that doctors would not prescribe drugs that could be impairing?
- Is there anyone on the panel today who believes you cannot possibly be impaired while taking prescription medications?
- Does anyone believe that marijuana may as well be legal since so many people smoke?
- Is there anyone who does not believe marijuana has an impairing effect?

Prescription Drug Labels

A doctor prescribed it so it must be ok, right?

Jurors' Attitudes towards Drug DUIs

Not always obvious.

- If you don't ask the right questions, you may completely miss a juror with some strong opinions.
- Sometimes the quiet juror is the most dangerous juror because they could have information that you will never have a chance to get otherwise.
- By asking questions of specific jurors, you can find out what your quiet jurors are thinking.

Marijuana/AMMA Cases

I wasn't feeling impaired…

Two Types of Potential Jurors

FAMILIAR WITH MARIJUANA

- May think they understand all of the signs and symptoms of being "high."
- Could have friends who smoke.
- Might be expecting more from impairment in order to convict on the A1.

UNFAMILIAR WITH MARIJUANA

- Impression of marijuana smokers is probably from the media.
- May be expecting a very specific and stereotypical manifestation of marijuana impairment.

Depending on your facts one, both, or neither of these jurors could be the right choice for you.

Other States and Marijuana Law

- Remember: your jurors will likely be familiar with marijuana use and possession laws in other states. You need to find out what they know and how it will effect their ability to sit on your jury.
- Also note that they might be familiar with per se levels from other states.

Laws Regarding Marijuana

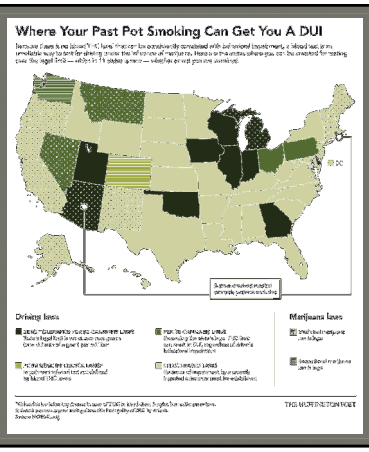
STATES WHERE MARIJUANA IS ILLEGAL FOR ANY PURPOSE

- Arkansas
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- Wisconsin
- Wyoming

Only 18/50!

PER SE DUI LAWS

- Colorado: reasonable inference (5 ng/ml)
- Montana: 5 ng/ml
- Nevada: 2 ng/ml
- Ohio: 2 ng/ml
- Pennsylvania: 1 ng/ml
- Washington: 5 ng/ml



AMMA Cases are Unique

Take the issues from prescription drug cases and marijuana cases and blends them together.

- Very important to find jurors who are going to follow the law NO MATTER WHAT
- Want jurors who aren't going to be swayed by sympathy for the Defendant
- Extra technical evidence at play so make sure you find jurors who can handle it and will understand DRE exams, scientific studies, etc.

Marijuana DUI Scenario

- Stopped for speeding, weaving, and wide right turn.
- DRE exam done
- Poor FSTs (WT 6/8, OLS 3/4)
- Odor of marijuana, reddened conjunctiva, rebound dilation, etc.
- AMMA card

Voir Dire Questions

- Are any members of the jury pool familiar with marijuana laws in other states?
- Would anyone let the laws of other states effect their decision on a case such as this?
- Would you be willing to follow the laws in Arizona even if they are different than laws in other states re: marijuana?

CSI Effect

- Most agencies in the valley are using Body Worn Camera (BWC).
- Jurors know these videos exist (news, etc.) so you are likely going to use them in trial.
- On a case involving prescription drugs or marijuana, oftentimes, the impairment will not be overwhelmingly obvious from the point of view of the video.

CSI Effect Cont.

- Might consider asking jurors if they've seen CSI, Law and Order, etc.
  - Breaks the ice with the jury
  - Educates them that BWC/trial might not be like they have seen on TV
- Make sure no one on the panel believes a real trial is going to look like one of these TV shows.
  - Won't be resolved in one hour!

Case Agent

- Don't be afraid to ask your case agent to sit with you during jury selection.
- Officers are trained to read people and notice subtle clues in your jurors that you might not notice.
- It might be helpful to have them sit with you and point out jurors that would need to question further.
- Introduces your case agent to your jury. Builds trust from the start.

Educate, Educate, Educate!

- Jury selection is the first opportunity for you to educate your jury on the basics of prescription drugs or marijuana.
- Though you can't go into case specific facts, don't be afraid to take the opportunity to educate them about issues that will be important in your trial.

Few Last Points/Questions to Ask

- Trust your gut on a juror. If you don't have a good feeling about them or their answers—just strike them.
- Take notes on subtle cues that suggest how jurors are feeling. If you don't, you may not remember come time to make strikes.
- There are a few jury selection questions to consider if you want to ferret out jurors who don't want to be there.
- Just ask them! They will be more than happy to let you know.

Remember!

Once you seat your jury, that's it! You're stuck with them.

Jury selection is the only opportunity to get into the minds of your jurors.

This is your first impression for your potential jury—make it a good one!

Questions?

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