

FOR THE ROAD

Idaho Prosecuting Attorneys Association



CRASH TO COURTROOM TRAINING IS COMING TO IDAHO

Idaho Prosecutors & Crash Reconstruction Experts Train Together -- May 21-23, 2012

The Idaho Prosecuting Attorneys Association, through their Traffic Safety Resource Prosecutor Program, will be hosting “Crash to Courtroom” training on May 21-23, 2012. Partnering with the Idaho State Police Crash Reconstruction program, this 3-day course will focus on increasing the ability of Idaho prosecutors and crash reconstruction experts to communicate effectively and confidently in the courtroom.

Most exciting will be the mock court exercises, where volunteer Idaho citizens will serve as actual jurors.

Professor John Kwasnoski will present the curriculum with a faculty of experienced vehicular crimes prosecutors. Kwasnoski has reconstructed over a 1000 crashes and has testified in numerous cases of national significance. A past article written by him is included in this month’s edition (page 2).

GOALS OF THIS TRAINING

The goals of this training include:

- Understanding the importance of building credibility during testimony.
- Developing skills to enhance the connection between the crash reconstruction witness and the jurors.
- Gaining insight into defense strategies & tactics to fully comprehend the “rules of engagement.”
- Developing direct testimony that will paint the picture of reality for the jurors.

Prosecutors interested in attending this valuable training are encouraged to

REGISTER TODAY!

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CREDIBILITY "COUPONS" FOR THE WITNESS

By John Kwasnoski and Patricia Gould

In many vehicular fatality cases the jurors' decision rests heavily on the credibility of the police investigator or reconstructionist. The defense goal is take some small part of the testimony and create reasonable doubt.

Therefore, be sure to take advantage of the intrinsic credibility of the State's witness who:

- Was physically at the scene and collected the evidence
- Observed the final rest position(s) of the vehicle(s)
- Spoke with the defendant first and noted the signs of impairment
- Interviewed witnesses within hours of the crash

In addition, there are areas of testimony that are nearly cross examination-proof, that enhance the credibility, and afford the officer an opportunity to testify in a conversational manner to the jurors.

Ask your witness to:

- Describe the measuring equipment (e.g. a rolling wheel or drag sled).
- Describe how a measurement was made, or the fact that multiple measurements were made to ensure certainty.
- Describe how the vehicle created the tire marks that were observed.
- Describe how s/he walked the scene looking for road defects or other factors that might have caused the crash.
- Explain terms of art or special vocabulary being used during testimony.

These areas of testimony are like "credibility coupons" the witness can use as much as needed. In every case there are examples of investigative procedures that show professionalism, fairness and compliance with standard departmental policy. In a case where the officer is offering an opinion, it may be more effective to devote 80% of the testimony to establish

credibility and only 20% to the details of the opinion.

By taking the time during witness preparation to develop these areas, you establish and highlight the witness' credibility and make the witness' ultimate opinion even more persuasive.

**Reprinted from Between the Lines, Volume 8, Number 1, Spring 1999, with permission of the NDAA's National Traffic Law Center.*

John B. Kwasnoski is Professor Emeritus of Forensic Physics at Western New England College, Springfield, Massachusetts after 31 years on the faculty. He is a certified police trainer in more than 20 states. Professor Kwasnoski has reconstructed over 1,000 crashes, including multiple and single vehicle, pedestrian, motorcycle and train crashes. Professor Kwasnoski authored "From Crash to Courtroom: Collision Reconstruction for Lawyers and Law Enforcement" and "Crash Reconstruction Basics for Prosecutors" a monograph for the NDAA's National Traffic Law Center.

Patricia Gould was the first Director of the National Traffic Law Center, a program of the American Prosecutors Research Institute/National District Attorneys Association. In this position, Ms. Gould established an authoritative clearinghouse and developed trial advocacy training programs for prosecutors regarding impaired driving, drugged driving and vehicular homicide.



John
Kwasnoski

Kwasnoski Teaching at Lethal
Weapon Course in 2009



Idaho Traffic Law Update

State v. Kramer, (Ct.App.2011):

Kramer appeals his DUI conviction arguing the State failed to timely provide all evidence required under a discovery request. Kramer specifically objected to the Intoxilyzer 5000 certificates produced by the State the day before trial. In addition, Kramer argued the Confrontation Clause required the State to produce not just the certificates, but also provide live testimony regarding the certification and calibration of the breath testing equipment.

First, the Court of Appeals held Kramer failed to show any prejudice by the late disclosure of the Intoxilyzer 5000 certificates. Kramer had an entire year to file a motion to compel or take independent steps to obtain the certificates directly from the Idaho State Police. Defense counsel was aware a breath test had been conducted and if they intended to call an expert to challenge the accuracy of the instrument, Kramer could have done so without the certificates. The Court concluded that Kramer could not genuinely claim surprise because, “the very nature of DUI indicates a breath test.”

Second, Kramer’s contention that because the Intoxilyzer 5000 certificates are prepared in anticipation of trial they are testimonial, thereby triggering the Confrontation Clause also failed. The Court found the certificates were not testimonial. Citing recent U.S. Supreme Court decisions in *Melendez-Diaz* and *Bullcoming*, the Idaho Court of Appeals held the Intoxilyzer 5000 certificates were not direct proof of an element of the crime in DUI, as were the blood alcohol analysis reports in the cited cases. The certificates here support the accuracy of the instrument which in turn supports another fact that can establish guilt (blood alcohol content).

Disclaimer: This newsletter is a publication of the Idaho Prosecuting Attorneys Association, Inc. Readers are encouraged to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Idaho, IPAA, or the Idaho Department of Transportation. Please send comments and suggestions to jared.olson@post.idaho.gov.

The Court concluded the certificates are not an element of proof. Idaho Code § 18-8004(4) does not require the certificates, including solution documentation, be admitted in order to obtain a conviction. Furthermore, the Court explained that the certification standards for breath test instruments in Idaho are not tied to the prosecution of any particular person. Therefore, the Intoxilyzer 5000 certificates are not testimonial and their admission does not implicate the Confrontation Clause.

State v. Stewart, (Ct.App.2012):

Stewart was arrested driving on a suspended license and not being insured. The officer requested a tow truck to impound Stewart’s vehicle and performed an inventory of the car. He found a small metal tin containing marijuana and methamphetamine. Stewart admitted to the drugs, stating she did not use meth, but instead sold it. Stewart filed a motion to suppress arguing the inventory search was improperly conducted.

Stewart argues the inventory search was invalid due to violating the Garden City Police Department’s impound policy because (1) the impoundment was not authorized because the vehicle would not have been left unattended on the street or unsecured; and (2) the officer did not obtain the proper approval prior to having the vehicle towed?

The Court found the impoundment and inventory search complied with reasonable department policies and was objectively reasonable. Inventory searches are a well-recognized exception to the warrant requirement, but they are not valid unless the police first obtain lawful possession of the vehicle. First, Stewart’s vehicle was not parked in a private driveway, without objection of the property owner, and without risk of damage. Instead, she was parked in a gas station open to the public. In addition, the vehicle was uninsured. Thus, before the vehicle could be removed, a driver would need to obtain insurance coverage before moving the vehicle. Therefore, the officer had legitimate rea-

sons to believe Stewart’s car was at risk of theft and/or damage. The officer testified it was a high-crime area. Together these factors make the officer’s decision objectively reasonable.

Second, the officer testified his watch commander had given him standing approval at the beginning of the shift to tow vehicles as long as it was within policy. The Court said they believed this “standing” approval was not within the contemplation of the policy, but regardless this factor did not render the impound and subsequent search unreasonable under a Fourth Amendment analysis. The inventory search was still reasonable based on the factors listed above.

Hubbard v. ITD, (Ct.App.2012):

Hubbard appeals her license suspension for failing a breath test arguing it was not conducted in conformity with the standard operating procedures and the instrument was not functioning properly when her test was administered. The issues raised by Hubbard relate to various “performance verifications” conducted on the LifeLoc FC20. Hubbard argues the performance verification conducted prior to her breath test yielded a result of 0.042 for a solution with a target value of 0.083. However, the performance verification conducted within an hour after her breath test was 0.081, well within the acceptable range of the 0.083 test solution. The Court held this complied with the standard operating procedures of requiring a performance verification within 24 hours of Hubbard’s test.

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Old Teton
County
Courthouse



WEB SITES

Idaho TSRP

www.TSRP-Idaho.org

Idaho Prosecuting Attorneys Association

www.IPAA-prosecutors.org

ITD Office of Highway Safety

<http://itd.idaho.gov/ohs/>

Idaho POST Academy

www.post.idaho.gov

National Highway Traffic Safety Administration

www.nhtsa.gov

National Association of Prosecutor Coordinators

www.napc.us

NDAA's National Traffic Law Center (NTLC)

www.ndaa.org/ntlc_home.html

Idaho State Police Forensics

www.isp.idaho.gov/forensic/

Alcohol Beverage Control

www.isp.idaho.gov/abc/



Idaho Traffic Law...Continued

Hubbard next contends the LifeLoc FC20 should have been taken out of service after yielding the 0.042 result, but the Court noted the SOPs do not require this to occur. Hubbard argued in the alternative the testing equipment was malfunctioning because of the wide variance between the 0.042 result and 0.081 result. The Court of Appeals agreed with the district court in finding the performance verification results other than the one obtained in conjunction with Hubbard's test were not relevant. Hubbard failed to meet her burden to prove the testing equipment was malfunctioning. The Court used the example of not being able to discern "whether the .042 reading was the result of an actual, purposeful performance verification test, or some accidental or uncontrolled activation of the equipment." Hubbard's license suspension was upheld.

State v. Randle, (Ct.App.2012):

Randle argues all evidence of his Felony DUI conviction must be suppressed because the officer seized him without reasonable suspicion when the officer parked behind Randle's vehicle in the parking lot, left the patrol car's headlights on, approached Randle's car, and knocked on the window.

Randle argued he was "trapped" in his vehicle when the officer parked behind him and tapped on his window. Randle said he had to respond to the implied request by either rolling down his window or opening his door. Randle referenced the *Bostick* case to support his argument,

wherein the court held a bus passenger was "trapped" on a bus. The Court said Randle's case was readily distinguishable from *Bostick* because Randle was in the driver's seat of his own car, not a passenger on a bus. There was also no evidence Randle could not leave the parking lot. The officer parked his patrol car two car-lengths behind Randle, left his headlights on and walked up the car. The district court had found Randle could have backed up and driver away from the encounter without running over the officer. The officer also did not restrict Randle's liberty to ignore the officer's presence by approaching Randle's vehicle and tapping on the window.

In addition, the Court rejected Randle's argument he was seized due to the officer's patrol car headlights illuminating Randle's vehicle. The Court citing *Baker* said "an officer is not constitutionally required to choose between a consensual encounter in the dark or turning on a spotlight and thereby effectuating a detention that may not be supported by reasonable suspicion."

The Court concluded the use of the patrol car headlights are for officer safety and were even less intrusive than the officer's use of a spotlight in *Baker*, wherein it was not found to constitute a seizure. The totality of the circumstances led the court to hold that a reasonable person would have felt free to decline the officer's request, therefore the officer did not seize Randle within the meaning of the 4th Amendment.

****Click on Case titles to read the cases****

Training & Conferences Notice

(Click on Course Names for More Information)

Idaho Highway Safety Summit — May 7-8, Boise, Idaho

Idaho DRE School — May 14-25, Lewiston, Idaho

Crash to Courtroom Training — May 21-23, Meridian, Idaho

2012 National Lifesavers Conference — June 14-16, Orlando, Florida

LAST CALL

The 2012 Idaho Highway Safety Summit is fast approaching. This year it will be back in Boise on May 8th at the Boise Center on the Grove. The Idaho Transportation Department's Office of Highway Safety has been busy at work in planning the event.

The theme of this year's summit is the "One Team" approach successfully modeled by Idaho's Law Enforcement Liaison (LEL) officers. In the past few years, Idaho's LEL officers have crossed city, county and state borders to help drive down the deaths and injuries on our Idaho roadways. Our goal remains to strive *Towards Zero Deaths*.

The Idaho Highway Safety Summit is a great way to build partnerships among all disciplines and partners in traffic safety. I encourage you to mark the date and attend.

The following programs are on the agenda:

- One Team Approach to Traffic Safety
- Idaho Traffic Case Law Update
- Prosecuting the Hard Core Drunk
- Motorcycle Safety - So Much More Than a Helmet Law
- Drug Recognition Expert Program in Idaho
- Prosecuting Commercial Vehicle Issues
- Examining the Health & Safety Issues of Designer Drugs
- Speed Limits-- What is the Right Limit?
- Forensics - What's Up With the Process?
- Distracted Driving - There's A New Law in Town



I look forward to attending this year's Idaho Highway Safety Summit and learn how I can do my part to be a member of "One Team." I thank each of you for your readership and doing your part to help Idaho *Towards Zero Deaths!*

Best Regards,

-- Jared Olson, TSRP



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This material was developed through a project funded by the Idaho Transportation Department's Office of Highway Safety.

Idaho Transportation Department

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WWW.TSRP-IDAHO.ORG**