

Homer Simpson and Drunk Driving

Written by Alex

Sunday, 13 December 2009 01:48 - Last Updated Tuesday, 15 March 2011 06:10

In MA it is not a crime to drink and drive. It is a crime to operate under the influence- that is that alcohol impairs your ability to drive. With Melanie's law the punishment for OUI has significantly worsened. You should never drive impaired for a variety of safety as well as legal reasons. OUI are treated more seriously than nearly any other type of crime.

If Homer lived in MA, his driving after drinking would not be a cartoon. The police are now looking for impaired drivers and once they smell alcohol on your breath it is extremely likely that you will be arrested. The police are not like Chief Wiggums. They are trained in how to conduct field sobriety tests. There is a manual and classes that the officers take. You choose to take or not taking these tests. If you choose not to take the tests, your refusal can not be used against you in court. In addition, the test have issues if they are not in a well lit area, on an even surface, if the ground should not be slippery and other reasons. The officer is supposed to ask if there is any reason why you can not do the test. Reasons can include physical conditions, obesity and other reasons. Some people just do not do well on many of these coordination tests. Homer, if he was smart, would most likely not do these tests based on his overall lack of coordination. In addition, his weight may make the tests not possible to complete. Most people have a variety of reason why they do not do well on the test including being nervous of having a police man deciding whether to arrest you or not based on how well you do. Most eyes tests (HGN) and Portable Breath Tests(PBT) can not be used against you in trial. There are a lot of defenses to the tests that can be introduced at trial.

Breath Tests are much harder to decide whether t take or not and can be harder to defend. MA is now a per se state for BT of .08 or above. The state has hoops to jump through and is not always able to actually get the test results in for a variety of reason. A big issue is whether you should take the breath test or not. The state has to provide you a written explanation of what happens to your license if you take the test or not. A big factor is whether you know you will pass or fail the exam and whether this is your first or subsequent OUI. In MA now there is a lifetime look back and the penalties for first and subsequent offenses are high.

Homer should not drive even after having one Duff beer. He has a prior record of OUI's. He needs his license to get to work and it is not worth it to take the risk. The police have to have a reason to stop him -whether a civil infraction such as speeding or another reason. However, the police are looking hard for OUI drivers and can many times find a minor reason to pull some one over. An attorney can try and suppress or exclude the stop and seizure along with statements that are made. Their are motions to dismiss based on lack of probable cause to arrest. Homer would want to have a comprehensive discovery motion to find out if there is a videotape, field notes, supplemental reports, training materials and so forth. Homer should probably refuse to do the field sobriety tests and exercise his Miranda rights. Depending on

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how much he had to drink and other factors he may want to choose not to take the breath test-even though there are license issues. His refusal to take the breath test and field sobriety tests will not be used against him at trial.