

Shut Up

By Keith J. Staten

The encounter with a peace officer should be a listening experience. Against all instinct you may have to be heard, it will benefit you most to shut up and listen. Although the officer has sought to engage you, it will be far more useful to your case to remain calm and try to observe what is going on around you.

The first encounter will be difficult but let the cop start the conversation. You can be sure that they will tell you what they want you to do. Listen carefully before you decide to engage in conversation. Realize that once an officer detects an odor of alcohol or states that they do you will be tested. The first thing they will want to discuss with you is if you have ingested alcohol that evening. This is the first trick question. If you say yes, you will be tested, if you say no, you will be tested.

You wouldn't think that a logical question like "Why did you stop me?" could cause a problem, but it can. If you answer with a question or fail to answer the question, you will be tested.

Since no matter what you choose as your answer to the "Have you been drinking?" question you will be tested, you should be prepared for what is coming next.

At some point, the amount and when you drank will be asked of you. In almost all cases, it would be beneficial to have ingested alcohol right before the stop. If you must say something, just say right before you stopped me. Most of the time you may be able to use the Rising BAC Defense and recent alcohol consumption can help to establish it. The officer does not need to hear your entire drinking pattern for the evening. This should be saved for your counsel. Perhaps the best answer to the question "Have you been drinking" is "I have drunk alcohol." Any more than that can hurt your case later.

If the officer pursues the questioning you should inquire if he is investigating you for violating VC section 23152. Now you may not be able to remember this so substituting "a DUI" for the vehicle code is ok. If you are under an investigation for DUI, any questioning without being detained may result in answers that will most certainly be used against you later.

The bottom line is, the more you say at the scene about what you have been drinking over the last 6 to 7 hours, the worst position you will be in later. The problem is that if you test, and you should, you don't know what your level will be. You need this information in order to know what to say about the drinking pattern. You will **never** have this information before being asked questions on your drinking pattern.

The advice of keeping quiet applies to where you have been and where you are going. First, that may generally be none of their business, but it could harm your case later.

Now there are some things you should point out when this encounter occurs. If you are under 21 years old, you should request the Preliminary Alcohol Screening device (PAS) and a blood test. You can refuse to do the Field Sobriety Tests (FST). If you are over 21, you should refuse all FST's and only agree to a PAS test if you are 100% sure you have **not** ingested alcohol in the last 2 hours and had no more than 2 drinks. As an adult, you may refuse the PAS as it is designed to detect the presence of alcohol only for adults. Based on the amount indicated with the PAS device, the officers will arrest. If you agreed to do the FST's and, in the officer's opinion, failed the tests, the officer can use those results, the PAS results, and the objective symptoms of alcohol (smell of alcohol, bloodshot eyes, unsteady gait, and slurred speech) to have probable cause for arrest.

If you should ever find yourself on the side of a road or street with the vehicle disabled, your right to remain silent should be invoked again.