

The Breathalyzer Says I Wasn't Drunk, But I Was Arrested Anyway!?

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After a party this past holiday weekend, I got pulled over at a DWI checkpoint and blew a .07 blood alcohol content. Although I know that New Jersey has a .08 legal limit, I was arrested anyway. What should I do?

A.M.

Dear A.M:

The first thing you should do is obtain advice of an attorney who specializes in DWI law.

Although your Blood Alcohol Level is below the legal limit of .08, you could still be convicted of "Driving Under the Influence" rather than "Driving While Intoxicated".

The DWI law in New Jersey has two (2) components. This first is based solely upon Blood Alcohol Level. If your Blood Alcohol Level (BAC) is 0.08 or higher you are guilty of a per se DWI offense based upon your BAC. This could lead to a three (3) month loss of license. If your BAC is equal to or in excess of 0.10, you could lose your license for seven (7) to twelve (12) months, and other fines and penalties would also be possible.

Even though your Blood Alcohol Content is below the per se (.08) amount, the State can still establish that you were Under the Influence. The State would use the Police Officer's observations of your performance of sobriety tests, and any evidence of erratic driving or motor violations to prove that you were under the influence. Being "under the influence" means that a driver's judgment or control is so impaired that it would be improper to drive.

Since a ticket was issued with a BAC less than 0.08, it must be assumed that the Police Officer involved will seek a DWI conviction based upon the “Under the Influence” part of the statute. It is imperative you contact a lawyer who is knowledgeable in DWI defense law.