What should I do if I get pulled over at a Holiday DUI checkpoint?

December 6, 2012 | by Einhorn Barbarito

Dear Ask the Attorney:

I am being invited to a number of office and industry holiday parties and usually have cocktails at these events, though not to excess. I noticed recently that there are a lot more police on the road during the holidays and that they have announced a number of DWI checkpoints being set up in my area. What should I do if I get stopped by the police?

—JG

Our Guest Blogger is Michael R. Ascher, Esq. Mr. Ascher is a partner in the firm and is engaged in a litigation practice handling both criminal and complex civil matters. His practice includes all categories of criminal cases including drunk driving defense, sex offenses, drug and white collar crimes, computer crime, conspiracy, fraud & theft cases and matters involving the Division of Youth and Family Services (DYFS).

Dear J.G.,

The use of DWI or DUI Checkpoints, also known as Sobriety Checkpoints is not unusual, but during the holiday seasons these checkpoints become more plentiful for the reasons you stated above – more holiday parties.

Obviously, I have to caution you not to drink at these parties at all. However, should you get stopped at a DWI checkpoint at all, the police will stop each driver only long enough to ask simple questions and to check for signs of impairment, such as alcohol on the breath, slurred speech and glassy or blood-shot eyes. If you show no signs of intoxication, you will be allowed to drive away.

However, if the officers have any "probable cause" for believing that you are intoxicated, they will direct you over to the side of the road for a field sobriety check and a breathalyzer test. So if you are directed to remain for further investigation, here's some do's and don'ts you should follow.

DO'S (AT THE DUI Checkpoint):

•Do have all your documents in your hand before the officer arrives at your car otherwise the officer may claim you fumbled for your documents.
•Do open your window immediately when you stop your vehicle after being directed by the police to combat the claim the car had a strong odor of alcohol.
•Do be polite and remain calm: A good attitude may result in no ticket if you are a borderline case.
•Do tell the police of all your medical problems and any reasons you cannot perform the roadside tests. This will assist your attorney in arguing the tests are not relevant or that they may not be reliable on the issue of probable cause or intoxication. Inform the office if your footwear will cause a problem when you take the tests (e.g. high heels, open crocs).
•Do listen to all instructions given by the police and have the officer repeat them. Then follow those instructions. Many drivers are too eager to start the roadside tests before instructed. This permits the arresting officer to testify that you were unable to follow directions due to intoxication. Furthermore, if your arrest is videotaped, any mistake in following the officer's instructions will be recorded and used against you.

DON'TS (AT THE SCENE)

•Don't be nasty or argue with the officer when stopped: a polite attitude may help you in a close case, based upon your performance on roadside tests.
•Don't volunteer information: what you say can and will be used against you, however, once you receive Miranda Rights, you may remain completely silent. Your silence cannot be used against you.
•Don't forget to tell the police of your physical and medical conditions which may make it difficult or impossible for you to take the roadside tests: By telling the police at the scene, you are informing them of your inability to succeed by discounting their basis to subject you to the breath test.
•Don't refuse the breathalyzer test/NEVER refuse the test!: Once you are given the breath test rights under the New Jersey Implied Consent Law, you must take the test. There is no exception to that rule.

If you refuse to take the test or do not unequivocally agree to take it, a separate charge will be filed against you for refusal. A refusal charge carries with it the same fines, penalties and license loss of a DWI violation itself. Although you cannot be jailed for a refusal charge, you can be found guilty of both a DWI and refusal charge.

- Don't ask for a lawyer before you agree to take the test: You have no right to an attorney in your breath test rights. Continuing to ask for an attorney will be deemed as a refusal. Police will read an additional paragraph to you which informs you that you have no right to have any attorney advise you regarding taking the test. Listen to the instructions in that paragraph and take the test.
- Don't forget to ask for your own independent test: This will create a legal issue to potentially keep out the breath test results out of your case.

If you are arrested for failing the breathalyzer test or field sobriety test, please try to remain calm. You need to not say anything except to ask to speak with an attorney. Find an attorney who is knowledgeable in DWI/DUI law because he/she can determine if any number of things which occurred during the checkpoint, the tests, or the arrest violated your rights and thus potentially mitigate or negate the charges.

—Michael R. Ascher, Esq.

"Ask the Attorney" is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.