

Beat DMV Plan for Administrative Per Se Hearing

DMV Must Prove:

- (1) That the officer had probable cause to believe you were DUI;
- (2) That you were [lawfully stopped and] lawfully arrested for DUI; and
- (3) That you were driving with a BAC of .08% or higher.

Defense Number 1: _____

Defense Number 2: _____

Defense Number 3: _____

Defense Number 4: _____

Objecting to DMV's Evidence

Exhibit Number	Name of Document
	DS 367
	Other police report (if any)
	Accident report (if any)
	Breath or Blood Test Report (if any)

When the hearing officer asks if you have any objections, state

"Yes. I object to the admission of the DS 367 form marked as Exhibit _____ on the grounds that it contains hearsay, double hearsay, lacks foundation and states legal conclusions of the officer.

[I also object to the police report marked as Exhibit _____ and the accident report marked as Exhibit _____ on the grounds that it contains hearsay, double hearsay, lacks foundation and states legal conclusions of the officer.]

More specifically, I object to the use of any PAS or chemical test results on the ground that there has been no showing of scientific foundation under either Title 17 or *People v. Adams* that the officer was competent and qualified, that (s)he administered the test properly or that it was in proper working order at the time of the test."

Cross-examining DMV's Witnesses

Witness Number 1: _____

Defense Number	Point to Make	Questions to Ask
(examples) 1. No lawful arrest	Stop was illegal because no traffic was impeded.	"Officer, you're trained to write a complete report, right? To include everything relevant to the incident? And you prepared a complete report in this case? You included everything in it that you felt was relevant?" You wrote down that it was 2:00 a.m., right? On a deserted stretch of Old Route One? Mine was the only car on the road, right? Or you would have written down that other cars were there? Because that would have been relevant to your report?
2. No driving	Never observed me driving.	"Officer, when you arrived on the scene, my car was already parked, wasn't it? You didn't observe who drove it? It could have been me or someone else? You can't testify under oath that I drove the car, can you?

Witness Number 2: _____

Defense Number	Point to Make	Questions to Ask

Presentation of Your Case

Witness: _____

Defense Number	Point to Make	Questions to Ask or Testimony to Give
(example) 1. No lawful arrest	Stop was illegal because no traffic was impeded by pausing at the light.	"Though I may have paused a few moments after the light turned green to make sure it was safe to go, mine was the only car on the road. There were no cars behind me or coming toward me."

Closing Argument

“To sustain the administrative suspension of my driver’s license, the Department has the burden of proving four things:

- (1) That the officer had probable cause to believe I had violated the drinking/driving laws;
- (2) That I was lawfully arrested for DUI; and
- (3) That I was driving at a time when my BAC of .08% or higher.

“The Department has failed to meet its burden of proving Issue Number _____ [and Issue Number _____].

As for Issue Number _____, _____

As for Issue Number _____, _____

[Here’s a sample closing argument for the common defense of Illegal Stop]

“As for Issue Number 2, that I was lawfully arrested for DUI, the Department has failed in its burden to show a lawful arrest because the underlying stop was illegal. There can be no lawful arrest following an illegal stop. Here the officer justified the stop saying I impeded traffic under Vehicle Code section 22400(a), but it is clear from the DS 367 [or from his testimony] that my car was the only one on the road. There cannot be a valid stop for impeding traffic without some traffic somewhere to impede. And the officer’s car doesn’t count. Every appellate case in California that has upheld a violation of 22400 has done so when cars have actually been affected by the stopped or slow-moving car. Because the stop was illegal, the resulting arrest was, too. Therefore, the Department has failed to meet its burden of proving Issue Number 2, a lawful arrest.

“Accordingly, I request that the Department set aside the suspension of my driver’s license.”