PROVING EXIGENCY/EVIDENCE LOST

WHAT EVIDENCE WOULD BE LOST IF A WARRANT WAS OBTAINED?

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|  | Need evidence of impairment contained in the body closest in time to driving. |
|  | Alcohol dissipates from the body with every breath and minute that passes. Generally alcohol dissipates at approximately a .015/hr. |
|  | It is unknown how much the person had to drink including the start and stop times to be able to determine if a measurable BAC would remain if a warrant is obtained. |
|  | A person’s metabolism of alcohol cannot be known as it relies on factors such as weight, gender, alcohol tolerance. |
|  | It is common for a person to combine alcohol and other drugs and it is unknown what substance or combination of substances the individual consumed. |
|  | Drugs affect the body differently and leave the body at different rates. |
|  | Drugs such as marijuana cross the blood/brain barrier very quickly and THC, the active metabolite of marijuana, cannot be accessed once it moves out of the blood into the brain. |
|  | In the case of urine, it is unknown what drugs the person consumed and there are some drugs that if they appear in their parent (non-metabolized) form, will give an indication of recency of use. |

**HOME ENTRY CONSIDERATIONS:**

|  |  |
| --- | --- |
|  | Need evidence of impairment contained in the body closest in time to driving. |
|  | Preservation of evidence – using more drugs/alcohol if suspect goes back into the home will permanently alter evidence. |
|  | State cannot rely on retrograde extrapolation (determining a BAC range earlier in time from a known BAC later in time) if there is post driving drinking. |
|  | Lose observational signs of impairment if suspect goes into the house and cannot be seen i.e. bloodshot/watery eyes, odor of alcohol, indicators of drug impairment, field sobriety tests. |

**If a warrantless home entry is necessary, do not testify that you did not think they would provide a breath test – it is unknown if the person will cooperate later.**

**CRASH CONSIDERATIONS:**

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| --- | --- |
|  | How long did it take to arrive at the crash scene? |
|  | Was the suspect contacted at the crash scene? Where was PC established? |
|  | Was the defendant transported to the hospital? How long did that take? |
|  | Is the hospital giving the suspect any medication (concerned about preservation of evidence)? |
|  | How long until able to contact suspect if transported to the hospital? |
|  | How long until someone is available to draw blood? |

**Have someone working on warrant/affidavit while obtaining exigency draw if possible.**

PROVING EXIGENCY - WARRANT

HOW LONG WOULD IT TAKE TO GET A WARRANT **AT THE TIME OF THE INCIDENT**? BE PREPARED TO ESTIMATE THE FOLLOWING TIMES AT A FUTURE MOTION TO SUPPRESS:

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| --- | --- |
|  | Distance from location to write **AND** print warrant and affidavit? Is it possible to do on car computer and if so would it take longer? |
|  | Other officers available to assist in gathering information and/or watching suspect? Staffing levels? |
|  | Delay due to multiple officers in different locations having information needed for the affidavit? |
|  | How detailed is information needed for an affidavit/warrant? |
|  | Do witness need to be contacted to put information in affidavit? |
|  | Is there any down time that a warrant can be worked on? (i.e. at the hospital if applicable) |
|  | How long to get warrant and affidavit reviewed/approved by supervisor? |
|  | How long to contact district attorney and get warrant and affidavit reviewed/approved? |
|  | How long to contact judge at that time of day/night? |
|  | Is it a telephonic/hybrid process? Where will the warrant and/or affidavit be printed and how long would it take? |
|  | Is it a standard warrant/affidavit? How far is judge located to sign warrant (and then back to suspect)? |
|  | Where is blood to be drawn in relation to where suspect is? |
|  | Who would draw the blood and how long does it generally take for them to be available? |
|  | What is the estimated time to get the sample? |

**Be prepared to talk about telephonic warrants AND standard form warrants!!!!!**

**HOME ENTRY CONSIDERATIONS:**

|  |  |
| --- | --- |
|  | What manpower needed to monitor exits of the house if a warrant was required? |
|  | Is it possible to apply for a warrant on scene? If not, why? |
|  | Where is the house located in relation to station? Judge? |

\*Prosecutors: see State v. Andersen, 361 Or 167 (2017) where the Supreme Court refers to the time and specificity needed in obtaining warrants.