

1 Q. Do you think people hungover would do  
2 poorly on this test?

3 A. Perhaps.

4 Q. The next one we have here is the one-leg  
5 stand, correct?

6 A. That's correct.

7 Q. And you didn't give this test from a  
8 manual either?

9 A. No, I did not.

10 Q. And this test, can we both agree that  
11 you're not supposed to give this to fat  
12 people?

13 A. It's a test for people -- if a person  
14 has problems with back, legs, which he did not  
15 state that he has.

16 Q. But you didn't write that down in your  
17 report.

18 A. I wouldn't have gave the test if he  
19 would have said that.

20 Q. And it's not supposed to be given to  
21 people over 60 years old either.

22 A. I suppose.

23 THE COURT: Is that over 60?

24 MR. MADSEN: Yes.

25 Q. And not supposed to be given to people

1 that may affect their balance?

2 A. Correct.

3 Q. And this is typical for sober people  
4 too, isn't it?

5 A. For some, not -- a very minimal amount.

6 Q. A very minimal amount?

7 A. Yes.

8 Q. So you're trained -- you have National  
9 Highway Traffic Safety Administration training,  
10 right?

11 A. I believe that's who administered that,  
12 yes.

13 Q. Do you remember if they told you that  
14 that test is only 65 percent, correct?

15 A. I remember a number, I don't remember  
16 the exact number.

17 Q. But you remember there was a number.

18 A. Yes.

19 Q. So did you demonstrate this  
20 one-leg-stand test for him?

21 A. Yes, I did.

22 Q. And then can you give me the  
23 instructions exactly as you gave them to him?

24 A. I told him I was going to check his  
25 balance again. I told him to stand up straight

1 with his arms at his side. I told him to begin.  
2 He was to lift one foot that you choose  
3 approximately six inches off the ground.

4 While you're in that position,  
5 you look at your raised foot. You keep it  
6 parallel to the ground. Keep your leg straight  
7 and you count in the following manner; one, one  
8 thousand, two, one thousand, three, one thousand  
9 and so on until I tell him to stop.

10 I told him not to stop the test  
11 until he was finished and I asked him if he  
12 understood. And he stated yes.

13 Q. And then he did the test?

14 A. Correct.

15 Q. And he didn't grab onto you for balance  
16 while he was doing the test, did he?

17 A. I was too far away. I wasn't right on  
18 top of him that he could grab me.

19 Q. He didn't try to reach to grab for you,  
20 did he?

21 A. No.

22 Q. And he never asked you to stop the  
23 test?

24 A. No.

25 Q. And his hands never touched the

1 ground?

2 A. No.

3 Q. And he didn't hop up and down, did he?

4 A. He put his foot down once.

5 Q. And he didn't fall?

6 A. No.

7 Q. And he looked at his toes during the  
8 test?

9 A. Yes.

10 Q. And how far is the foot supposed to be  
11 off the ground?

12 A. Six inches. Approximately six inches.

13 Q. Is that the heel or the toe?

14 A. The entire foot because it's supposed to  
15 be parallel to the ground.

16 Q. So that would be both the heel and the  
17 toe are supposed to be six inches?

18 A. Theoretically, yes.

19 Q. So let's go step by step. He took the  
20 test when you asked him to take it.

21 A. Yes.

22 Q. Not before.

23 A. Yes.

24 Q. Many times when you tell people about  
25 this test, they don't wait for you to start, do

1 they?

2 A. Some do. But he did not.

3 Q. Aside from the one time when his foot  
4 touched the ground, he kept his foot six inches  
5 off the ground?

6 A. Yes.

7 Q. Did he count out loud for you?

8 A. Yes.

9 Q. What number did he get to?

10 A. I believe it was 22.

11 Q. And why did we stop at 22?

12 A. People count slowly.

13 Q. What did you count to?

14 A. 30.

15 Q. And did he miss any numbers as he was  
16 counting to 22?

17 A. I don't believe so.

18 Q. So this test only has one clue.

19 A. No. There was a total of four possible.  
20 He had three out of the four. He was swaying  
21 while he was standing. And he raised his arms  
22 once.

23 Q. How far did he raise his arms?

24 A. Not that far.

25 Q. How far?

1 A. They came off of his side. And I told  
2 him to put them back on the side.

3 Q. But not more than six inches?

4 A. No.

5 Q. So you get done with all these field  
6 sobriety tests and you decide that you were  
7 taking him in?

8 A. At that point I was.

9 THE COURT: Counselor, I'm going  
10 to recess for about two minutes. Something I  
11 need to discuss with my staff.

12 (Brief recess.)

13 THE COURT: You may proceed.

14 BY MR. MADSEN:

15 Q. So after the PBT you decided you were  
16 going to take him in?

17 A. That's correct.

18 Q. So you handcuff him.

19 A. Yes, I did.

20 Q. You put him in the back of the  
21 cruiser?

22 A. Yes, I did.

23 Q. And you transported him?

24 A. To our station, yes.

25 Q. Did he make any statements during this