

One of the questions that I am most frequently asked is “what are my rights as a driver if I am pulled over and investigated in a DUI traffic stop?” The answer is as follows:

1. A driver has the absolute legal and complete right to remain silent at all times. Once a police officer comes up to your window they are probably going to ask you for your drivers license, registration, insurance card, etc. Request some of that type of basic information. I generally advise people to answer those type questions and provide that type of information; however, if the conversation from the officer goes toward “have you had anything to drink tonight? have you been drinking tonight? where have you been or where are you going tonight? when was the last time you had anything alcoholic to drink? how many drinks have you had tonight? how many beers do you think you had at the club? how many glasses of wine did you have with dinner?, etc”; that is when I advise somebody to invoke their right to remain silent unless they really want to speak with a police officer. In my experience the police officer at that point is engaging in subtle interrogation and trying to build a case for a DUI arrest. These questions are part of their investigation and a driver has the absolute right in those situations to not answer any questions. There is no such thing as a casual conversation between a driver and a police officer in a DUI traffic stop. A driver has the absolute, complete and legal right to remain silent at all times on the roadside.
2. A driver has the right to decline to participate in field sobriety tests. A driver does not have to take or attempt field sobriety tests. A driver has the absolute, complete and legal right to decline and refuse to engage or attempt field sobriety tests. Field sobriety tests are another method of interrogation and the officer is absolutely trying to build a case for a DUI arrest through the use of field sobriety tests. These balance tests (walk the line test or stand on one foot test) are generally designed for failure. A driver has the legal right to decline any and all field test if they choose. There is no mandatory requirement for anyone to take a field test. In the South Carolina DUI Reform Act of 2009, the South Carolina Legislature specifically provided that a motorist’s failure to attempt or take field sobriety tests was not a basis for charging or citing a person for “failure to obey a police officer”. Again, a driver in South Carolina has the absolute, complete and legal right to decline to attempt any and all field sobriety tests on the road side.
3. A driver who is arrested for DUI in South Carolina has the absolute, complete and legal right to refuse or decline a breath test. A motorist has to be informed both verbally and in writing that they have the right to refuse the breath test. A driver will be informed that their license will be suspended for six (6) months; however, there are other licenses available to the motorist during the six (6) month suspension period. The police officer offering the breath test will probably not inform the driver of this; however, a “temporary alcohol license” and a “route restricted license” are generally available to a person who has refused the breath test. Again, a driver in South Carolina has the absolute, complete and legal right to refuse a breath, blood or urine test. Additionally, a driver has the right to a hearing where they can contest whether or not the breath test was offered in accordance with SLED regulations in South Carolina Law. At that hearing the burden is on the State to prove that all regulations and procedures were followed correctly in the offering of the breath or urine test.
4. In addition to advising someone of their rights if they are pulled over and investigated in a DUI traffic stop, I always advise motorists to remember that they are most probably being both video and audio recorded during the stop. The police officer generally will have a microphone on their lapel or shirt collar, and their car will be equipped with a “dash cam”. Always assume that everything that you say or do is being both video and audio recorded. Attempts to “talk your way out of it” often times wind up being very incriminating when played in front of a jury. Generally, statements such as “I am almost home”, “Can’t you just cut me a break”, “I just leave 3 streets from here”. “Officer, I promise I will let my girlfriend drive the rest of the way home, etc.” don’t help. Additionally, a motorist arrested for DUI in South Carolina will be advised at the breath testing site that they are being both video and audio recorded for the entire procedure. The best advise I can give someone regarding audio and video recording in DUI cases is to always remember their right to remain silent.