

Probable Cause in a DUI Arrest Explained

Probable cause is a crucial component in any DUI or DWI investigation. All police officers must follow appropriate protocol when stopping a vehicle. This protocol includes having probable cause for the initial stop.

Probable cause, however, is not based on suspicion but on factual evidence. It refers to all facts and evidence that would make any reasonable individual believe that a crime has been committed, is being committed, or will be committed.

It must be noted that arresting an individual on reasonable suspicion to detain him or her for investigation is not the same as probable cause to arrest a DWI or DUI offender.

A police officer's initial observations of a driver's unusual behavior and driving behavior are not enough for an arrest due to probable cause, although they are sufficient in establishing reasonable suspicion for the initial traffic stop.

Probable Cause in Justifying an Arrest

Probable cause must exist and show that a crime took place and that the accused was involved or committed the criminal activity for a judge to issue a search warrant or warrant of arrest. In an arrest without a warrant such as a DUI/DWI arrest, it is important that the arrest meet the probable cause standard in order to be considered admissible in court.

At times, a DUI defense lawyer can establish that the officer arrested the driver with no probable cause. The DUI lawyer must then present the case to the trial judge, who, based on evidence, will then come to a decision. Conclusions from witnesses are not enough, as specific evidence is needed. Without proper evidence, the trial judge will dismiss the case.

Establishing Probable Cause

Often, but not always, a police officer establishes or determines probable cause to arrest a driver by the following methods:

- Observing the individual's impaired driving behavior
- Stopping the vehicle to question the driver
- Administering a SFST or standard field sobriety test
- Administering a PBT or preliminary breath test

The DUI Arrest

Should a police officer establish reasonable suspicion and probable cause, it is highly possible that a DUI arrest will take place. Should the arrest happen, the officer must then read your implied consent rights and advise you of your right to a lawyer.

The arresting officer will then request you take a blood, urine or breath test in order to get an evidentiary chemical sample from you and determine your BAC or blood alcohol content. Refusing to take a chemical test in Minnesota is considered a crime. Should you refuse to take a certain kind of test, you must be offered another test form.

Breath Tests

Typically, the two types of breath tests are the PBT or preliminary breath test, and the EBT or evidentiary breath test.

The PBT is a handheld test used only at the scene of the stop and before a DWI arrest is made. The PBT's sole results are not considered admissible in court, as it is not as reliable as the EBT. It simply helps officers determine whether there is probable cause to arrest the driver.

The EBT is administered at the police station after the arrest. The results of the EBT are admissible in court.

Challenging a DUI Arrest

There are many factors to consider when establishing probable cause of a DUI arrest, all the way from the time the vehicle is spotted until the DUI case is formally filed. The DUI charge can possibly be dismissed if a prosecutor is unable to establish a probable cause for a DUI arrest. It is up to the DUI lawyer to effectively challenge any flaws and mistakes that may exist during a prosecutor's presentation of the case in court.

About The Author

Douglas Kans is the founder of Kans Law Firm, LLC and an experienced DWI lawyer practicing in the Minneapolis/St. Paul area. To learn more visit <http://www.kanslaw.com>