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*"Team Diamond Got Me Off...
Again. I Love You Guys!"*

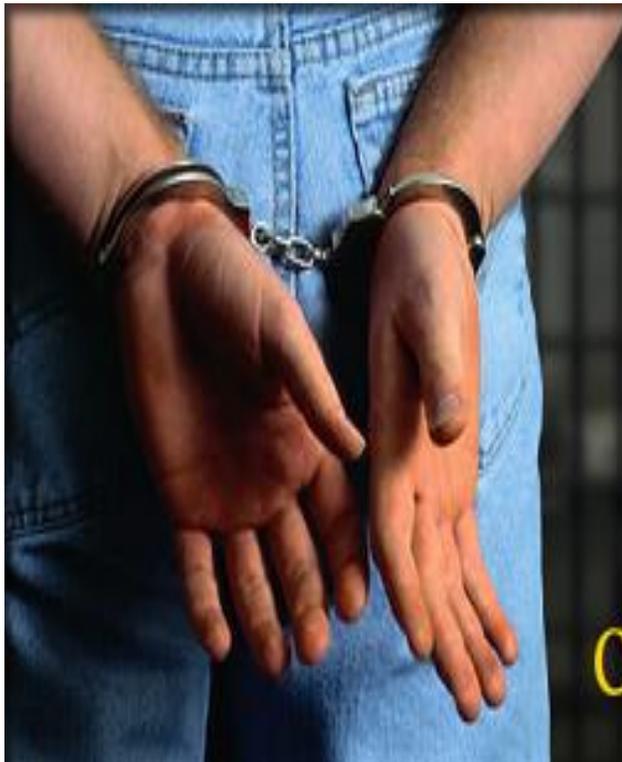
Steve G., Boca Raton (March 2nd, 2013)



En Español

Jason A. Diamond Scott A. Kistner
Diamond Diamond Kistner

CONFESIONS OF A D.U.I. ATTORNEY



Arrested for
DUI?
YOU NEED TO KNOW
YOUR RIGHTS... NOW!
Call for a **FREE** consultation.
(954) 967-9888 www.TrafficTicketTeam.com

Jason A. Diamond, Esq.

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INTRODUCTION

“LET HE WHO IS WITHOUT SIN CAST THE FIRST STONE”

I am not in the habit of quoting the Bible, but I have used this more than once when discussing driving under the influence (D.U.I.). Let me start with my own confession. I grew up in the “Just Say No” years and MADD lectures at my school. It was not an issue for me as I never really even drank until I went to college. After a few years of training, I learned how to drink like most college students. I was not exceptional in anyway, but come the weekend and I would probably be drinking.

Now for those of you who can answer NO to all of these questions, good for you. I don’t mean that sarcastically. I really am glad that you have been responsible and never put anyone’s life, including yours, in jeopardy. However, you are probably in the VERY small minority. Ask yourselves the following:

- Have you ever had a few beers at a sporting event and driven home?
- Have you ever been on a date and had a few glasses of wine and then drove home?

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- Have you ever gone to a party, drank too much, and driven home ... EVER?
- Have you ever been to a restaurant and had a few drinks and drove home?
- Have you ever been in the car with anyone who has done any of the above?

I can say that I have done all of the above at one time or another. Mostly in my younger days and more than once or twice. I confess this, not because I am proud to have broken the law. Nor am I proud that I could have killed myself or someone else. I confess this because I believe I am like most people. I have made mistakes. The main difference between me and the hundreds of D.U.I. clients I have represented is that I got lucky and they didn't.

Here I go again ... **“But for the Grace of G-d Go I.”** It is true. I learned a long time ago not to judge people who get caught committing crimes that I have committed myself. Or that I could see myself committing. So I don't get any nasty e-mails, let me state this now. **YOU SHOULD NEVER DRIVE A CAR AFTER CONSUMING ALCOHOL.** Now let's get back the reality we all live in where people do drive after consuming alcohol. This book is not being written as an excuse for people

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to go out and drink and drive. It is designed to inform the reader about the D.U.I. laws and how they affect you. It is also designed to educate you on what to do if you get pulled over for D.U.I. so hopefully your bad luck won't ruin your life.

Perhaps the worst part of obtaining a driver's license in the State of Florida for the first time, after waiting in the endless line at the Department of Motor Vehicles, is having to take a four hour DATA (Drug and Alcohol) course. It's a mandatory four hours – which means you can't whiz by it online. Most people think this course is a way for the DMV (Department of Motor Vehicles) to make some cash on the side. After all, it's all common sense, right? Unfortunately, it's not. In 2011, 9,878 people were killed and approximately 350,000 were injured as a result of drunk driving. So if you think that "it can't happen to you", think again. Not every situation is alike. There is a stigma in our society that if you are charged with driving under the influence you are a reckless driver without any regard for your safety or the safety of others. This is not always the case. During my 17 years as an Attorney, I've had 100s of D.U.I. clients who were charged with driving under the influence and were definitely not reckless drivers without regard for their peers. They were just like you and me, and could just as easily been you or me.

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Like I noted above, this eBook is designed to help you understand what the law defines as driving under the influence, what to do if you are pulled over by an officer who suspects that you are intoxicated, and what you can do to fight back after you've been charged with driving under the influence. If you have any questions or you need our help, you can call our office for a free consultation at (954) 967-9888 anytime. Enjoy.

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CHAPTER I.

One of the most common questions I am asked is, “should I take the breath test?” Or put another way, “should I blow?” This question is not an easy one to answer, but I will try. There are two ways to be convicted of D.U.I. in the State of Florida. The first one is to be caught while in control (not necessarily driving) of a motor vehicle to the extent your normal faculties are impaired. The second way is to be in control of a motor vehicle while your blood alcohol level is .08 or higher. Lets address the second way since that is what has to do with blowing. BAC, or blood alcohol content, is measured by the amount of alcohol that has been absorbed into your blood stream. The best way to test this is to draw actual blood. But since that is not feasible and the results take time, the police use a breathalyzer. This machine samples the air in your lungs. The air in your lungs will contain some of the alcohol that has been absorbed into your blood. The machine uses some pretty fancy math and can estimate your BAC through the air sample you provide when you blow into the machine.

If you blow over a .08, you are going to have to convince the jury that the machine was not working or something else caused the machine to say you have a .08 BAC. If you don't blow, that fact can be used against

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you in Court. So what to do? Before I tell you the advice I give friends and family, you need to understand a few more things about the whole D.U.I. world.

When you are being asked if you will submit to the breathalyzer, you are already under arrest. I will go into further detail about this below, but you will not be un-arrested if you say "yes, I will blow." Whether you agree to blow or not, you are going to jail for the night and will spend the next few hours in a cell. Even if you blow under a .08, you are still spending the night in jail. They will assume you are on other drugs. Thus, I always tell friends and family the following: if you have had **NOTHING** to drink and the cop asks you to blow, do it. Why lose your license for no reason? In fact, if you are on drugs, you can always point to the .00 BAC test and say you were fine. **BUT**, if you have had more than one drink, do not blow. Why give them evidence against you? Even if you blow a .06, you can still be convicted of D.U.I. under the first way noted above. If you have had one drink, it's up to you. If you are 6'4" and ate dinner with one beer two hours ago, yes blow. If you are a female, 5' tall, have not eaten all day, and had a glass of wine, you probably should not blow. To understand this better, we need to discuss the whole D.U.I. process.

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PART 1.

Let me set the stage, as I have read thousands of police reports for D.U.I., so you know what you are up against. The Officer is going to say that the reason he pulled you over was because you “failed to maintain a single lane.” The reason he does this is that it is the number one sign of impairment on the NTSB list of Signs of Impairment. This way, he can tell the jury this fact. Even if he pulls you over for running a red light, he will probably put “failure to maintain a single lane” in his report. He will then say that when he approached your car he “noticed the smell of an alcohol emanating from the driver’s window.” Of course, this is usually not true for two reasons. First, alcohol has no odor. It is what was mixed with alcohol that he smells. Second, unless he is part dog, he cannot smell alcohol from your window on I-95 while cars are flying past with the wind blowing. Regardless, he is going to say he does. Then he is going to ask you if you have been consuming any alcohol. The answer to this question will make or break you so pay attention. Your answer should **ALWAYS BE NO**. “Oh, but Mr. Diamond, what if I only had one beer, I know I will blow under a .08, why not tell the truth?” Because if you admit to 1 beer, he will assume you are lying and you had 3 beers. If you say 2 glasses of wine, he will assume you had 4. At this point he will be arresting you for D.U.I. regardless of what happens next. Thus, never admit to having any

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The advertisement features a sunset cityscape background. On the right, three attorneys are shown: two men and one woman, all in professional attire. A pink ribbon logo is visible in the top right corner. Social media icons for Facebook, Twitter, and Google+ are located in the bottom left. A button labeled 'En Español' is in the bottom center.

drinks. If he says he can smell alcohol, tell him you don't know what he's talking about. If you really reek, tell him you were in a restaurant and maybe that is what he smells. Or that you just brushed your teeth and used mouthwash, but do NOT admit to drinking.

Okay, so you said you had nothing to drink and he says "listen, I don't want to bust you, just tell me the truth and I will let you go. If not, I need to do more investigating to quell my suspicions." YES COPS CAN LIE TO YOU. Do not admit it or now you are the liar and you will be on a fast track to jail. And he will note your lying on his police report. He will than ask you to get out of the car.

PART II.

When you get out of the car, start acting like your life depends upon it, because you are on camera and you are being recorded. The whole time he has been speaking to you, he has been wearing a microphone on his shirt. He is playing the part of the professional concerned cop. You have hopefully been playing the part of the law abiding citizen. But now that you are out of the car, you are being videotaped (from his dashboard camera) and recorded. The cop is going to be performing for the jury. In other words, he knows a jury might be watching this tape a few months from now, so he is going to be polite and professional. But he knows he's



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on tape. You are not supposed to know that, so don't acknowledge that fact. However, this is your opportunity to show the jury how sober you in fact are at that moment. You also get the benefit of "pretending" later than you did not know. Thus, we can show the jury how the cop is performing and you were just being yourself because you did not know you were on camera.

So, you get out of the car. Be careful not to lean on the car, he will say you could not steady yourself if you do. Stand straight and be polite. Say something like "Officer, I don't know why you are harassing me. I have not had a sip of alcohol. In fact, I have not had a sip of alcohol since last Christmas." At this point, he will ask you to do some voluntary roadside tests. You have probably seen these in the movies. Finger to Nose test. Walk in a straight line test. Hold one foot in the air for thirty seconds. Remember, you are on camera. Whether or not to take the road side tests is up to you. I will tell you the two schools of thought.

Do you or don't you do the road side tests? Let me start by saying nobody can do the tests perfect. If you are sober and on a flat surface and practice ballet at night, you will still fail the test. However, you might be able to do a pretty good job if you are sober. First school of thought, do the tests if you can. What I mean is if you are not under the influence, are in pretty good shape and have no major physical reason not to do the tests,

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do them. This way, we can show the jury how great you did the tests. Mind you they won't be perfect, but if they are pretty good, we can use that in Court. Some say, don't do them even if you are sober because you will fail them anyway. It's up to you. However, if you are not feeling well, on medication, or there is any other reason that might hinder your ability to do the tests, don't do them. It's better to refuse to do the tests, than to bomb them. Just tell the cop/camera/jury that you have bad knees and can't do any hard physical activity. Or tell them that you pulled your shoulder last week and it's still sore. Just make sure you are believable since you are on camera.

At this point, the cop will probably arrest you. He will say that he smells alcohol, you drove erratically and you have refused to do the tests that could convince him otherwise. This is your Oscar Moment. You need to say that you are fully willing to cooperate, but you have not been drinking and you have never been involved with the police in your life. You are scared and want to talk to a lawyer. You have never been in trouble before and don't know why he is harassing you for no reason. Again, be polite, don't shout. Just look scared since you will be (or will already be) in handcuffs.

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PART III.

Okay, so now back to the blowing question. He will now read from a card that basically says you must take the breath test. You don't. Just like the roadside tests, you do not have to do anything. He will tell you that you will lose your license and you must take the breath test. (See above about whether or not you should take the test.) However, if you refuse the breath test, you need to say the following.

YOU: Officer, I don't mean to be disrespectful, but I have NEVER been in trouble in my life. I don't drink and I am scared. I don't know why you are targeting me, but I am afraid and want to speak to a lawyer.

COP: You do not have a right to an attorney at this point. I am asking you again under Florida Law if you will submit to a breath test?

YOU: Officer, I will do whatever you want, but I am so scared, I just want to speak to a lawyer. My cousin is a lawyer and he said to always ask for a lawyer if you are being harassed by the police.

THIS UP AND BACK WILL GO ON A FEW TIMES AND THEN HE WILL STATE (FOR THE CAMERA) "You have refused the breath test ...". You need to say again, "I am not refusing anything, please just let me speak to a lawyer, I am terrified".

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When you get to the police station, you will probably be asked again to do a breath test. You will be on camera again, so just say the things noted above - that you will do whatever they want; you are just really scared and want a lawyer.

The whole reason for the performance above is that you have two things to deal with when you get out of jail in the morning. First, you will have a D.U.I. charge for which you will need a lawyer. Second, you will have an Administrative Suspension of your license. This is a suspension because you refused the breath test. Hopefully, we can argue later that you never “refused”- you just wanted a lawyer.

SUMMARY OF CHAPTER ONE

- A blood alcohol content level of 0.8 or higher will automatically place you in the “driving under the influence category”
- You can refuse to submit to a breath test in the state of Florida.

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- If you take the breath test and test higher than 0.8 your license will be revoked immediately for 6 months.
- Taking the breath test, failing is much worse than not taking it at all if you want to get off.
- You are on camera, so start acting.

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CHAPTER TWO

Naturally, the second most frequently asked question is: what now? We recommend calling a qualified D.U.I. Attorney to evaluate your case. If you followed the above suggestions, you will probably have a great case. If you decide to plead Guilty to the charge, and if this is the first time you are being charged with a Driving under the Influence charge, a couple of things can happen. Assuming there weren't any other factors involved (such as an accident, property damage, another D.U.I. in your past, under aged minors in the vehicle and /or a blood alcohol content of 0.15 or more), there are a few standard penalties and procedures. You may be placed on supervised probation for up to one year, required to do up to 50 hours of community service, pay court fees, pay an *additional* \$500 to \$1000 fine, and/or submit to a 10 day vehicle immobilization. This means that your vehicle will be rendered immobile for at least ten days. The Judge may require you to also complete AA or similar program. This is just a likely set of consequences that will follow if this is your first D.U.I. charge. This doesn't apply to everyone, as different circumstances warrant different verdicts on behalf of the State. You will also lose your license for 6-12 months, but you can get a work permit if you qualify.

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Will you be sent to jail? The short answer is: it depends. The long answer is that this has less to do with the driving while under the influence charge and more to do with your criminal record. For example, if this is the first time you've been charged with a driving under the influence charge, you can be sentenced to up to 6 months of jail time (this can go up to 9 months if your blood alcohol content level was .15 or higher). Remember, this is if there are no other factors such as an accident, property damage, and/or under aged minors in the vehicle. If any of these facts are true in addition to driving under the influence, you could be looking at facing a longer sentence. However, if none of these factors apply you will most likely NOT go to jail for a first time D.U.I.

If this is your second time, it will almost always carry some jail time. The length of your stay depends on the circumstances and any additional factors. If your second D.U.I. happens within five years of the first, a stay of 10 days in jail is mandatory. The third time could lead to prison time, which is a completely different song and dance from county jail. If you are charged with driving under the influence a third time within ten years of a prior charge, you are now dealing with a third degree felony conviction which could equal five years in prison. You have to stay in jail for at least 30 days. When you're looking at possible jail and/or prison time, it's time to call an attorney.

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CHAPTER THREE

After the craziness that follows a Driving Under the Influence charge and arrest, you might have a moment or two to review the paperwork handed to you. One of the pieces of paper you should receive will usually look like a standard ticket. And just like with a standard ticket, the writing will more than likely be illegible. If you are lucky enough to understand what the officer scribbled on the ticket, you should see that you are permitted to drive for ten days after your arrest.

Whether you refuse to submit to the breath test or choose to submit and test at .08 or over, you *do* have the privilege of driving for an additional 10 days after being arrested for Driving Under the Influence. In that small window of ten days, you have the legal right to challenge the automatic suspension that was placed on your driver's license at the time of the incident. When you legally challenge the revocation and request a Formal Review, you will receive an additional 42 days to drive. This is the period when you will be mounting your defense against the suspension. If you do nothing within the ten days that you are permitted to drive, your license will be suspended on the eleventh day.

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SUMMARY OF CHAPTER THREE

- You can drive for 10 days after being arrested for a D.U.I..
- Within those 10 days you can challenge the suspension placed on your driver's license and set a Request for Formal Review. This will give you an additional 42 days to drive.
- You Should Get an Attorney ASAP.



CHAPTER FOUR

One of your Constitutional Rights is that of legal counsel. That means, if you are facing a criminal charge and you cannot afford an attorney, an attorney will be assigned to you. If you are assigned an attorney he or she will be from the Public Defender's office. Public Defenders have a lot of legal experience, mainly because they handle anywhere from 300 to 400 cases *at a time*. That's right; you could be lucky number 350. This is not to demean the Public Defender's Officer. In fact, yours truly was a public defender at one time. It is simply to illustrate a point. Because of the amount of cases that Public Defenders handle, they simply do not have the time to comb through and review your case for the technicality or loopholes that could get a D.U.I. thrown out. After all, they have 399 people who also need their help.

In addition to court hearings, there are administrative hearings that must be attended within the D.U.I. process. Public Defenders DO NOT attend administrative hearings a/k/a Formal Reviews. Administrative hearings are as important, if not more so than the court hearings. They have a big role in determining the fate of your driver's license. A private attorney will attend both the court hearings and the administrative hearings. They have a much lighter case load, so they will dedicate the

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time and resources necessary to carefully comb through your paperwork and the circumstances surrounding your D.U.I. case.

Additionally, if you have any questions about the process, you can simply call your attorney or schedule an appointment to speak to them in regards to what direction the case is headed. A Public Defender doesn't really have the time to meet with you or discuss your concerns.

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SUMMARY OF CHAPTER FOUR

- A Public Defender will be assigned to you if you do not hire a private attorney.
- A Public Defender handles anywhere from 300 to 400 cases at a time
- A Public Defender will not attend Administrative hearings which are crucial to the fate of your driver's license

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CHAPTER FIVE

A client will sometimes ask, “Will a D.U.I. affect my job?” Before I answer this question, I have to clarify the difference between being *charged* with a D.U.I. and being *convicted* with a D.U.I.. When you’re pulled over by an officer and written a ticket for a D.U.I., this is what it means to be *charged* with a D.U.I.. If you plead guilty, represent yourself in court and realize too late you’re way in over head, or allow the state to assign a public defender that doesn’t have the time to defend you properly, you may be *convicted* of a D.U.I..

A D.U.I. conviction is just like any other criminal conviction. If your job is related to driving, you will most likely be terminated. Even if your job is not directly associated with driving, your employer may see you as a liability and terminate you. Another aspect of your life that will be affected by a D.U.I. conviction is your insurance rate. Your insurance can increase anywhere from 20% to over 50% if you pay a speeding ticket so you can only imagine how much it could rise due to D.U.I. If your insurance company doesn’t abandon ship, it may raise your bottom line to as much as 85%. Still think getting that free public defender was a money saver?



SUMMARY OF CHAPTER FIVE

- Being charged with a D.U.I. and being convicted of a D.U.I. are two different things
 - Being charged is when the initial incident occurs and you are accused of committing the offense
 - Being convicted is when the judge, based on your legal representation and evidence, concurs that you are guilty
 - A D.U.I. can raise your insurance as much as 85%
 - If you drive for a living, your employer may terminate your employment

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Q & A

Q. If I blow over 0.08 should I just plead guilty and get over it?

A. NO. Even if you feel that you are guilty, there are technicalities in the D.U.I. paperwork and other ways that an experienced D.U.I. attorney can use to get your case dismissed and or reduced. You should never plead guilty to a charge, criminal or otherwise.

Q. I missed my arraignment and now there's a warrant out for my arrest. **HELP!**

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A. Everything isn't lost. Our firm can file the necessary paperwork to get your warrant lifted and reset the court date. We can even keep you out of court. Call our office for a free consultation at (954) 967-9888.

Q. Can I be present during the court proceedings?

A. We strive to keep our clients out of court. However, if you wish to be present, you are welcome to do so. Our attorney will be with you every step of the way.



CONCLUSION

Everyone who has ever gotten pulled over knows what a nightmare it is. This multiplies when you're charged with a D.U.I.. We hope that this e-book answered some of your questions regarding the D.U.I. process and your options to fight back. Remember, a D.U.I. charge is a criminal charge so it is in your best interest to seek legal representation. I have had a lot of clients cry in my office after being charged with a D.U.I. or some other criminal offense. These are good people who made a bad choice and got caught. I like to tell clients, and I mean it, that "THIS IS JUST A BAD CHAPTER IN A VERY GOOD BOOK". So if you find yourself in trouble with the law for a D.U.I. or any other offense, don't despair. Our legal system is designed to help the defendant and make sure your rights are always protected. Don't beat yourself up, just get help ASAP.

If you have any questions and would like a free consultation, you can contact me anytime at (954) 967-9888. I hope you have enjoyed this eBook and have learned a thing or two.

Thank You

Jason A. Diamond, Esq.