§2:41 Questions Regarding Relationship to Defendant, Witness, Law Enforcement

Q: Does anyone know Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_?

Q: Does anyone know any of the witnesses?

Q: Has anyone here ever been employed by, or have a spouse or close friend who has ever been employed by any of the following agencies:

The District Attorney’s Office.

The U.S. Attorney’s Office.

The court system.

Probation or parole.

Police.

Sheriff.

Constable.

Department of Public Safety.

FBI.

U.S. customs.

DEA.

Military police.

The military.

A law office.

Fire Department arson squad.

Citizens’ crime groups.

Q: Has anyone here ever worked or served as, or had a spouse or close friend who has ever worked or served as:

A security guard.

A grand juror.

A juror (civil and/or criminal).

§2:42 Questions Related to Police Officers

Q: Has anyone here ever wanted to be a law enforcement officer?

Why?

What happened?

Q: Has anyone here ever worked with the police officers? When?

Q: Has anyone here been offended by a police officer in the past?

Q: Does anyone here believe that police officers are more trustworthy than the average person?

Q: Does anyone here believe that police officers are more truthful than the average person?

Q: Does anyone here believe police officers are more cynical or suspicious than the average person?

Q: Does anyone here believe that if later on a police officer testifies that Mr. \_\_\_\_\_\_is guilty?, and Mr.\_\_\_\_\_\_\_testifies that he is innocent, that the testimony of the police officer ought to be more believed than that of Mr.\_\_\_\_?

Q: Can you think of any reasons a police officer would testify as to one version of facts, not be lying, but just be wrong?

Q: Does anyone here believe a police officer cannot make mistakes?

Q: Would anyone here be more inclined to accept a police officer’s opinion rather than your opinion where the officer and you have seen and heard the identical same things?

Q: Would anyone here be inclined to find Mr. \_\_\_\_\_guilty in order to protect the arresting officer from a subsequent lawsuit for false arrest or for a violation of Mr.\_\_\_\_\_ civil rights?

Q: Does anyone here believe that the number of arrests a police officer makes would affect his chances for advancement?

Q: Just as it might be said that Mr.\_\_\_\_\_ has a motive not to tell the truth so that he could be found innocent, can you think of any motives an officer might have not to tell the truth?

Q: Has anyone here ever had courses in police science, criminology, or received any specialized training in police forensics?

§2:43 Questions Related to Punishment

Q: Please describe your thoughts on the following theories of punishment:

Rehabilitation.

Deterrence.

Retribution.

Q: If Mr.\_\_\_\_\_\_\_is convicted by you of the DUI offense, the range of punishment will be from 72 hours in jail up to two years in jail, and that would be in addition to a fine ranging from $100.00 to $2000.00. In this regard, what are your thoughts as to making a decision that might cause a person to be placed in jail and fined?

Q: Does anyone here know what “probation” is? Please tell us.

COMMENT: Refusal case only: Our laws also provides that you the jury, upon conviction of Mr.\_\_\_\_, can recommend to the court that his driver’s license not be suspended, but rather, that it be probated for a year.

Q: What are your thoughts as to the proper punishment in a first-offender DUI case where there was no accident and the person arrested did not know he was legally intoxicated?

Q: Would the fact that Mr.\_\_\_\_has filed a motion for probation indicate to you that he is somehow guilty of the offense charged?

§2:44 Questions Related to Scientific Evidence

Q: Is anyone here familiar with the type of breath test machine now used by law enforcement in this state? It is called an Intoxilyzer.

Q: What do you know about it?

Q: Do you believe that machines are error-free?

Q: Is anyone here not familiar with mechanical and computer errors that have occurred in the past in our NASA Space Shuttle Program?

Q: Does anyone here believe the quality of a machine has some bearing on its performance, accuracy, and reliability?

Q: Does anyone here believe that simply because a machine has a computer within it, somehow it is more reliable?

Q: What experiences have you had with sophisticated machine or computer-type machine malfunctions?

Q: Have you ever had trouble with your automobile? Would the problem seem to come and go?

Q: Would any juror here accept the machine’s proof automatically?

Q: Would any juror here require Mr. \_\_\_\_\_ to disprove the machine before having a doubt or possibly disbelieving the machine?

Q: Does any juror here believe the Intoxilyzer is incapable of making a mistake?

Q: Does anyone here believe a machine would not make a mistake because the operating principals of the machine are premised upon a theory found in science?

Q: Would you tell me what you think “science” is?

Q: Does anyone know what the “scientific method” is?

Q: If the state were to introduce machine evidence, would anyone here not hold that evidence to the standard of “proof beyond a reasonable doubt” before finding Mr.\_\_\_\_\_\_\_guilty?

Q: Has anyone here had training, instruction, or experience in computer science?

Q: Has anyone here had an education in physics or electrical engineering?

Q: The Intoxilyzer, so the manufacturer tells us, operates on a principal known as infrared spectroscopy. Is anyone here familiar with infrared spectroscopy?

§2:45 Questions Related to Expert Opinion

Q: Does anyone here not feel an employee might be afraid to testify in a way that is inconsistent with his job or employer and that this fear might bias or color his testimony in some way?

Q: Would anyone here automatically believe the opinion of an expert witness? Explain?

Q: Would anyone here, after seeing the same set of facts as the expert, automatically defer his or her opinion to the opinion of the expert?

Q: Would anyone here believe a prosecution expert more than a defense expert?

§2:46 Questions Related to Blood Analysis

Q: Has anyone here ever had a blood test? What for?

Q: Has anyone here ever been misdiagnosed by a doctor or medical-related person? Explain.

Q: Has anyone here personally received an erroneous or mistaken laboratory result?

Q: Does anyone here know of someone else who has received an erroneous or mistaken laboratory result?

Q: Would anyone here automatically accept an alcohol blood test result as true because it had been offered as evidence by the state?

Q: How about a blood test result being untrue because it has been offered by Mr.\_\_\_\_\_\_\_?

Q: Would anyone here automatically accept an alcohol blood test as true because it was a high alcohol reading rather than a low one?

Q: How about a blood test as untrue because it had a low reading?

§2:47 Questions Regarding Constitutional Issues

Q: Does anyone here have a greater fear of letting a guilty person go than of convicting an innocent person?

Q: Does anyone here feel compelled to punish a person who accidentally committed a crime, i.e. had no intent to commit a crime?

Q: Do you think the courts generally protect criminals too much?

Q: Does anyone here not understand that illegally obtained evidence, or evidence derived from other illegally obtained evidence, cannot be considered by you?

Q: What do you think about constitutional rights?

Q: Do you think the right to assistance of an attorney after arrest is important? Why?

Q: Do you think it is important to have the right to consult with your attorney in private?

Q: Do you think the right to be free from compulsory self-incrimination is important after a person is arrested? Why?

Q: Do you think that an arrested person, a person who is presumed innocent, should not be forced, compelled, or tricked into doing things he or she ordinarily would not do?

Q: Does anyone here believe a person cannot knowingly, intelligently, and voluntarily consent to aid the police in an investigation, even if the person is the focus of the investigation?

Q: Do you think that to give true consent, the person consenting must not be tricked, coerced, or intimidated in any way?

Q: Would you agree then that consent should be: Voluntary? Knowingly given? Intelligently given?

Q: If the issue of “consent” were raised at trial, and it was alleged that consent was not voluntary, and that this involuntary consent led to the state’s illegally obtaining evidence (test results), could you follow the law and require the state to prove beyond a reasonable doubt that the consent was not illegal before you considered any evidence derived from it for guilt/innocence purpose?

Q: Our law provides that a police officer may only arrest a citizen if the officer has probable cause that would make a reasonable person, based on his or her experiences, believe that the citizen has committed some crime. Probable cause cannot be a gut feeling, subjective suspicion, or just a guess. It must be based upon real and objective facts. A person is illegally arrested if he is taken into custody on less evidence than probable cause. This protection is found in our constitutional right to be free from all unreasonable searches and seizures. Does everyone understand this right?

Q: A police officer may, on less evidence than probable cause, stop and momentarily detain a citizen if the officer has a reasonable and articulate suspicion that the person is involved in some criminal activity. However, this reasonable and articulate suspicion does not authorize an officer to arrest. Indeed, were an arrest to be made only on a reasonable and articulate suspicion, it would be illegal. Indeed, it would also be illegal if the momentary detention lasted too long or the scope of the officer’s investigation were too broad. What is your thought about this Juror\_\_\_?

Q: If this issue of an “unreasonable search or seizure” were raised by the evidence at trial, and it was alleged that this illegal search or seizure led to the state’s obtaining illegal evidence (test results), could you follow the law and require the state to prove beyond a reasonable doubt that Mr.\_\_\_\_\_’s right to be free from all unreasonable searches and seizures was not violated before considering that evidence for guilt/innocence purposes?

§2:48 Questions Related to Motor Skills

Q: Would you recite the ABC’s?

Q: Would you please: stand, hold your arms to your side, lift either of your legs six inches off the ground in front of you without bending the knee, and tilt your head back with your eyes closed, and hold that position for 15 seconds.

Q: Perform the same exercise as the preceding question but also please count backwards from 1,030 to 1000.

Q: Please stand, put your feet together, extend your arms out to your side and tilt your head back with your eyes closed and now take your index finger of each hand and in alternating fashion touch the tip of your finger to the tip of your nose.

Q: Would you please stand and read the following out loud for me? (Give the prospective juror the implied consent notice.)

§2:49 Questions Related to Physical Characteristics of Intoxicated Persons

Q: Does anyone here smoke a tobacco product?

Q: Has the smoke ever bothered your eyes?

Q: Would you agree with me that after a prolonged period time exposed to smoke all persons’ eyes would turn red? Why?

Q: Has anyone here ever worn contact lenses, either in the past or currently?

Q: Does anyone here know someone who wears contact lenses?

Q: Would you agree that wearing contact lenses contributes to bloodshot eyes?

Q: Would you agree that lack of sleep would cause a person’s eyes to appear bloodshot? Why?

Q: Would you also agree that some persons may have naturally bloodshot looking eyes? Why?

Q: Would you agree that alcohol consumption might make a person’s eyes red?

Q: Would you agree that a person who has bloodshot eyes is not automatically intoxicated?

Q: The same would be true even if they had been drinking?

Q: Would you agree that bloodshot eyes can be brought on by a combination of things like: alcohol consumption, smoke, lack of sleep, eye sensitivity and eyestrain?

§2:50 Questions Regarding Memory

Q: Would you agree that a person’s memory could be affected by the mere lapse of time?

Q: Would you agree that a person’s memory can be affected by nervousness?

§2:51 Questions Regarding Odor of Alcohol

Q: Has anyone here smelled rubbing alcohol?

Q: What did it smell like?

Q: Has anyone here smelled beer, wine, or whisky?

Q: Were you able to smell the alcohol in the substance or was it the solution that the alcohol was in that you smelled?

§2:52 Questions Regarding Nervousness

Q: Would you agree that with regard to what makes a person nervous, all people are different?

Q: Would you agree that all persons do not demonstrate their nervousness in the same manner?

Q: Has anyone here ever been stopped by a police officer while driving?

Q: Were you nervous?

Q: Had the officer acted differently would you have been more nervous?

Q: If you had just consumed one 12oz beer, and you were not intoxicated but realized there was an odor of alcoholic beverage on your mouth and the police pulled you over would you be nervous? Why?

Q: If you had just been from a party and you were not drinking, but someone had spilled beer on your clothes and the odor was noticeable, and you were stopped by the police, would you be nervous? Why?

Q: Would you agree that “nervousness” does not equate to “intoxication”?

§2:53 Questions Regarding Intoxication

Q: Would you agree that everyone’s coordination is not exactly alike?

Q: Would you agree that differences in coordination are sometimes related to unfamiliarity and learning?

§2:54 Questions Related to Bodily Functions

Q: Does anyone here have some formal education in anatomy?

Q: Does anyone here believe that human beings are all identical in their bodily functions and physical characteristics, such as: height, weight, sight, hearing, coordination, digestion, natural learning ability, tolerance to alcohol?

Q: Does anyone here believe that “normal” for one person may not be “normal” for another?

Q: Does anyone here believes that “normal” for a specific person at one time in his or her life is the identical “normal” for that person at another time?

Q: Does anyone here have knowledge of the human respiratory system and in particular: the heart, blood, arteries, veins, capillaries, blood groups, lungs and exchange of gases.

Q: Does anyone here have knowledge of the human digestive system?

Q: Does anyone here remember the old adage that a person is not supposed to swim until waiting one hour after eating? What do you think is the reasoning behind that warning?

Q: Has anyone here taken an aspirin or some kind of pain killer and noticed that it does not work immediately?

Q: Has anyone here ever noticed that it takes prescription drugs time to affect either a virus or a bacterium that makes you feel ill?

Q: Has anyone ever noticed with regard to medicine that differences in doses are prescribed for different people because two persons may not be alike?

Q: Does anyone here have any knowledge about human body temperature?

§2:55 Questions Related to Offense of DUI

Q: What if we had a law that DUI was such a bad crime that all persons arrested for it were automatically guilty?

Q: How would you feel about the offense of DUI?

Q: Has anyone here been a suspect in a DUI or public intoxication criminal prosecution?

Q: Does anyone here have a relative or a close friend who has ever been a suspect in a DUI or public intoxication criminal prosecution?

Q: Has anyone here been a witness in a DUI prosecution or a witness or defendant in a civil case that involved alcohol consumption?

Q: Does anyone here have a relative or has a close friend who has been a witness in a DUI prosecution or a witness or defendant in a civil case that involved alcohol consumption?

Q: Has anyone here been involved in an automobile accident in which one of the drivers had been allegedly consuming alcohol?

Q: Does anyone here have a relative or close friend who has been involved in an automobile accident in which one of the drivers had been allegedly consuming alcohol?

Q: Has anyone here heard of mothers against drunk drivers?

Q: What are your feelings on all DUI publicity in the media, newspapers, radio, television, etc?

Q: Has anyone here had any formal or on the job training in the areas of: alcohol research, medicine, nursing, or chemistry?

Q: Does anyone here have a relative or close friend who has any formal or on the job training in the areas of: alcohol research, medicine, nursing, chemistry?

§2:56 Questions Related to Alcohol

Q: Does anyone have a job related to the alcohol business?

Q: Has anyone here never consumed alcohol in the past?

Q: What are your feelings about “prohibition”?

Q: Does anyone here not now consume alcohol?

Q: Does anyone here have religious feelings against alcohol?

Q: Does anyone here not keep alcohol in the home?

Q: Describe your alcohol consumption, e.g., occasional, social, moderate, heavy?

Q: Describe your alcohol preference? Beer, wine, liquor?

Q: Does anyone here know the percent of alcohol in beer?

Q: Does anyone here know the percent of alcohol in wine?

Q: Does anyone here know the percent of alcohol in whisky?

Q: Does anyone here know how many beers it would take to bring their own blood, breath, or urine alcohol concentration to .10?

Q: Does anyone here knows how much wine it would take to bring their blood, breath, or urine alcohol concentration to a .10

Q: Does anyone here know how much whisky it would take to bring their blood, breath, or urine concentration to a .10?

Q: Does anyone here have a drinking or drug problem?

Q: Does anyone here have a relative or close friend with a drinking problem or drug problem?

Q: Has anyone here ever been in a alcohol or drug rehabilitation?

Q: Does anyone here have a relative or close friend who was in the past or is now is an alcohol or drug therapy program?

Q: Has anyone here ingested alcohol and then operated a motor vehicle within: three hours, two hours, one hour?

Q: Your definition of “drunk”?

Q: Your definition of “intoxicated”?

Q: Your definition of “normal intoxication”?

Q: Have any of you ever experienced a difference in your normal mental or physical faculties after having consumed alcohol?

Q: Has anyone here felt the effect of alcohol but still believed you were within your “normal” range of mental or physical faculties?

Q: Has anyone here noticed the effect that eating food has on the effects of alcohol on one’s self?

Q: Would anyone here require the “defendant’s normal range” to be the same as their own “normal range”?