

POP QUIZ

1. True or False. For a person to be charged with driving under the influence of alcohol, the car must be in motion or the engine must be running.

Answer:

2. True or False. If a person under age 21 is driving with a blood alcohol concentration (BAC) of .04 and the legal limit for Driving Under the Influence (DUI) is .10 BAC, he or she cannot be charged with a crime.

Answer:

3. True or False. The legitimate use of prescription medication constitutes a defense to driving under the influence of alcohol.

Answer:

4. True or False. A person cannot be convicted of robbery in the first degree if the gun he uses is unloaded or a toy.

Answer:

5. True or False. If a person is convicted of a criminal charge, and later receives a pardon from the Governor of Delaware, the police and court records relating to that criminal charge shall be expunged.

Answer:

6. True or False. A suspect in a criminal case may be taken to the station house for interrogation if the police have reasonable suspicion to believe that he has committed a crime.

Answer:

7. True or False. Police officers may search a dwelling house at any time at night, as long as the officers deem it necessary to do so.

Answer:

8. True or False. Motor vehicles can be searched without a valid search warrant.

Answer:

9. True or False. Police who arrest someone for an offense, i.e. speeding, may conduct a search of the passenger compartment of the car, including opening containers such as a briefcase, although they have no expectation of finding any evidence of the offense for which the arrest was made.

Answer:

10. True or False. In Delaware in capital offense cases, the jury decides whether the defendant is sentenced to life imprisonment or death.

Answer:

11. True or False. If a house is occupied by two unrelated adults, both persons must consent to a search of the house to allow the evidence found to be used against both occupants.

Answer:

12. True or False. If a person is arrested and taken to be shown to the victim for identification shortly after a crime, the person has a right to be represented by counsel while he or she is shown to the victim.

Answer:

13. True or False. Immediately after a person is arrested, he is entitled to receive the Miranda warnings, i.e., the warning of the right to counsel, the right to remain silent, etc..

Answer:

14. True or False. Officers violate the Fourth Amendment, if, without probable cause, they jump over a barbed wire fence to search through a cornfield on the defendant's property.

Answer:

15. True or False. Under the First Amendment right of freedom of speech and press, a person's right to communicate cannot be regulated by the government.

Answer:

ANSWER KEY

1. False. A person may be convicted of "operating" a motor vehicle while under the influence of intoxicating liquor without it necessarily being shown that automobile was actually in motion or that the engine was running. State v. Pritchett, Del. Super., 173 A.2d 886 (1961). Moreover, pursuant to 21 *Del. C.* § 4177, "Driving a vehicle while under the influence; evidence; arrests; and penalties", to "drive" a vehicle shall include "driving, operating, or having actual physical control of a vehicle." (emphasis provided). 21 *Del. C.* § 4177(c)(3).

2. False. Actually, there are at least two crimes for which the person may be charged:

(1) **DRIVING AFTER CONSUMPTION OF ALCOHOL BY A MINOR or the AZERO TOLERANCE**≡ law (21 *Del. C.* § 4177L). This is not the same as DUI and so the legal limit is not the same. This law prohibits a minor from driving after *any* consumption of alcohol and, although a .02 BAC is *prima facie* evidence of alcohol consumption, a minor can be charged and prosecuted even if there is no alcohol test result.

Penalties -- The penalty for the first offense by a minor is a mandatory loss of a driver=s license for 60 days. For a subsequent offense, the penalty is 6 months to 1 year loss of license. If the minor does not have a driver=s license, or has a license from another state, then he or she would be subject to a fine of \$200 for the first offense, and \$400 to \$1,000 for any subsequent offenses. *Note*: A driving record will be started for any one without a current Delaware license who violates this law and this crime will go on that record and be shared with other states.

(2) **POSSESSION OR CONSUMPTION OF ALCOHOL BY A MINOR** (4 *Del. C.* § 904(f)). Mere possession or consumption of alcohol by a minor can cause the person to lose his or her license.

Penalties -- The penalty for the first offense by a minor is a mandatory loss of a driver=s license for 30 days. For a subsequent offense, the penalty is 3 to 6 months loss of license. If the minor does not have a driver=s license, or has a license from another state, then he or she would be subject to a fine of \$100 for the first offense, and \$200 to \$500 for any subsequent offenses. *Note*: A driving record will be started for any one without a current Delaware license who violates this law and this crime will go on that record and be shared with other states.

3. False. The legitimate use of prescription medication will not be a defense to driving under the influence of alcohol. 10 *Del. C.* § 4177(b)(1).

4. False. Robbery First Degree only requires that the defendant display what appears to be a deadly weapon. It does not matter that in fact the weapon was a toy. 11 *Del. C.* § 832.

5. False. State v. Skinner, Del. Supr., 632 A.2d 82 (1993) (held that a defendant's subsequent pardon will not remove underlying criminal conviction for expungement purposes).
6. False. There must be "probable cause." In Dunaway v. New York, 442 U.S. 200 (1979), the United States Supreme Court held that, as a general proposition, detention for custodial interrogation without probable cause violates the Fourth and Fourteenth Amendments of the United States Constitution.
7. False. Pursuant to 11 *Del. C.* § 2308, a search warrant shall not authorize a search of any dwelling house in nighttime unless the issuing judge is satisfied that it is necessary to prevent the escape, removal or destruction of the person or thing to be searched and then authority shall be expressly stated in the warrant. See Mason v. State, Del. Supr., 534 A.2d 242 (1987). Nighttime falls between 10:00 p.m. and 6:00 a.m.. 11 *Del. C.* § 2308.

Also advise that in Delaware, police must abide by the "knock and announce" rule. Gregory v. State, Del. Supr., 616 A.2d 1198 (1992).

8. True. So long as the police have probable cause to believe that an automobile is carrying contraband or evidence, they may lawfully search the vehicle for contraband without a warrant, including personal belongings, containers and other passengers. Carroll v. United States, 267 U.S. 132, 153-154 (1925); Tatman v. State, Del. Supr., 494 A.2d 1249, 1251 (1985); Wyoming v. Houghton, ___ U.S. ___, 1999 WL 181177 (Apr. 5, 1999).
9. True. Delaware law gives a police officer the discretion to make a custodial arrest for violation of any motor vehicle law, 21 *Del. C.* § 703(a), (b). In Traylor v. State, Del. Supr., 458 A.2d 1170, 1173-75 (1983), the Supreme Court held that whenever the police have made a custodial arrest of the occupant of an automobile, they may, as a contemporary incident of that arrest, conduct an immediate, warrantless search of both the arrestee's person, and the passenger compartment of the automobile. See also Davis v. State, Del. Supr., 625 A.2d 278 (1993). Moreover, any container found within the passenger compartment may also be examined. New York v. Belton, 453 U.S. 454 (1981).
10. False. Pursuant to 11 *Del. C.* § 4209, the Delaware Death Penalty statute, the jury issues a "recommendation" to the Court as to whether the defendant should be sentenced to life imprisonment or death. The Court alone decides in capital offense cases whether or not to impose life imprisonment or death sentence which was recommended by the jury.
11. False. Under Delaware law, 11 *Del. C.* § 2301, "[n]o person shall search any person, house, building, conveyance, place or other thing without the consent of the owner (or occupant, if any) unless such search is authorized by and made pursuant to statute or the Constitution of the United States." (emphasis provided). Thus, a search and seizure may

be made without a warrant if a person with authority to do so gives his or her consent to the search. State v. Harris, Del. Super., 642 A.2d 1242 (1993).

12. False. Immediate show-ups or confrontations such as here are to be commended as essential both to law enforcement and fairness to innocent suspects. Anderson v. State, Del. Supr., 452 A.2d 955, 956 (1982). Delaware courts have consistently held that the right to counsel at such corporeal or in person identification procedures attaches only at the initiation of formal adversarial judicial proceedings -- generally initial presentment to a magistrate in Delaware. See, e.g., Goodyear v. State, Del. Supr., 348 A.2d 174 (1975); see also Wade v. United States, 388 U.S. 218 (1967) (Sixth Amendment right to counsel at post-indictment police line-up). Thus, there is no right to counsel at show-ups or line-ups prior to that time. There is never a right for counsel to be present when a photographic line-up is conducted, no matter when it occurs. Reed v. State, Del. Supr., 281 A.2d 142 (1971); United States v. Ash, 413 U.S. 300 (1973).
13. False. If there is no custodial interrogation, the police are not required to administer a Miranda warning. Nicholson v. State, Del. Supr., 707 A.2d 766 (1998); Gordon v. State, Del. Supr., 604 A.2d 1367 (1992).
14. False. State v. Halco, Del. Super., 188 A.2d 100, 110 (1962) (citations omitted) (“The special protection accorded by the Fourth Amendment to the people in their ‘persons, houses, papers and effects’ is not extended to the open fields.”).
15. False. As a general matter, it is unconstitutional for the government to place burdens on speech because of its content. To justify such content-based regulation of speech, the government must show that the regulation is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board, 502 U.S. 1105 (1991). Certain categories of speech (obscenity, defamation and “fighting words”) generally are proscribable despite the First Amendment. Furthermore, while the First Amendment guarantees the right of free speech, the State has the authority to regulate conduct which adversely affects public interest and indirectly affects right of free speech. State v. Elliott, Del. Super, 548 A.2d 28 (1988) (citing State of Delaware v. Ayers, Del. Supr., 260 A.2d 162, 168 (1969)).

The Courts will give the government more latitude in regulating “conduct as speech” by permitting the government to adopt “content neutral, time, place and manner” restrictions. If the regulation involves a “public forum”, such as a public protest, the regulation must be “narrowly tailored” to achieve an “important government interest.” If it is a “non-public forum”, such as a law prohibiting billboards in order to preserve public safety, the regulation need only have a “reasonable relationship to a legitimate regulatory purpose.”