

Special Instruction No. 0002

LACK OF SUFFICIENT BLOOD ALCOHOL CONTENT EVIDENCE

Though it is up to you to determine what weight you will give to breath or blood test evidence, such evidence, even when combined with minimal corroborating evidence of impairment is not enough to convict the defendant of DUII. Because it is common knowledge that alcohol in the blood dissipates over time, a reported measurement of a blood alcohol content, where the breath or blood sample is collected at a time after the driving has occurred is not sufficient. Even a breath or blood sample corroborated with minimal physical observations of potential impairment is not enough to determine that a defendant is guilty of operating a motor vehicle with a blood alcohol content of .08% or higher.

See: State v. Hedgepeth, 290 Or. App. 399, 415  
P.3d.1080 (2018).