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CHARLES SIFERS

(Oklahoma City), on June 23, 2005, won an **acquittal in a felony DUI case** in Oklahoma County that sounds like incredibly sharp lawyering. Client on trial for a **second felony DUI** in a refusal case. Client in the drive-through at Little Caesar's. Employee called cops and reported that client was drunk. Cop arrested client and testified before the jury that he performed no SFSTs because client was too drunk to do them(!). Client took the stand and admitted to the priors. Q. Why did you plead guilty to the first prior? A. Because I did it. Okay. Why did you plead guilty to the second DUI? Because I did that one, too. Okay. Why did you plead guilty to the third DUI(!)? Because I done that one, too. Okay. Why did you not plead guilty to this one? Because I didn't do this one, I wasn't drunk, and the cop is a liar(!) Client admitted to drinking **five beers** but testified he was not drunk. Charles defended on several grounds and could probably teach a CLE on this one, but the highlights are that the cop did not see any of the 20-some-odd DUI "cues" as set forth in the Bethany Police Department's manual and Charles framed the issue as a difference of opinion between client and cop and cop (State) had the higher burden to actually prove his opinion. Notable argument: the odor of alcoholic beverage was listed as simply an odor of alcoholic beverage in the arrest report. At preliminary hearing, it escalated into a "very strong" odor. At trial, in transformed further into an "overwhelming" odor. In closing, Charles told the jury that it was a good thing the trial was over or else they wouldn't be able to breath. Notable x-exam: Charles asked cop how many DUI arrests he made. Answer: 350. Okay. Of these, how many have you taken to the Breathalyzer and had the arrestee pass the test (*i.e.*, refute the officer's observations about the person being drunk)? 2. Charles presented 350 aspirin pills to the jury and pulled one out, telling the jury that the State is asking you to swallow one pill in 350, but two of them are cyanide and the rest are aspirin. Here is the pill. Will you swallow it? Charles told me that this illustration did not originate with him and he modestly instructed me to note this in my report. Charles also was able to get in a **jury instruction** concerning the impact of the client's refusal to take the breath test and put some hurdles in the way of the jury to accept the refusal as an inference of guilt unless they found BRD that client refused the test with a consciousness of guilt and in order to avoid arrest or conviction(!) The DA did not object to this instruction and Judge Croy went along. Also, he said that post-trial interviews with the jurors confirmed that they thought his client was most likely guilty but that the State simply did not prove it beyond a reasonable doubt--they actually followed the law and applied the burden of proof(!!!) But alas, victory was not complete as client was sentenced to the maximum on the charge of driving without a seat belt: \$20 fine. Extraordinary win here and I don't think there are but a handful of

lawyers in the state who could have tried this case and achieved the same result. Mucho props to Charles on this one. In fact, I hope he orders the transcript because I think this one could be studied on many levels.

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