



**You had a few drinks - but does that mean you're at fault?**

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**Facts:**

While at a birthday party you have a glass of wine, a shot of tequila, and a beer over the course of two and a half hours. You melodically sing Happy Birthday to the guest of honor, inhale Oreo Blizzard Ice Cream Cake, and hop into your car. At the third stop sign, a dude on a motorcycle does a California stop and crashes into the left front fender of your car. You are given a Field Sobriety Test but are well under the legal limit. Who's at fault? Tell us what you think...our answer will be posted Friday evening!

**Our Simple Answer:**

You (the driver) will not be found at fault for this accident.

**Our Detailed Legal Answer:**

***It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.<sup>1</sup> It is unlawful for any person to drive a vehicle with a .08 or more BAC (blood alcohol concentration).<sup>2</sup>***

There is a distinction between 23152(a) and 23152(b) that you should know or understand. **Driving while impaired is unlawful even if your BAC is below .08.** Driving with a BAC of .08 or more makes it is "must do" for the officer to cite and arrest you. The first is a judgment call, the second is a matter of obligation.

In our fact pattern, the officer administered a Field Sobriety Test (FST). We did not say which kind or whether a breathalyzer was involved. If you had blown a .08 you would have been cited/arrested. If you pass standard tests, such as walk and turn, one leg stand, eye movement tests (Horizontal gaze nystagmus), etc, then the officer felt that you were not impaired sufficient to warrant citation.

If the motorcyclist argues that you were intoxicated, then the FST would likely become admissible evidence to demonstrate your lack of impairment.

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<sup>1</sup> California Vehicle Code Section 23152(a)

<sup>2</sup> California Vehicle Code Section 23152(b)

In this fact pattern, the motorcyclist would not receive a “negligence per se” instruction against you. A negligence per se instruction can be given when there is a violation of the law that brings about harm to another person. In this case, there was no violation of law if you were not impaired.

People despite their better judgment drink and drive all the time. The issue for you to decide should be “am I impaired” or “under the influence” of alcohol such that my ability to drive is affected. Time is a key to this analysis. It takes about an hour for the body to get rid of each drink. Having more than a drink an hour may require some sobering up time before operating a vehicle. Don’t drink and drive is a good motto but in reality people drink and then drive all the time. Impairment is the key issue.

***A person is not necessarily negligent just because he or she used alcohol. People who drink alcohol must act just as carefully as those who do not.<sup>3</sup>***

In our fact pattern, you the driver used alcohol during the first 2 ½ hours at the party and spent probably less than a half an hour singing, eating and leaving the party. You would have had some alcohol in your blood stream but by passing the Field Sobriety Test you were able to convince the law enforcement officer that you were not “under the influence” such that it affected your driving skills.

In a civil lawsuit brought by the injured motorcyclist against you, the motorcyclist would have to prove that you were negligent in your operation of your car. Said another way, he would have to prove that you did or failed to do something that caused the accident. His lawyer would likely argue that you ran the stop sign because you were under the influence of alcohol and impaired. The fact that the officer examined you at the scene with FST techniques would be your best proof that you were not impaired.

More importantly, there is nothing in this fact pattern that suggests that you did not act just as carefully as any other motorist in the same situation. Your use of alcohol is more of an inflammatory fact, not real evidence of your negligence.

### **CONCLUSION:**

Our civil jury system provides specific instructions to the jury about what the law is for a given set of facts. The jury listens to the facts and comes to a conclusion, after deliberations, as to whether someone is negligent or liable.

**A jury will find you not at fault for this accident because you acted just as carefully as any other driver using the roadway. You did not do or fail to do anything that caused the motorcyclist’s injury or damages. The jury would hear about your use of alcohol, the fact that an officer administered a Field Sobriety Test at the scene, and the fact that you were not arrested or cited. It would be the burden of proof of the plaintiff to establish that your use of alcohol caused you to be impaired, and that that impairment caused his client’s injury. That is difficult to**

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<sup>3</sup> CACI 404 - Intoxication (Judicial Council of California Civil Injury Instructions)

**do. Your lawyer will want to make sure that the jury follows the law and does not penalize you for drinking and then driving later.**

It should also be noted that the jury could find you liable for inhaling Oreo Blizzard Ice Cream Cake. You should never eat it fast...take your time and savor each and every bite.

Legal opinions regarding the outcome of a given fact pattern can and do vary. The legal opinions expressed herein are just one lawyer's opinion of the likely results of this fact pattern. They are based on California law only.

You should not construe this post and/or the answer as legal advice. Legal opinions can and will vary even when facts change ever so slightly. Please consult a licensed lawyer for answers related to your specific fact pattern or legal situation. This information is disseminated for informational purposes only and is not intended to be an exhaustive legal analysis of the facts and issues presented.

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