



Garden State CLE
 21 Winthrop Road • Lawrenceville, New Jersey 08648
 (609) 895-0046 fax- 609-895-1899
Atty2starz@aol.com

Video Course Evaluation Form

Attorney Name _____

Atty ID number for Pennsylvania: _____

Name of Course You Just Watched _____

Please Circle the Appropriate Answer

Instructors: Poor Satisfactory Good Excellent

Materials: Poor Satisfactory Good Excellent

CLE Rating: Poor Satisfactory Good Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

Word #3 was: _____ Word #4 was: _____

What did you like most about the seminar?

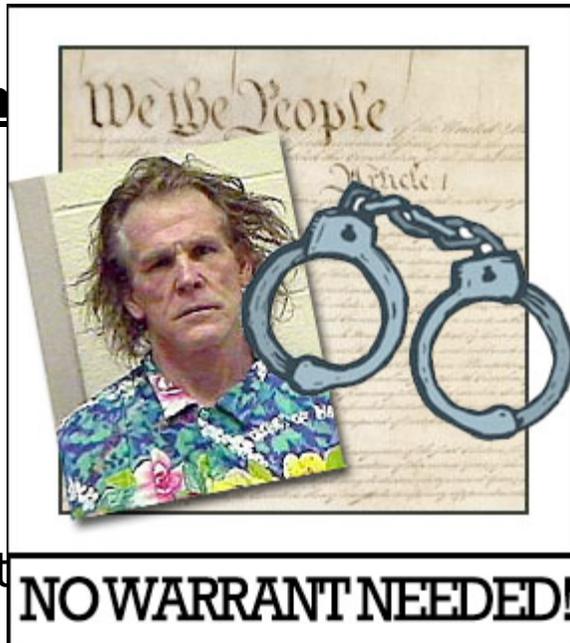
What criticisms, if any, do you have?

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

Lesson

Intoxication



1. Element
2. Under the Influence
3. Proof of Intoxication
4. Foundational Requirements for Novel Scientific Proofs [HGN]
5. Field Sobriety Testing

1. Elements of Proof

Under New Jersey Law, a *prima facie* Drunk Driving case can be established with evidence of operation of a motor vehicle while under the influence of:

1. Alcohol;
2. A Narcotic (or substance producing a narcotic effect);
3. A Hallucinogenic;
4. A Habit-producing drug; or
5. A Chemical inhalant

2. Under the Influence

a. In General

“Generally speaking, it means a substantial deterioration or diminution of the mental faculties or physical capabilities of a person whether it be due to intoxicating liquor, narcotic, hallucinogenic or habit-producing drugs.”
State v. Tamburro, 68 N.J. 414, 420
(1975)

b. Chemical Inhalant

Chemical Inhalant (NJSA 39:4-50(a)(3) includes any "chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

c. Alcohol

"The expression, 'under the influence of intoxicating liquor,' covers not only all the well known and easily recognized conditions and degrees of intoxication, but any abnormal mental Or physical condition which is the result of indulging in any degree in intoxicating liquors, and which tends to deprive him of that clearness of intellect and control of himself which he would otherwise possess." State v. Rodgers, 91 N.J.L. 212, 215 (E & A 1917).

[N.J.S.A. 39:4-50] "penalizes a person who drives 'while under the influence of intoxicating liquor.' Although prosecutions pursuant to its provisions are commonly and colloquially termed 'drunken driving cases,' it is settled that the statute does not require as a prerequisite to conviction that the accused be absolutely 'drunk,' in the sense of being sodden with alcohol. It is sufficient if the presumed offender has imbibed to the extent that his physical coordination or mental faculties are deleteriously affected." State v. Emery, 27 N.J. 348, 355 (1958).

The vital requirement of [N.J.S.A. 39:4-50](#) and its predecessors, like the comparable statutes of most other states, is operation 'under the influence of intoxicating liquor.' The phrase was not self-defining and required judicial ascertainment of the legislative intent, now long settled in this State in substantial conformity with that reached elsewhere. At the one pole, since 'intoxication' is not the expression used, it is not requisite that '* * * the accused be absolutely 'drunk,' in the sense of being sodden with alcohol.' [Citation omitted] At the other extreme, the described condition means something more than having partaken of a single drink even though, physiologically, the smallest amount of alcohol has some slight effect or influence on an individual. The obvious intention of the Legislature was to prescribe a general condition, short of intoxication, as a result of which every motor vehicle operator has to be said to be so affected in judgment or control as to make it improper for him to drive on the highways. State v. Johnson, 42 N.J. 146, 165 (1964)

d. Narcotic, Hallucinogenic or Habit-Producing Drug

"[A]n operator of a motor vehicle [is] under the influence of a narcotic drug within the meaning of [N.J.S.A. 39:4--50\(a\)](#) if the drug [produces] a narcotic effect 'so altering his or her normal physical coordination and mental faculties as to render such person a danger to himself as well as to other persons on the highway.'" State v. DiCarlo, 67 N.J. 321(1975).

"The thrust of the Motor Vehicle Act is safety on the highway. The particular section is addressed to the evil of operating a motor vehicle while one's physical coordination or mental faculties are substantially diminished by 'intoxicating liquor, narcotic, hallucinogenic or habit-producing drug.' Competency to operate a motor vehicle safely is the critical question." State v. Tamburro, 68 N.J. 414, 422 (1975).

"[T]he driving while intoxicated statute "does not require that the particular narcotic[, hallucinogen or habit-producing drug] be identified." The statute also does not define the quantum of narcotics, hallucinogens or habit-producing drugs required in order to violate its prohibition. Instead, as with alcohol intoxication, the issue is simple: was the defendant "under the influence" of a narcotic, hallucinogen or habit-producing drug while he operated a motor vehicle. State v. Tamburro, 68 N.J. 414, 422 (1975).

U/I Drugs - Recapitulation

"We have described generally the term 'under the influence' as 'a substantial deterioration or diminution of the mental faculties or physical capabilities of a person whether it be due to intoxicating liquor, narcotic, hallucinogenic or habit producing drugs.' We also have explained that the term 'under the influence' means 'a condition which so affects the judgment or control of a motor vehicle operator as to make it improper for him to drive on the highway. In the specific context of narcotic, hallucinogenic or habit-producing drug intoxication, we have held that a driver is 'under the influence of a narcotic drug ... if the drug produced a narcotic effect 'so altering his or her normal physical coordination and mental faculties as to render such person a danger to himself as well as to other persons on the highway.' The question then is whether the proofs adduced in this case are sufficient to establish beyond a reasonable doubt that, at the time of his arrest, defendant suffered from 'a substantial deterioration or diminution of the mental faculties or physical capabilities[,]' or was in a drug-induced state that 'so affect[ed his] judgment or control ... as to make it improper for him to drive on the highway[,]' or whether defendant was under the effect of a drug that 'so alter[ed] his ... normal physical coordination and mental faculties as to render [defendant] a danger to himself as well as to other persons on the highway.' State v. Bealor, 87 N.J. 574, 589-90 (2006)

e. Synergistic Effects

A person may be deemed to be under the the influence within the meaning of NJSA 39:4-50(a) based upon the consumption of an alcoholic beverage in combination with medication. *State v. Glynn*, 20 N.J. Super. 20 (App. Div. 1952).

3. Proof of Intoxication

a. Alcohol - Lay opinion

“If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences may be admitted if it (a) is rationally based on the perception of the witness and (b) will assist in understanding the witness' testimony or in determining a fact in issue.” NJRE 701

“It is not to be doubted that the average witness of ordinary intelligence, although lacking special skill, knowledge and experience but who has had the opportunity of observation, may testify whether a certain person was sober or intoxicated. Neither our statutory law nor any procedural rule requires the testimony of medical experts in the prosecution of offenses of this nature.” State v. Pichadou, 34 N.J. Super. 177 (App. Div. 1955)

b. U/I Marijuana

Option I – No Expert Opinion Offered

The rule adopted by the panel—that the nexus between the facts of intoxication and the cause of intoxication can only be proved by expert opinion—impermissibly impinges on the traditional role of the fact-finder and is explicitly disavowed. In these circumstances, determining whether defendant was under the influence of marijuana was not “beyond the ken of the average [finder of fact.]”. Thus, we adopt the rationale employed by both the municipal court and the Law Division and hold that additional expert opinion was not necessary in order to sustain defendant's conviction for “operat[ing] a motor vehicle while under the influence of ... [a] narcotic, hallucinogenic or habit-producing drug” in violation of [N.J.S.A. 39:4-50](#). That said, expert testimony remains the preferred method of proof of marijuana intoxication. *State v. Bealor*, 187 N.J. 574, 591-92 (2006).

Option II – Police Officer as Expert

We arrive at that conclusion in the knowledge that it is not too difficult a burden for the State to offer an expert opinion as to marijuana intoxication. Prosecutors in municipal courts throughout the State routinely qualify local and state police officers to testify as experts on the subject of marijuana intoxication. Expert testimony only requires that a witness be qualified “by knowledge, skill, experience, training, or education.” In view of their training, police officers in this State are eligible to qualify as experts on marijuana intoxication under [N.J.R.E. 702](#). We note that, before they are commissioned, police officers must “successfully complet[e] the Basic Course for Police Officers.” As part of their required course of study, police officers must be trained in detecting drug-induced intoxication. *State v. Bealor*, 187 N.J. 574, 592-93 (2006).

c. U/I Other Substances

Need for Qualified Expert Testimony

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. NJRE 702

“The statute does not require that the particular narcotic be identified. It is enough if, from the subject's conduct, physical and mental condition and the symptoms displayed, a qualified expert can determine that he or she is 'under the influence' of a narcotic. This, of course, would include a drug which produces a narcotic effect.” State v. Tamburro, 68 N.J. 414, 421 (1975). (See also State v. Kraft, 134 N.J. Super. 416 (Cty. Ct. 1975)).

4. Foundational Requirements for Novel Scientific Proofs [HGN]

“However, absent a [determination] by this court or our Supreme Court, the trial courts in this State are not at liberty to admit evidence of newly-devised scientific technology unless the general acceptance thereof is demonstrated by expert testimony, authoritative scientific and legal writings or judicial opinions.” *State v. Doriguzzi*, 334 N.J. Super. 530, 533 (App. Div. 2000)

“When reviewing a decision on the admission of scientific evidence, an appellate court should scrutinize the record and independently review the relevant authorities, including judicial opinions and scientific literature. In the rapidly changing world of modern science, continuing research may affect the scientific community's acceptance of a novel technology. By reviewing post-trial publications, an appellate court can account for the rapid pace of new technology. The continuing review also recognizes that general acceptance may change between the time of trial and the time of appellate review.” [State v. Harvey, 151 N.J. 117, 167-168 \(1997\)](#).

“[T]he test in criminal cases remains whether the scientific community generally accepts the evidence.

A proponent of a newly-devised scientific technology can prove its general acceptance in three ways:

- (1) by expert testimony as to the general acceptance, among those in the profession, of the premises on which the proffered expert witness based his or her analysis;
- (2) by authoritative scientific and legal writings indicating that the scientific community accepts the premises underlying the proffered testimony; and
- (3) by judicial opinions that indicate the expert's premises have gained general acceptance.

The burden to “clearly establish” each of these methods is on the proponent. *State v. Harvey*, *supra* at 170.

State v. Chun, 194 N.J. 54 (2008); [Frye v. United States, 293 F.1013 \(D.C.Cir.1923\)](#).

Field Sobriety Tests

Officer Training & Observations

Categories [check-off boxes] on drinking/driving report (sec 8.2)

The inference of guilt (Specific Physical & Psychological tests)

Preservation of evidence via video

Refusal to perform tests (State v. Macuk, 57 NJ 1 (1970))

Non-testimonial character of FST

Other Confirmatory Testing (HGN – PBTU – Admissions)