



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 2.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

ALL THE BASICS: DWI DEFENSE

WITH
RICHARD USLAN, ESQ.

AND FEATURING

ROBERT RAMSEY, SENIOR INSTRUCTOR

Program Description

This 2-credit All the Basics course with an experienced DWI defense attorneys will provide what every Practitioner needs to put together an effective drunk driving defense. From initial contact, to review of discovery to trial, the course attendee will learn what it takes to professionally and competently represent the client.

I. INTRODUCTION

- Panelists [Richard Uslan – Robert Ramsey]
- Topic

II. THE LAW OF DRUNK DRIVING: WAYS TO CONVICT A DRIVER

- *Per se* violation: if measurement of .08 and greater BAC on the Alcotest machine in New Jersey, or blood drawn---both within a reasonable time of operation of the motor vehicle and no ingestion of alcohol between operation and BAC test
- Observation: those drivers under the legal limit, but whose:
 - i. manner of operation of the motor vehicle
 - ii. standardized field sobriety tests (horizontal gaze nystagmus test, walk and turn test and one-legged stand, each of which alone has no more than a 67% reliability)
 - iii. odor of alcohol
 - iv. refusal to take provide a breath sample
 - v. admission
 - vi. and other circumstantial evidence (e.g., nystagmus eye test for probable cause purposes)

All may be used to convince the court that the defendant was U/I but -----sometimes -----the tests can be used to exonerate the Defendant

- The case of State v. Kashi, 180 N.J.45 (2004) suggests that both observations and per se violations may be considered by the Court.

III. DRIVING UNDER THE INFLUENCE OF DRUGS

- a. Statute prohibits operation while under the influence of a narcotic, hallucinogen, habit producing drug or drug which gives the driver a narcotic effect
- b. Presence of drug in the bloodstream is made by blood alcohol results, urine tests do not provide any more than an inference. Presence or absence of drug by products in the urine will not be enough to prove operation while under the influence, no quantitative evidence is received. Urine half lives and extrapolation need to be taken into account
- c. State v. Bealor, 187 N.J. 574 (2006) expert testimony is needed in order to prove a drug influence case
- d. Ambien case and sleep driving. Injected the intent to drive issue into a DWI case. Extremely rare issue as DWI is a strict liability offense.
- e. Refusal is only AN OFFENSE if refusing a breath sample. However, refusal to allow a blood or urine sample, although not an offense, is likely to permit the magistrate to draw an ADVERSE INFERENCE of driving under the influence. (State v. Cryan, 363 N.J. Super. 2 (App. Div. 2003). In addition, the police may use “reasonable force” to withdraw a blood sample. Forcible urine sample is likely not to result in law enforcement force due to the danger and pain involved. State v. Ravotto, 169 N.J. 227 (2001).

- f. Know your science and the law: SOMA is not a narcotic before ingested, but has a narcotic effect.
- g. Good defense counsel will challenge the lab results, chain of custody, testing individuals. PRACTICE POINT: You will waive your right to object if you do not, within ten (10) days of receipt of the lab results, challenge the lab personnel used by the State of New Jersey, etc. *State v. Kent*, 391 N.J. Super. 352 (App. Div. 2007).

IV. TIME: WHAT IS REASONABLE FOR DRUGS AND ALCOHOL?

- a. Alcohol: *State v. Tischio*, 107 N.J. 504 (1987): Extrapolation case relative to police delay of a test to ensure a HIGHER BAC level
- b. Drugs: Two hour and four hours have been held as reasonable
- c. After *State v. Chun*, 194 N.J. 54 (2008) we have case law requiring certain waiting periods between tests and before tests, waiting periods after things in mouth, vomiting, mouth alcohol, etc.

V. CONVICTIONS FOR PERMITTING OPERATION BY A DRIVER UNDER THE INFLUENCE

- With BAC of .08 or greater, Probably a strict liability offense, Appellate Division hasn't addressed the issue yet. U/I requires proof of objective knowledge.

VI. STATUS OFFENSES: CDL DRIVERS AND UNDERAGE DRINKERS

VII. EVIDENTIARY ISSUES

- Standards of Proof
 - i. Trial: Beyond a Reasonable Doubt
 - ii. Refusal: Beyond a Reasonable Doubt despite statutory requirement of Clear and Convincing
 - iii. Motion to Suppress: Preponderance
 - iv. Arrest: Probable Cause
 - v. Vehicle Stop: Reasonable and articulable suspicion

VIII. NO PLEA BARGAINING DWI

- Part VII of the Court Rules: Exception in Guideline 4 in the Appendix to the Court Rules

**IX. THE AOC TO MUNICIPAL COURT
DIRECTIVE ON SIXTY DAY REQUIREMENT
OF CASE RESOLUTION**

- Holup motions: Motion to compel Prosecutor to supply needed discovery with sanctions for failure to supply it. State v. Holup, 253 N.J. Super. 320 (App. Div. 1992)

X. LOSS OF LICENSE

- For the most part this is a question of how long, not whether the client will lose the license

XI. JAILING OF THE DRUNK DRIVER

XII. SUSPENSIONS

- Know your statute

XIII. IGNITION INTERLOCK DEVICE

- Discretion
- Expense
- Annoyance
- Negotiation of the reading: is that plea bargaining?
- Stipulation to the reading: > .10 but < .15

XIV. SENTENCING PARAMETERS

- First Offense

no BAC or .08 to < .10

Fine: \$250 to \$400 + \$364 state mandated costs and assessments, 90 day suspension, IDRC participation of 12 to 48 hours and the possibility of jail up to 30 days

.10 or above

Fine: \$300 to \$500 + \$364 state mandated costs and assessments, 7 month to one year suspension, IDRC participation of 12 to 48 hours and the possibility of jail up to 30 days and if under .15 and greater than .10, the ignition interlock device is discretionary. Over .15, ignition interlock device is mandatory sentencing characteristic

- Second Offense

If over ten years since first conviction, the driver is sentenced as a first offender

Fine: \$500 to \$1000 + \$364 state mandated costs and assessments, 36 days of community service, 2 year suspension, IDRC participation of 12 to 48 hours (and counselor can require inpatient procedure) and mandatory jail sentence of 2 days, can be extended up to 90 days. Interlock device for 1 to 3 years (effectively this is a 5 year obligation because it is required at the time of conviction)

- Third Offense

If over ten years since last conviction, the driver is sentenced as a second offender: Step down in sentencing. State v. Burroughs, 349 N.J. Super. 225 (App Div. 2002) and State v. Ciancaglini, 204 N.J. 597 (2011)

Fine: \$1000 + \$364 state mandated costs and assessments, 36 days of community service, 10 year suspension, IDRC participation of 12 to 48 hours (and counselor can require inpatient procedure) and mandatory jail sentence of 6 months and you are led from the courtroom on the day of conviction. Interlock device for 1 to 3 years (effectively this could be a 13 year obligation because it is required at the time of conviction if you own a car)

- Refusal

Can be plea bargained away in exchange for a plea of guilty to DWI

- School Zone Offenses

They haven't panned out as an enforcement tool. But they are effective plea bargaining tools because they can be bargained away for plea of guilt: avoid double penalties

XV. NUTS AND BOLTS

- Set goals with the client
- See the Police Reports
- Demand discovery in timely fashion
- Review with client
- File motions
- Try cases