



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 _____

Garden State CLE Presents:



Lesson Plan

Table of Contents

A. Introduction

B. Field Sobriety Tests – In General

C. HGN Testing

D. Psycho-Physical Testing

A. Introduction

I. Significance of Evidence from Field Sobriety Testing is two-fold:

1. It can provide evidence establishing probable cause to believe that the defendant operated a motor vehicle while under the influence of alcohol or drugs. Apart from supporting the DWI arrest, this proof can be used to boot-strap the following:

- a. Provide a statutory requirement to submit to a breath test under NJSA 39:4-50.2(a):**

Any person who operates a motor vehicle on any public road, street or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this act and at the request of a police officer who has reasonable grounds to believe that such person has been operating a motor vehicle in violation of the provisions of [R.S.39:4-50](#)

b. Provide police with a justification to draw an involuntary blood sample:

Schmerber v. California, 384 US 757 (1966)

c. Provide police with a “reasonable basis” to get a *Dyal* order:

State v. Dyal, 97 NJ 229 (1984)

; State v. Bodtmann, 239 NJ Super. 33 (App. Div. 1990).

d. Support an element of proof in a refusal prosecution under NJSA 39:4-50.4a.:

See generally State v. Marquez, 202 NJ 485 (2010)

A careful reading of the two statutes reveals four essential elements to sustain a refusal conviction: (1) the arresting officer had probable cause to believe that defendant had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol or drugs; (2) defendant was arrested for driving while intoxicated; (3) the officer requested defendant to submit to a chemical breath test and informed defendant of the consequences of refusing to do so; and (4) defendant thereafter refused to submit to the test.

e. Authorize search of the person arrested (*Chimel v. California*, 395 US 752 (1969)) and

**impoundment of the vehicle under John's Law.
(NJSA 39:4-50.23)**

2. It can provide powerful, substantive evidence of guilty on the charge of operating a motor vehicle while under the influence of alcohol or other prohibited substances.

a. Under the Influence - 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. 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).

[NJSA 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).

. 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)

c. Drugs

“[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).

B. Field Sobriety Tests - In General

- a. Failure to perform may be considered as consciousness of guilt: State v. Bryant, 328 NJ Super. 379, 383 (2000).**

- b. Are considered to be non-testimonial – State v. Macuk, 57 NJ 1 (1970); State v. Green, 09 NJ Super. 347 (App. Div. 1986).**

- c. Have Long Considered as reliable evidence of intoxication —**

“Our courts have long accepted the results of field sobriety tests as reliable evidence of intoxication.”

State v. Morton, 39 N.J. 512, 514-15 (1963);

State v. Higgins, 132 N.J. Super. 67, 70-71 (App. Div. 1975);

State v. Pichadou, 34 N.J. Super. 177, 180 (App. Div. 1955).

d. Admissible as lay testimony

This relates to the problem of admissibility of the testimony of two police officers with respect to certain physical tests or actions engaged in by defendant at their request shortly after his arrest. According to the officers defendant was put through tests referred to as ‘finger to nose,’ ‘walking heel to toe,’ ‘standing heels and toes together (with) eyes closed,’ ‘standing bent, head back, eyes closed,’ ‘standing bent at the waist with eyes closed,’ etc. They described the results of the tests, not only on the basis of their observation of his actions, but in some instances they used such terms as ‘normal’ and ‘failure.’ The Appellate Division pointed out that such conclusory expressions are not admissible if given by lay witnesses, as distinguished from persons shown to have some expert knowledge, such as physicians, or others who have had special training in use of the tests and in normal and abnormal reactions thereto. We agree that where the significance of results of tests depends upon a conclusion of the witness as to whether the motorist's reaction is a departure from the normal or standard, such conclusion may not be given unless the examiner is shown to have some skill or training which will qualify him to make an evaluation. But on retrial of this case, even if no qualifying experience or training of the officers is shown, it does not follow that their testimony must be excluded. It is entirely proper for them to describe the tests or maneuvers they had the defendant perform and then testify as to what his Physical reaction was when he undertook to execute them. The reaction should be described in terms of what they Observed when the tests were undertaken by defendant. To illustrate, we consider that Lieutenant Castellucci's testimony was competent when, speaking of defendant's attempt to walk heel to toe, he said Morton ‘was slow, swayed and stepped to the side.’ Descriptions in like terms of the results of the tests are also admissible. In other words, the observed physical reactions to such tests are on the same plane as other common factual indicia that a person is under the influence of intoxicating liquor which always may be testified to by a layman. Of course the ultimate determination of defendant's intoxication within the meaning of the statute rests with the trial court on all the evidence in the case. State v. Morton, 39 NJ 512, 514-515 (1963).

C. HGN Testing

The HGN test is based on the observation of three different physical manifestations which occur when a person is under the influence of alcohol: (1) the inability of a person to follow, visually, in a smooth way, an object that is moved laterally in front of the person's eyes; (2) the inability to retain focus and the likelihood of jerking of the eyeball when a person has moved his or her eye to the extreme range of peripheral vision; and (3) the reported observation that this “jerking” of the eyeball begins before the eye has moved 45 degrees from forward gaze if the individual's BAC [(Blood Alcohol Content)] is .10 [percent] or higher.

State v. Doriguzzi, 334 NJ Super. 530 (App. Div. 2000)

Overrules State v. Maida, 332 NJ Super. 564 (Law Div. 2000)

D. Psycho-Physical Testing

1. Standardized FST

HGN

Walk & Turn

One Leg Stand

2. Non-Standardized FST

Alphabet

Count backwards

Romberg

3. Standardized as to:

Demonstrated

Scored

Given

4. Examples

Injury

<http://www.youtube.com/watch?v=U16JqHMOHDg&feature=autoplay&list=PLB37E76F67369EC95&index=27&playnext=2>

Alphabet

<http://www.youtube.com/watch?v=Wz8dsvm0GFo>

Walk and Turn

<http://www.youtube.com/watch?v=MgWxviUYWVk&feature=related>

One Leg

http://www.youtube.com/watch?v=7g7vA_qlcko&NR=1

5. Evidence

- a. Effects of alcohol on the human body**
- b. Relation between test and alcohol's effects**
- c. Instructions to subject**
- d. Demonstration of test & understanding**
- e. Environment, Weather and Lighting**
- f. Reporting Observed Results in Reports**
- g. Reporting Observed Results at Trial**