Garden State CLE Presents:

"Top TEN Supreme Court DWI Decisions of ALL TIME!"

Instructor:

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Lesson Plan

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State v. Johnson, 42 NJ 146 (1964)

1.) Burden of proof in a DWI case is beyond a reasonable doubt.
2.) On appeal to Law Division, the Court's function is to determine the case completely anew on the record made in the Municipal Court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses.
3.) The duty of the Appellate Division on appeal is to review the record, but not initially from the point of view of how it would decide the matter if it were the court of first instance. It should give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy. The aim of the review at the outset is rather to determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record. When the reviewing court is satisfied that the findings and result meet this criterion, its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal.
4.) If the appellate tribunal is thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction then, and only then, it should appraise the record as if it were deciding the matter at inception and make its own findings and conclusions. While this feeling of 'wrongness' is difficult to define, because it involves the reaction of trained judges in the light of their judicial and human experience, it can well be said that that which must exist in the reviewing mind is a definite conviction that the judge went so wide of the mark, a mistake must have been made. This sense of 'wrongness' can arise in numerous ways—from manifest lack of inherently credible evidence to support the finding, obvious overlooking or under-evaluation of crucial evidence, a clearly unjust result, and many others.
5.) 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.' 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.
6.) 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.
7.) The Drunkometer is sufficiently established and accepted as a scientifically reliable and accurate device for determining the alcoholic content of the **823

blood to admit testimony of the reading obtained upon a properly conducted test, without any need for antecedent expert testimony by a scientist that such reading is a trustworthy index of blood alcohol, or why.'

8.) It is, of course, most essential, in view of the heavy impact the result can have, that proper administration of the breath test *be clearly established* before the reading is admitted in evidence. This includes full proof that the equipment was in proper order, the operator qualified and the test given correctly.

State v. Daly, 64 NJ 122 (1973)

In the instant case, defendant denied any intent to move or drive his car until he had sobered up and, contrary to the State's contention, there was no evidence from which any such intent could be inferred beyond a reasonable doubt. The tavern, concededly, was required to close at 2:00 A.M. and there was no proof that it did not. Defendant had, thus, been in his car for at least one hour and twenty minutes without driving when come upon by the police.

In the alternative, the State argues that intent to move the vehicle should not be a required element of the offense of operating a motor vehicle while intoxicated. The State's position is that an intoxicated person who enters a motor vehicle and starts the engine is a threat to himself and to the public because of the hazard that either he may try to drive the vehicle, or accidentally cause it to be moved.

We recognize that there is a risk involved. However, the statutory sanction is against ‘operating’ a motor vehicle while intoxicated. We conclude, as we did in Sweeney, that in addition to starting the engine, evidence of intent to drive or move the vehicle at the time must appear.

State v. Tamburro, 68 NJ 414 (1975)

An 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 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 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. 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.

Romano v. Kimmelman, 96 NJ 66 (1984)

1.) In New Jersey, the results of scientific tests are admissible at a criminal trial only when they are shown to have sufficient scientific basis to produce uniform and reasonably reliable results and will contribute materially to the ascertainment of the truth. Scientific acceptability need not be predicated upon a unanimous belief or universal agreement in the total or absolute infallibility of the techniques, methodology or procedures that underlie the scientific evidence.
2.) Reliability of such evidence must be demonstrated by showing that the scientific technique has gained general acceptance within the scientific community.
3.) In order to use breathalyzer test results as evidence in a trial charging a violation of *N.J.S.A.* 39:4–50, the State had clearly to establish that (1) the equipment was in proper order—that it was periodically inspected in accordance with accepted procedures; (2) the operator was qualified to administer the instrument—that these qualifications as a breathalyzer operator were properly certified; and (3) the test was given correctly—that it was administered in accordance with the official instructions for the use of the instrument.
4.) We hold that in its totality models 900 and 900A are scientifically reliable for the purpose of determining the content of blood alcohol (with the narrow qualification as to the admissibility of test results relating to the possible effects of radio frequency interference, discussed *infra* at 10–13). As stated in paragraph one of our order, [t]he Smith and Wesson Breathalyzer Models 900 and 900A are found to be scientifically reliable and accurate devices for determining the concentration of blood alcohol. Such scientific reliability shall be the subject of judicial notice in the trial of all cases under *N.J.S.A.* 39:4–50. In addition, we hold that the results of a breathalyzer test shall be generally admissible in evidence when the breathalyzer instrument is in proper working order, is administered by a qualified operator and is used in accordance with accepted procedures, and that such results may, upon the establishment of these conditions, form the basis upon which a conviction of violating *N.J.S.A.* 39:4–50 may be obtained.
5.) Two of the experts testifying before Judge McGann were of the opinion that the administration of two tests each producing readings of 0.01 percent of the other is a sure indication of the reliability of the breathalyzer instrument and a reliable indication that its results were not affected or tainted to any cognizable extent by radio frequency interference. According to the experts, when the results of two tests are within a tolerance of 0.01 percent of each other, these results can be regarded as reliable without any additional proof concerning the rfi-sensitivity of the instrument. Consequently, the two-test procedure is highly important in the regular use of the breathalyzer instrument and, when followed, can be dispositive in terms of determining the reliability of the results.
6.) Under *Johnson,* conditions of admissibility must be "clearly established." To avoid any confusion over what is intended by this level of proof, it should be understood that it conforms to that standard conventionally referred to as "clear and convincing proof. The conditions of admissibility to which this burden of proof shall apply include those presently required to establish the admissibility of

the results of a breathalyzer test, namely, the proper operating condition of the machine, the requisite qualifications of the operator, and the proper administration of the test. They shall also include, with respect to model 900A, those conditions we have now prescribed relating to the possible effects of rfi.

7.) We hold further that the responsibility for establishing all conditions as to the admissibility of the breathalyzer results is properly allocated to the State. This is the rule with respect to the usual conditions of admissibility under *Johnson.*

State v. Tischio, 107 NJ 504 (1987)

1.) We now hold that a defendant may be convicted under *N.J.S.A.* 39:4-50(a) when a breathalyzer test that is administered within a reasonable time after the defendant was actually driving his vehicle reveals a blood-alcohol level of at least 0.10%. We rule that it is the blood-alcohol level at the time of the breathalyzer test that constitutes the essential evidence of the offense. Consequently, we hold further that extrapolation evidence is not probative of this statutory offense and hence is not admissible.

2.) The statute reflects a simple legislative plan to establish a violation where the administration of the breathalyzer or other established tests for determining blood alcohol content produces a reading of .10 percent blood alcohol or greater *at any time* after operation so long as there has been no ingestion of alcohol between the time of operation and the time of testing. Further proof on the issue of the blood alcohol level at the time of operation is unnecessary.

3.) The primary purpose behind New Jersey's drunk-driving statutes is to curb the senseless havoc and destruction caused by intoxicated drivers.

4.) **The overall scheme of these laws reflects the dominant legislative purpose to eliminate intoxicated drivers from the roadways of this State. To this end, the Legislature, working in tandem with the courts, has consistently sought to streamline the implementation of these laws and to remove the obstacles impeding the efficient and successful prosecution of those who drink and drive.** One such impediment has been the introduction of conflicting expert testimony at trials. The vast majority of statutory revisions in this area have been directed towards minimizing, if not eliminating, the necessity for this kind of evidence.

5.) In accord with our perception of the legislative intent, we conclude that the statute calls for the administration of a breathalyzer **test within a reasonable time after the defendant was actually operating his vehicle.**

6.) Those who drive after drinking enough alcohol to ultimately result in a blood-alcohol concentration of .10% or greater are a menace to themselves and to all others who use the roadways of this State. There is no rational reason why prosecution of these individuals must depend upon the entirely fortuitous circumstance of the time they were apprehended by the police. The Appellate Division grasped this essential point in ruling that an interpretation of the statute that would require or permit extrapolation evidence would produce anomalous results inconsistent with the intent of the Legislature. The court stated that such an interpretation would allow drunk drivers-"moving time bombs"-to escape prosecution simply because, at the time of the stop, their blood-alcohol had not yet reached the proscribed level.

7.) Finally, defendant contends that our construction of the statute encourages police officers to subject an accused to prolonged detention and repeated testing in the hope that the driver's blood-alcohol will ultimately reach the .10% level. As to this contention, the authority for the extended detention of a driver, under *N.J.S.A.*

39:4-50(a), is doubtful. **Moreover, we now hold that breathalyzer tests must be taken "within a reasonable time" after the arrest.**

8.) Accordingly, we hold that the statute prescribes an offense that is demonstrated solely by a reliable breathalyzer test administered within a reasonable period of time **after the defendant is stopped for drunk driving**, which test results in the proscribed blood-alcohol level. Prosecution for this particular offense neither requires nor allows extrapolation evidence to demonstrate the defendant's blood-alcohol level while actually driving.

State v. Wright, 107 NJ 488 (1987)

The issue in this case is whether a defendant may be convicted under *N.J.S.A.* 39:4–50.4a for refusing to submit to a breathalyzer test without proof that he actually was operating a motor vehicle at the time of his arrest. We hold that proof of actual operation is not required. To secure a conviction under *N.J.S.A.* 39:4–50.4a, the State must prove only that (1) the arresting officer had probable cause to believe that defendant had been operating a vehicle while under the influence of alcohol; (2) defendant was arrested for driving while intoxicated; and (3) defendant refused to submit to a breathalyzer test. The language and legislative history of *N.J.S.A.* 39:4–50.2 and *N.J.S.A.* 39:4–50.4a, as well as the fundamental policies underlying our drunk driving laws, lead us to conclude that the Legislature did not intend to require proof of actual operation of a motor vehicle for a conviction under the refusal statute.

State v. Laurick, 120 N.J. 1 (1990)

We hold that with the exception that a prior DWI conviction that was un-counseled in violation of court policy may not be used to increase a defendant's loss of liberty, there is no constitutional impediment to the use of the prior un-counseled DWI conviction to establish repeat-offender status under DWI laws. With respect to collateral consequences of an un-counseled conviction other than a loss of liberty, any relief to be afforded should follow our usual principles for affording post-conviction relief from criminal judgments, namely, a showing of a denial of fundamental justice or other miscarriage of justice.

[Current state of the law from State v. Patel, 239 N.J. 424 (2019)]

1.) In summary, when facing a second or subsequent DWI conviction, an indigent or non-indigent defendant may file a petition for post-conviction relief to bar the use of a prior un-counseled DWI conviction as a predicate conviction for increasing a term of incarceration. This form of post-conviction relief does not prohibit the imposition of enhanced financial or administrative penalties, such as a period of license suspension. By "un-counseled" we mean an unrepresented defendant who was not advised by the municipal court of his right to retain counsel or, if indigent, of his right to appointed counsel without cost; who otherwise did not know of his right to counsel in the proceeding and did not waive that right; and who, if properly advised of his rights, would have secured counsel or accepted appointed counsel. The defendant has the burden of proving he was un-counseled, but is not required to establish that the outcome would have been different had he been represented.

2.) The defendant has the burden of proving that his prior uncounseled DWI conviction was based on the municipal court's failure to advise him of his right to counsel. If municipal courts retain the records mandated by our rules and jurisprudence, determining whether there was compliance with the notice requirements should not be difficult.

3.) The defendant must secure the relevant court documents or the electronic recording or transcript of the proceeding to establish a violation of the notice requirement. In the absence of documentary evidence or witnesses with a recollection, the defendant is in a position to do no more than file an affidavit or certification averring that he was not advised of his right to counsel and did not know that he could retain counsel. The defendant who claims he was indigent at the time of the prior proceeding should attest that he was not advised and did not know of his right to appointed counsel, and was unable to afford an attorney. In future cases, he also should attach to his affidavit or certification relevant documents -- bank statements or other financial documents that would establish his indigence in accordance with the standards set forth in N.J.S.A. 2A:158A-14 and N.J.S.A. 2B:24-9.

State v. Hamm, 121 NJ 109 (1990)

In sum, we believe that although the Legislature may regard DWI as a profound social problem based on its potential threat to public safety, the statutory penalties do not signal the Legislature's intent to treat DWI as the functional equivalent of a crime. Attainment of the 6-month incarceration line is not the automatic product of a third DWI offense under New Jersey's law. The law allows for various alternatives to incarceration, with a strong emphasis on community service and rehabilitative alternatives. It is not without significance *129 that the statistical data that we have on repeat DWI offenders come from the State Department of Health, which operates the Intoxicated Driver Program Unit within its Division of Alcoholism. The ten-year license suspension for third offenders, although in itself a heavy burden, is both precautionary and penal. No other loss of privilege, franchise, or right of citizenship flows from a DWI conviction.

[Current state of the law - State v. Denelsbeck, 225 NJ 103 (2016)]

Given that the total term of potential confinement does not exceed six months, we presume the DWI offense to be “petty” for purposes of the Sixth Amendment. The Legislature has, however, reached the outer limit in subjecting third and subsequent DWI offenders to confinement without a jury trial. Defendant faced a mandatory term of six months' confinement, the constitutional maximum. The closer the DWI system actually comes to the six-month incarceration line, the less room there may be for other penalties. In light of that fact, the State has also reached the outer limit of additional penalties that may be added for a third or subsequent DWI offense without triggering the right to a jury trial. Any additional penalties will demonstrate that the Legislature views a third or subsequent DWI as a “serious” offense requiring a trial by jury. Until that day arrives, however, we believe that the penal consequences of the offense do not tip the balance to classify it as “serious.” As a result, the State's interest in the efficiency and cost-saving benefits of non-jury trials can still prevail.

State v. Bealor, 187 NJ 574 (2006)

1.) The rule adopted by the Appellate Division—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.

2.) That said, expert testimony remains the preferred method of proof of marijuana intoxication. 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.

State v. Chun, 194 N.J. 54 (2008)

1.) We begin, as we must, with a brief review of the applicable principles of law governing admissibility of novel scientific evidence. Admissibility of scientific test results in a criminal trial is permitted only when those tests are shown to be generally accepted, within the relevant scientific community, to be reliable. *See State v. Harvey,* 151 *N.J.* 117, 169–70, 699 *A.*2d 596 (1997) (citing *Frye v. United States,* 293 *F.* 1013, 1014 (D.C.Cir.1923));
2.) The Special Master recommended approval, in general, of four minimum criteria for a breath sample, which are: (1) minimum volume of 1.5 liters; (2) minimum blowing time of 4.5 seconds; (3) minimum flow rate of 2.5 liters per minute; and (4) that the IR measurement reading achieves a plateau (i.e., the breath alcohol does not differ by more than one percent in 0.25 seconds). However, the Special Master also found that there was credible evidence to support lowering the minimum breath volume from 1.5 to 1.2 liters for women over the age of sixty. He recommended that the State reprogram the device to reflect that finding, but found no need to lower the minimum volume for the general population.
3.) The record reflects that a semi-annual inspection and recalibration program recommended by the Special Master is consistent with the manufacturer's recommendations. At the same time, it provides a useful safeguard by affording a more regular opportunity to evaluate and replace aging fuel cells. We discern no reason to permit the State to continue to adhere to its program of annual recalibration, particularly in light of the concerns raised as to the utilization of a compensating algorithm in the interim.
4.) Foundational v. Core foundational documents
5.) General order for implementation