

THE DRUG RECOGNITION PROGRAM

THEORY AND PRACTICE UPDATE



WHY DOES THE STATE USE DRUG RECOGNITION EVALUATORS?

ALCOHOL IMPAIRMENT v DRUG IMPAIRMENT



**I feel like I'm taking
crazy pills!**

ELEMENTS OF THE OFFENSE FOR ALCOHOL DWI

➤ OPERATION

➤ MOTOR VEHICLE

➤ UNDER THE INFLUENCE
OF A:

➤ INTOXICATING
LIQUOR

➤ NARCOTICS

➤ HALLUCINOGENIC

➤ HABIT -
PRODUCING DRUG

➤ OPERATION

➤ MOTOR
VEHICLE

➤ .08% BAC OR
HIGHER

NJ RULE OF EVIDENCE 701

OPINION TESTIMONY OF LAY WITNESSES

- 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

STATE v. SMITH

NJ SUPREMES 1971

- AN ORDINARY CITIZEN IS QUALIFIED TO ADVANCE AN OPINION IN A COURT PROCEEDING THAT **A PERSON WAS INTOXICATED** BECAUSE OF CONSUMPTION OF ALCOHOL
- THE SYMPTOMS OF THAT CONDITION HAVE BECOME SUCH COMMON KNOWLEDGE THAT THE TESTIMONY IS ADMISSIBLE
- **ACCORD *STATE v. PICHADOU* (App. Div. 1995)**

TRADITIONAL PROOFS IN A DRUG DWI

➤ **OBSERVATIONS +**

➤ **TOX -BLOOD/URINE +**

➤ **OPINION ON IMPAIRMENT**

TRADITIONAL PROOFS IN A DRUG DWI

➤ **OBSERVATIONS** +

➤ **SPECIMEN -BLOOD/URINE** +

➤ **OPINION** ON IMPAIRMENT

OBSERVATIONS

**CAN THE STATE USE THE
SAME TYPE OF OBSERVATION
TESTIMONY IN A DRUG DWI AS
AN ALCOHOL DWI?**

OBSERVATIONS

CAN THE STATE USE THE
SAME TYPE OF OBSERVATION
TESTIMONY IN A DRUG DWI AS
AN ALCOHOL DWI?

YES

OBSERVATIONS ARE
OBSERVATIONS

The 2005 *Bealor* Dilemma

But the State must prove both
the "facts of intoxication"
and the
"cause of intoxication"

STATE v. BEALOR

NJ SUPREMES 2005

- LAY OBSERVATIONS OF THE FACT OF INTOXICATION ARE ALWAYS ADMISSIBLE
- LAY OPINION ON THE CAUSE OF INTOXICATION **OTHER** THAN FROM ALCOHOL IS NOT ADMISSIBLE BECAUSE NO SUCH GENERAL AWARENESS EXISTS AS YET REGARDING THE SIGNS AND SYMPTOMS OF THE CONDITION AS DESCRIBED AS BEING “HIGH” ON MARIJUANA

**OPINION TESTIMONY
REGARDING CAUSE OF
DRUG DWI IMPAIRMENT
CANNOT COME FROM A LAY
WITNESS**

MORE IS NECESSARY

STATE v. BEALOR NJ SUPREMES 2005

- **EXPERT TESTIMONY
REMAINS THE PREFERRED
METHOD OF PROOF OF
MARIJUANA INTOXICATION**

- **SPECIALIZED LAY WITNESS?**

***BEALOR* LOOSE END**

Expert needed but is testimony admissible?

***Bealor* did not consider the critical issue of
whether expert testimony by a DRE is
admissible to prove the cause of intoxication in
DUID cases**

FAST FORWARD 18 YEARS

STATE V. OLENOWSKI
255 N.J. 529 (2023)

DRUG RECOGNITION EVALUATORS (DREs)

THREE PHASES

- **PHASE 1: 16 HOURS DRE PRE-SCHOOL INCLUDING PROFICIENCY IN CONDUCTING SFSTs**
- **PHASE 2: 56 HOUR DRE SCHOOL REGARDING DRUG EVALUATION PROCESS, EXPANDED SESSIONS ON EACH DRUG CATEGORY, EXAMINATION OF VITAL SIGNS, DRUG PHARMACOLOGY, CASE PREP, COURTROOM TESTIMONY, AND WRITTEN EXAM**
- **PHASE 3: MINIMUM OF 12 DRUG EVALUATIONS UNDER SUPERVISION OF DRE INSTRUCTOR WITH A 75% TOXICOLOGICAL CORROBORATION RATE - THEN FINAL EXAM (with an 80% pass rate required)**

DRUG EVALUATION PROGRAM

3 STEP PROCESS

- VERIFY THAT THE SUSPECT IS IMPAIRED AND THAT THE BAC IS NOT CONSISTENT WITH THE DEGREE OF IMPAIRMENT
- DETERMINE WHETHER THE IMPAIRMENT IS DRUG RELATED OR MEDICALLY RELATED (INJURY OR ILLNESS)
- USE **“PROVEN DIAGNOSTIC PROCEDURES”** TO DETERMINE THE CATEGORY (OR COMBINATIONS) OF DRUGS THAT IS/ARE THE LIKELY CAUSE OF IMPAIRMENT

THE DRE THEORY

How We Got Here

- Driver fails SFSTs – always proves “impairment”
- Rule out EtOH with breath testing
- Rule out medical condition with DRE exam
- DRE opinion “impairment by drugs”
- Many non-peer reviewed DRE studies make accuracy calculations based on tox showing any drug in any category
- See, DRE predicted drug impairment and “a drug” was found


THE SEVEN DRE DRUG CLASSES

1. **CENTRAL NERVOUS SYSTEM (“CNS”) DEPRESANTS:** Benzos (Alprazolam, Diazepam, Lorazepam, etc), Barbiturates, GHB, Methaqualone
2. **CNS STIMULANTS:** Cocaine, Amphetamines, Methamphetamines, Adderall
3. **HALLUCINOGENS:** LSD, MDMA, Psilocin, Peyote
4. **DISSOCIATIVE ANESTHETIC:** PCP, DXM
5. **NARCOTIC ANALGESIC:** Heroin, Morphine, Codeine, Hydrocodone, Oxycodone, Methadone, Dilaudid, Fentanyl
6. **INHALANTS:** Nitrous Oxide, Volatile Solvents (Toluene), Anesthetic Gases
7. **CANNABIS:** Marijuana, Vape Extracts, wax, shatter, edibles, tinctures

THE 12 STEP DRE EVALUATION

- BREATH ALCOHOL SCREENING
- DRE INTERVIEWS ARRESTING OFFICER
- PRELIMINARY EXAM & FIRST PULSE
- EYE EXAMS: TRACKING, EQUAL PUPIL SIZE, HGN, VGN, AND NON-CONVERGENCE
- DIVIDED ATTENTION TESTS: ROMBERG (BODY SWAY AND 10 SECOND INTERVAL CLOCK), WAT, OLS, FINGER-TO-NOSE
- VITAL SIGNS & SECOND PULSE
- DARK ROOM CHECKS OF PUPIL SIZE (WAIT 90 SECONDS), NASAL & ORAL CAVITY EXAM
- CHECK FOR MUSCLE TONE
- CHECK FOR INJECTION MARKS & THIRD PULSE
- INTERROGATION, STATEMENTS, AND OTHER OBSERVATIONS
- OPINION OF EVALUATOR
- TOXICOLOGICAL EXAM

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- 

CORROBORATIVE OR NECESSARY?

DRE MANUAL SAYS THAT THE
TOXICOLOGY IS CORROBORATIVE,
NOT CONFIRMATORY

OLENOWSKI FOLLOWS THIS LEAD
BUT EXPANDS ON THE *TRUE NEED*
FOR TOXICOLOGY

IT IS PART OF THE 12 STEP DRE
MATRIX and A VIRTUAL NECESSITY

STATE v. OLENOWSKI

2018 N.J. Super. Unpub. LEXIS 2589
(App. Div. 2018)

ARREST #1

2/13/15

- **Seat belt violation**
- **Failed SFSTs**
- **Erratic and belligerent**
- **0.04% BAC**
- **Urine drawn (results not disclosed)**
- **DRE exam conclusion: CNS depressant and EtOH**

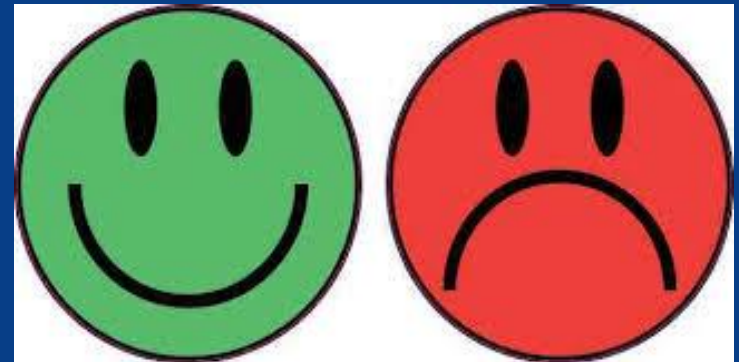


STATE v. OLENOWSKI
2018 N.J. Super. Unpub. LEXIS 2589
(App. Div. 2018)

ARREST #2

8/17/15

- Hit pole
- Failed SFSTs
- Blank stare
- 0.00% BAC
- No blood/urine obtained
- Sudden mood swings
- DRE exam conclusion: CNS Depressant



STATE v. OLENOWSKI

Law Div. 2018

Two separate trials



“New Jersey's *continued reliance* on
DRE evidence indicates the
willingness that it still finds it to be
generally acceptable and reliable in
the scientific community”

HUH?

NEW JERSEY

- NO REPORTED APPELLATE DIVISION CASE APPROVING USE OF THE DRE EVALUATION TO ASSESS DRIVING IMPAIRMENT
- *STATE v. REITER*: NJ App. Div. 2007 (UNREPORTED) – ADMISSIBLE TESTIMONY BUT... (“trained and certified”)

STATE v. OLENOWSKI **NJ SUPREMES 2023**

DRE testimony does not, in and of itself establish impairment. However, such testimony is sufficiently reliable to be admitted for a less ambitious purpose and with critical “safeguards”

STATE v. OLENOWSKI

The “Safeguards”

1. The DRE testimony must be confined to an opinion that the evaluation is “*consistent with*” the driver’s ingestion or usage of one or more of the identified drug categories. The DRE **MAY NOT** present opinions as to whether the driver’s observed impairment was actually caused by such drugs and, if so, to what extent;
2. If feasible, the State must make a reasonable attempt to obtain a toxicology report based on a **blood or urine** sample from the driver. If the State fails to make such a reasonable attempt without persuasive justification, the DRE opinion testimony must be excluded;
3. The defense must be afforded a fair opportunity to impeach the DRE and present competing proof.

STATE v. OLENOWSKI

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OLENOWSKI

PROOF OF “CONSISTENCY” CAN BE
PERTINENT AS **ONE** COMPONENT
WITHIN THE TOTALITY OF THE
EVIDENCE TO SUPPORT AN INFERENCE
THAT DRUGS CAUSED A DRIVER'S
IMPAIRMENT

**Leaves door open to alternate
explanations**

Bealor allowed courts to explore
“other factors”

YOUR LOW HANGING FRUIT EXPLORE “OTHER FACTORS”

- General appearance
- Cognitive level
- Neuro conditions
- Driving explanation
- Condition for which Rx given & name of substance
- Subject's normal baseline
- Pre-existing conditions
- Age
- Weight
- Historical dosage Hx
- Dosage Hx that day
- Dexterity

THE 12 STEP DRE EVALUATION

**ONE
MOMENT IN
TIME**

BREATH ALCOHOL SCREENING

- DRE INTERVIEWS ARRESTING OFFICER
- PRELIMINARY EXAM & FIRST PULSE
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- DIVIDED ATTENTION TESTS: ROMBERG (BODY SWAY AND 10 SECOND INTERVAL CLOCK), WAT, OLS, FINGER-TO-NOSE
- VITAL SIGNS & SECOND PULSE

• DARK ROOM CHECKS OF PUPIL SIZE (WAIT 90 SECONDS), NASAL & ORAL CAVITY EXAM

• CHECK FOR MUSCLE TONE

• CHEK FOR INJECTION MARKS & THIRD PULSE

• INTERROGATION, STATEMENTS, AND OTHER OBSERVATIONS

• OPINION OF EVALUATOR

• TOXICOLOGICAL EXAM

THINGS THAT MIMIC DRUG CLASS

- **CNS DEPRESSANTS:** FATIGUE, HEAD INJURY, DIABETIC REACTION, HYPOTENSION, INNER EAR DISORDER, SEVERE DEPRESSION
- **CNS STIMULANTS:** HYPERACTIVITY, NERVOUSNESS, STRESS, HYPERTENSION, FEAR
- **HALLUCINOGENS:** HIGH FEVER, MENTAL ILLNESS

THINGS THAT MIMIC DRUG CLASS

- **DISSOCIATIVE ANESTHETIC:** MENTAL ILLNESS
- **NARCOTIC ANALGESIC:** FATIGUE, RECENT HEAD INJURY, DIABETIC REACTION, HYPOTENSION, SEVERE DEPRESSION
- **INHALANTS:** SEVERE HEAD INJURY, INNER EAR DISORDERS
- **CANNABIS:** ATTENTION DEFICIT DISORDER

STATE v. OLENOWSKI

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Indicators Consistent with Drug Categories

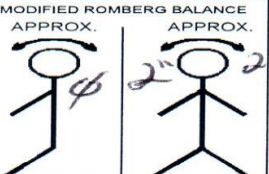
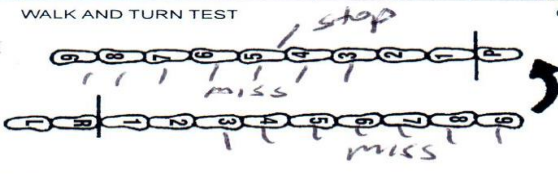
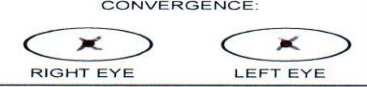

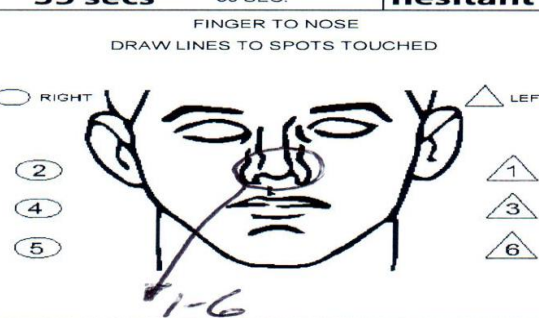
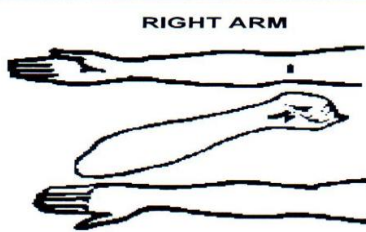
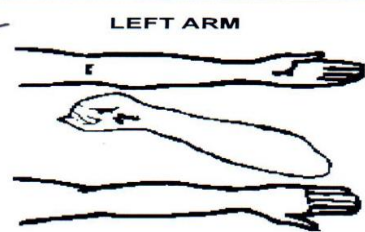
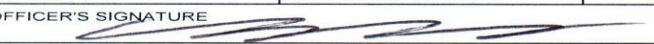
| | CNS Depressants | CNS Stimulants | Hallucinogens | Dissociative Anesthetics | Narcotic Analgesics | Inhalants | Cannabis |
|--|--|--|---|--|---|--|--|
| HGN | Present | None | None | Present | None | Present | None |
| Vertical Gaze Nystagmus | Present (High Dose) | None | None | Present | None | Present (High Dose) | None |
| Lack of Convergence | Present | None | None | Present | None | Present | Present |
| Pupil Size | Normal (1) | Dilated | Dilated | Normal | Constricted | Normal (4) | Dilated (6) |
| Reaction to Light | Slow | Slow | Normal (3) | Normal | Little or None Visible | Slow | Normal |
| Pulse Rate | Down (2) | Up | Up | Up | Down | Up | Up |
| Blood Pressure | Down | Up | Up | Up | Down | Up/Down (5) | Up |
| Body Temperature | Normal | Up | Up | Up | Down | Up/Down/Normal | Normal |
| Muscle Tone | Flaccid | Rigid | Rigid | Rigid | Flaccid | Normal or Flaccid | Normal |
| General Indicators | Disorientation Droopy eyelids Drowsiness Drunk-like behavior Slow, sluggish reactions Thick, slurred speech Uncoordinated Unsteady walk | Anxiety Body tremors Dry mouth Euphoria Exaggerated reflexes Excited Eyelid tremors Grinding teeth Increased alertness Insomnia Irritability Redness to the nasal area Restlessness Runny nose Talkative | Body tremors Dazed appearance Difficulty with speech Flashbacks Hallucinations Memory loss Nausea Paranoia Perspiring Poor perception of time and distance Synesthesia Uncoordinated NOTE: With LSD, Piloerection may be observed (goose bumps, hair standing on end) | Blank stare Confusion Chemical odor (PCP) Cyclic behavior Difficulty with speech Disoriented Early HGN Onset Hallucinations Incomplete verbal responses Increased pain threshold "Moon Walking" Non-communicative Perspiring (PCP) Possibly violent Sensory distortions Slow, slurred speech Slowed responses Warm to touch (PCP) | Depressed reflexes Droopy eyelids Drowsiness Dry mouth Euphoria Facial Itching Inability to concentrate Nausea "On the Nod" Puncture marks Slow, low, raspy speech Slow breathing Slow deliberate movements NOTE: Tolerant users exhibit relatively little psychomotor impairment. | Bloodshot eyes Confusion Disoriented Flushed face Intense headaches Lack of muscle control Non-communicative Odor of substance Possible nausea Residue of substance Slow, thick, slurred speech Watery eyes | Altered time/distance perception Alteration in thought formation Body tremors Bloodshot eyes Disoriented Drowsiness Eyelid tremors Euphoria Impaired memory Increased appetite Lack of concentration Mood changes Odor of Marijuana Rebound Dilation Relaxed inhibitions Sedation |
| Duration of Effects | Ultra-Short: A few minutes Short: Up to 5 hours Intermediate: 6-8 hours Long: 8-14 hours | Cocaine: 5-90 minutes Methamphetamine: Up to 12 hours | Duration varies widely from one hallucinogen to another: LSD: 10-12 hours Psilocybin: 2-3 hours | PCP Onset: 1-5 minutes Peak Effects: 15-30 minutes Exhibits effects up to 4-6 hours DXM: Onset 15-30 min. Effects 3-6 hours | Heroin: 4-6 hours Methadone: Up to 24 hours Others: Vary | 6-8 hours for most volatile solvents Anesthetic gases and aerosols – very short duration | 2-3 hours – exhibit and feel effects (Impairment may last up to 24 hours, without awareness of effects) |
| Usual Methods of Administration | Injected (occasionally) Insufflation Oral | Insufflation Injected Oral Smoked | Insufflation Oral Smoked Transdermal | Injected Insufflation Oral Smoked Transdermal | Injected Insufflation Oral Smoked Transdermal | Inhalation | Oral Smoked Transdermal |
| Overdose Signs | Clammy skin Coma Rapid, weak pulse Shallow breathing | Agitation Hallucinations | Intense bad "trip" Hyperthermia Convulsions | Deep coma Seizures and convulsions | Cold, clammy skin Coma Convulsions Slow, shallow breathing | Cardiac arrhythmia Possible psychosis Respiration ceases Severe nausea/vomiting Risk of death | Excessive vomiting Fatigue Acute anxiety attacks Paranoia Possible psychosis |

FOOTNOTE: These indicators are the most consistent with the category, keep in mind that there may be variations due to individual reaction, dose taken and drug interactions.

- 1) Soma, Quaaludes and some antidepressants usually dilate pupils
- 2) Quaaludes, ETOH and some antidepressants may elevate
- 3) Certain psychedelic amphetamines may cause slowing

- 4) Normal, but may be dilated
- 5) Down with anesthetic gases, up with volatile solvents and aerosols
- 6) Pupil size possibly normal

DRUG INFLUENCE EVALUATION

| | | | | | | |
|--|--|---|--|--|--|-----------------------------------|
| EVALUATOR Sgt. Kevin Bohn (#2057) | | DRE# ABC123 | ROLLING LOG # 18-6 | EVALUATOR'S AGENCY Cinnaminson Poice Dept | | CASE # XYZ-123 |
| RECORDER/WTNESS: Off. Chiumento | | CRASH <input type="checkbox"/> Fatal <input checked="" type="checkbox"/> Injury <input checked="" type="checkbox"/> Property <input type="checkbox"/> None | | ARRESTING OFFICER (NAME, ID#) Sgt. Kevin Bohn (#2057) | | |
| ARRESTEE'S NAME (LAST, FIRST, MIDDLE) Doe, John E. | | DOB 5/1/62 | SEX M | RACE W | ARRESTING OFFICER AGENCY: Cinn PD | |
| DATE EXAMINED/TIME/LOCATION 8/25/18 2200hrs; CPD HQ | | BREATH RESULTS: 0.00 BAC | | <input type="checkbox"/> REFUSED | CHEMICAL TEST <input checked="" type="checkbox"/> Urine <input checked="" type="checkbox"/> Blood <input type="checkbox"/> Oral Fluid <input type="checkbox"/> Test or tests refused | |
| MIRANDA WARNING GIVEN: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | WHAT HAVE YOU EATEN TODAY? WHEN? ham sandwich 5pm | | WHAT HAVE YOU BEEN DRINKING? HOW MUCH? nothing | | TIME OF LAST DRINK? n/a |
| BY: Sgt. Bohn | WHEN DID YOU LAST SLEEP? HOW LONG? last night /7 hous | | ARE YOU SICK OR INJURED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | ARE YOU DIABETIC OR EPILEPTIC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| TIME NOW?/ACTUAL 2100hrs/2200hrs | DO YOU TAKE INSULIN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | DO YOU HAVE ANY PHYSICAL DEFECTS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | ARE YOU UNDER THE CARE OF A DOCTOR OR DENTIST? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | COORDINATION poor | | |
| ARE YOU TAKING ANY MEDICATION OR DRUGS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | ATTITUDE cooperative | BREATH ODOR: ham | FACE: flushed | BLINDNESS: <input checked="" type="checkbox"/> None <input type="checkbox"/> Left <input type="checkbox"/> Right | TRACKING: <input checked="" type="checkbox"/> Equal <input type="checkbox"/> Unequal | |
| SPEECH: quiet, slow | CORRECTIVE LENSES: <input checked="" type="checkbox"/> Glasses <input type="checkbox"/> Contacts, if so <input type="checkbox"/> Hard <input type="checkbox"/> Soft <input type="checkbox"/> None | EYES: <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Bloodshot <input type="checkbox"/> Watery | ABLE TO FOLLOW STIMULUS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | EYELIDS: <input type="checkbox"/> Normal <input checked="" type="checkbox"/> Droopy | | |
| PUPIL SIZE: <input checked="" type="checkbox"/> Equal <input type="checkbox"/> Unequal (explain) | RESTING NYSTAGMUS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | VERTICAL NYSTAGMUS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | PULSE & TIME: 1. 80 / 2205 hrs 2. 83 / 2225 hrs 3. 81 / 2240 hrs | HGN LACK OF SMOOTH PURSUIT MAX. DEVIATION ANGLE OF ONSET | LEFT EYE na | RIGHT EYE na |
| MODIFIED ROMBERG BALANCE APPROX.  | WALK AND TURN TEST  | CONVERGENCE:  | CANNOT KEEP BALANCE <input checked="" type="checkbox"/> STARTS TOO SOON <input checked="" type="checkbox"/> STOPS WALKING <input checked="" type="checkbox"/> MISSES HEEL-TOE <input checked="" type="checkbox"/> STEPS OFF LINE <input type="checkbox"/> RAISES ARMS <input checked="" type="checkbox"/> ACTUAL STEPS TAKEN: 9 / 10 | ONE LEG STAND 30 / 30  | SWAYS WHILE BALANCING <input checked="" type="checkbox"/> L <input checked="" type="checkbox"/> R USES ARMS TO BALANCE <input type="checkbox"/> HOPPING <input type="checkbox"/> PUTS FOOT DOWN <input checked="" type="checkbox"/> L <input checked="" type="checkbox"/> R | |
| TIME ESTIMATION 35 secs | ESTIMATED AS 30 SEC. | DESCRIBE TURN hesitant | CANNOT DO TEST (EXPLAIN) n/a | TYPE OF FOOTWEAR: tied sneakers | | |
| FINGER TO NOSE DRAW LINES TO SPOTS TOUCHED  | PUPIL SIZE | ROOM LIGHT 2.5 - 5.0 | DARKNESS 5.0 - 8.5 | DIRECT 2.0 - 4.5 | NASAL AREA clear | |
| LEFT EYE 2.4mm | RIGHT EYE 2.4mm | LEFT EYE 5.0mm | RIGHT EYE 5.0mm | LEFT EYE 2.0mm | ORAL CAVITY clear | |
| REBOUND DILATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | REACTION TO LIGHT less than normal | RIGHT ARM  | LEFT ARM  | | | |
| BLOOD PRESSURE 115/70mmHg | TEMPERATURE 98.2 °F | MUSCLE TONE: <input checked="" type="checkbox"/> NORMAL <input type="checkbox"/> FLACCID <input type="checkbox"/> RIGID | COMMENTS: | | | |
| WHAT MEDICINE OR DRUG HAVE YOU BEEN USING? Oxycontin | HOW MUCH? 10mg pills | TIME OF USE? 1600 & 2000 hrs | WHERE WERE THE DRUGS USED? (Location) residence | | | |
| DATE/TIME OF ARREST 8/25/18 | TIME OF DRE WAS NOTIFIED immediate | EVALUATION START TIME 2200 hrs | EVALUATION COMPLETION TIME 2250 hrs | <input type="checkbox"/> Subject refused entire evaluation <input type="checkbox"/> Subject stopped participating during evaluation | | |
| OFFICER'S SIGNATURE  | | DRE#: ABC123 | REVIEWED/APPROVED BY/DATE: Lt. Chris Baxter--apprvd 8/26/18 | | | |
| OPINION OF EVALUATOR: | <input type="checkbox"/> NOT IMPAIRED | <input type="checkbox"/> ALCOHOL | <input type="checkbox"/> CNS STIMULANT | <input type="checkbox"/> DISSOCIATIVE ANESTHETIC | <input type="checkbox"/> INHALANT | |
| <input type="checkbox"/> MEDICAL | <input type="checkbox"/> CNS DEPRESSANT | <input type="checkbox"/> HALLUCINOGEN | <input checked="" type="checkbox"/> NARCOTIC ANALGESIC | <input type="checkbox"/> CANNABIS | | |



DRE NARRATIVE REPORT

Drug Evaluation and Classification Program



DRE: Sparacio, Anthony

Agency: SP BRIDGETON - A

DRE#: [REDACTED]

Rolling Log #: [REDACTED]

Case#: [REDACTED]

Subject's Name: [REDACTED]

Birth Date: [REDACTED]

Date of Evaluation: 01/31/2023

Driver's License: [REDACTED]

Start Time of Evaluation: 02:00

LOCATION:

This evaluation took place at NJSP Atlantic City Expressway Station.

WITNESSES:

N/A

BREATH ALCOHOL TEST:

The defendant's BAC was revealed to be .00% via Alcotest 7110 MKIII-C serial number ARWC-0056 which was administered by #8495.

NOTIFICATION and INTERVIEW of ARRESTING OFFICER:

I was contacted on the above date and time and requested that I perform a DRE evaluation on [REDACTED]. At the station, I met with Tpr. D. Pandolpho who informed me he interacted with the driver during the course of a motor vehicle stop investigation and at which time he determined the driver was impaired. Tpr. D. Pandolpho stated during the course of interacting with the driver he requested the driver to perform standardized field sobriety tests and driver was unable to successfully complete them. Tpr. D. Pandolpho further informed me that [REDACTED] vehicle was called into dispatch as a erratic driver.

INITIAL OBSERVATION of SUSPECT:

I observed [REDACTED] seated on the Atlantic City Expressway station processing bench. [REDACTED] was resting with his head against the wall with his eyes closed. I began to interact with [REDACTED] and he informed me he was tired and has not slept in a few days. [REDACTED] interacted with me in a slow hoarse tone. [REDACTED] was cooperative and polite while interacting with him and stated he was driving and missed his exit, and got lost. [REDACTED] appeared lethargic while interacting with him. [REDACTED] would continuously close his eyes. [REDACTED] first pulse check was 92BPM, which is above the DRE average range.

MEDICAL PROBLEMS and TREATMENTS:

STATE v. OLENOWSKI

The Safeguards

1. The DRE testimony must be confined to an opinion that the evaluation is “*consistent with*” the driver’s ingestion or usage of one or more of the identified drug categories. The DRE may not present opinions as to whether the driver’s observed impairment was actually caused by such drugs and, if so, to what extent;
2. If feasible, the State must make a reasonable attempt to obtain a toxicology report based on a blood or urine sample from the driver. If the State fails to make such a reasonable attempt without persuasive justification, the DRE opinion testimony must be excluded;
3. The defense must be afforded a fair opportunity to impeach the DRE and present competing proof.

CRITICISMS OF HGN

- **MULTIPLE CAUSES OF GAZE NYSTAGMUS - APPROXIMATELY 256**
- **MANY COMMON CAUSES: ALCOHOL, CAFFEINE, NICOTINE**
- **LARGEST HGN STUDY SHOWS 10% OF SUBJECTS HAVE ONSET BEFORE 45° AT 0.00% BAC**
- **ANOTHER 10% HAVE ONSET OF NYSTAGMUS AT 45° AT 0.00% BAC**
- **OLENOWSKI DID NOT SPECIFICALLY RECOGNIZE ITS ADMISSIBILITY (SEE STATE V. DORIGUZZI)**

Instruments Relied Upon Calibrated?

Pupilometer

Sphygmomanometer

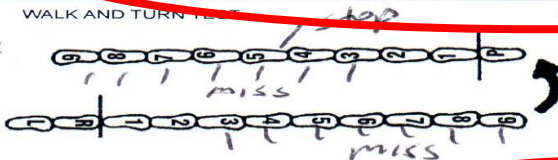


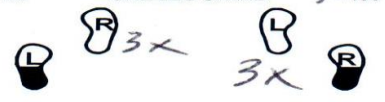


Oral Thermometer

Calibrated? Ever Measured?

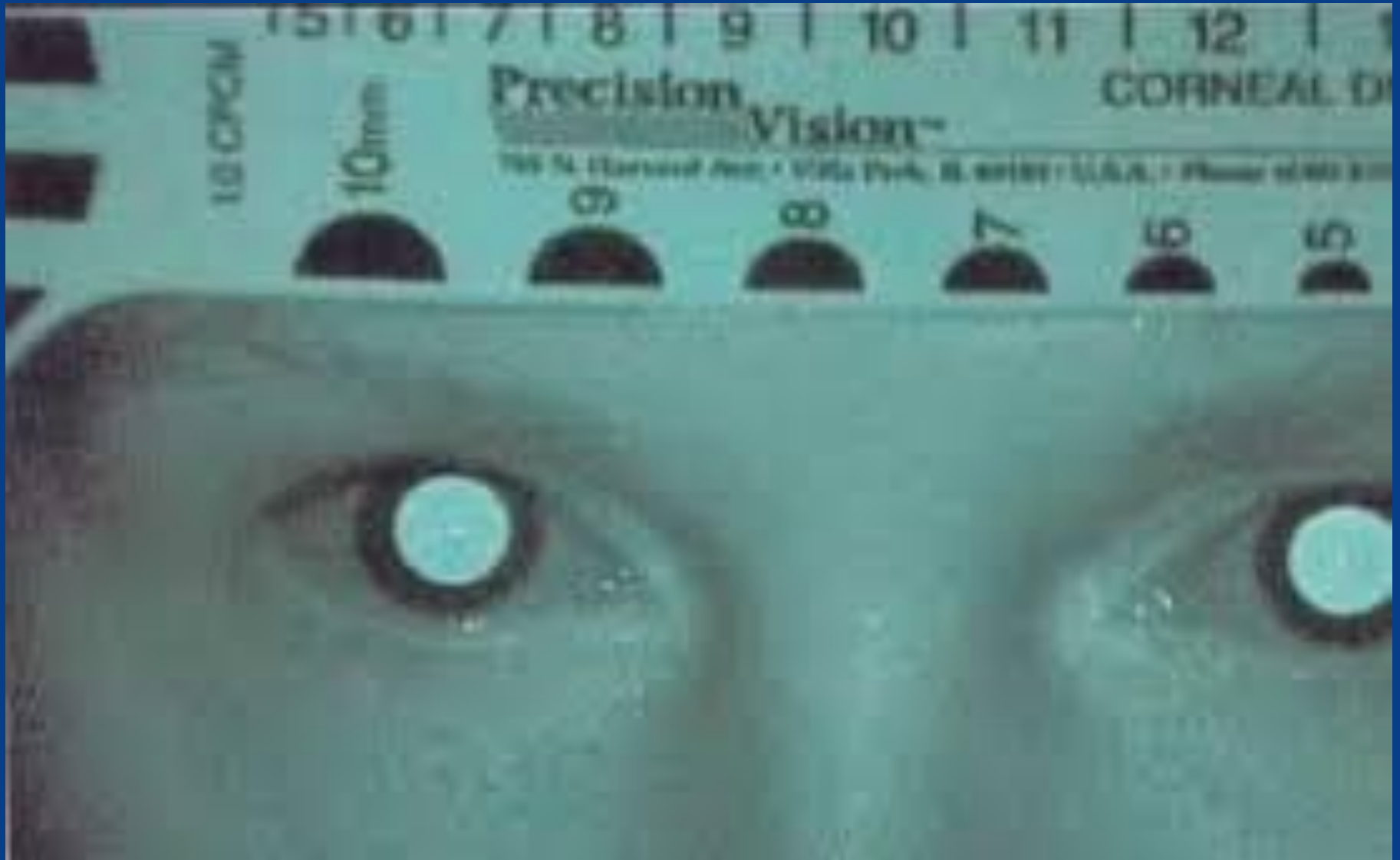
| | NEW JERSEY DRUG RECOGNITION EXPERT PROGRAM | |
|------|--|------|
| 1.5 | 1. BREATH ALCOHOL SCREENING TEST | 1.5 |
| 3.0 | 2. INTERVIEW OF ARRESTING OFFICER | 3.0 |
| 4.5 | 3. PRELIMINARY EXAMINATION | 4.5 |
| 6.0 | A. FIRST PULSE | 6.0 |
| 7.5 | 4. EYE EXAMS (EQUAL TRACKING/EQUAL PUPIL SIZE) | 7.5 |
| 9.0 | A. HORIZONTAL GAZE NYSTAGUS | 9.0 |
| 10.5 | - SMOOTH PURSUIT | 10.5 |
| 12.0 | - MAXIMUM DEVIATION | 12.0 |
| 13.5 | - ANGLE OF ONSET | 13.5 |
| 15.0 | B. VERTICAL GAZE NYSTAGMUS | 15.0 |
| 16.5 | C. NON-CONVERGENCE | 16.5 |
| 18.0 | 5. DIVIDED ATTENTION TESTS | 18.0 |
| 19.5 | A. ROMBERG | 19.5 |
| 21.0 | - BODY SWAY | 21.0 |
| 22.5 | - 10 SECOND INTERNAL CLOCK | 22.5 |
| 24.0 | B. WALK AND TURN | 24.0 |
| 25.5 | - 9 STEPS / 9 STEPS | 25.5 |
| 27.0 | C. ONE LEG STAND (30 SEC. EACH LEG) | 27.0 |
| 28.5 | - LEFT LEG THEN RIGHT LEG | 28.5 |
| 30.0 | C. FINGER TO NOSE | 30.0 |
| 31.5 | - LEFT/RIGHT/LEFT/RIGHT/RIGHT/LEFT | 31.5 |
| 33.0 | 6. VITAL SIGNS AND SECOND PULSE | 33.0 |
| 34.5 | 7. DARK ROOM CHECKS OF PUPIL SIZE (WAIT | 34.5 |
| 36.0 | 90 SECONDS); NASAL & ORAL CAVITY EXAM | 36.0 |
| 37.5 | 8. CHECK FOR MUSCLE TONE | 37.5 |
| 39.0 | 9. CHECK FOR INJECTION MARKS AND THIRD | 39.0 |
| 40.5 | PULSE | 40.5 |
| 42.0 | 10. INTERROGATION, STATEMENTS AND OTHER | 42.0 |
| 43.5 | OBSERVATION | 43.5 |
| 45.0 | 11. OPINION OF EVALUATOR | 45.0 |
| 46.5 | 12. TOXICOLOGICAL EXAMINATION | 46.5 |
| 48.0 | | 48.0 |
| 49.5 | | 49.5 |
| 51.0 | | 51.0 |
| 52.5 | | 52.5 |
| 54.0 | | 54.0 |
| 55.5 | | 55.5 |
| 57.0 | | 57.0 |
| 58.5 | | 58.5 |
| 60.0 | | 60.0 |
| 61.5 | | 61.5 |
| 63.0 | | 63.0 |
| 64.5 | | 64.5 |
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| 69.0 | | 69.0 |
| 70.5 | | 70.5 |
| 72.0 | | 72.0 |
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| 76.5 | | 76.5 |
| 78.0 | | 78.0 |
| 79.5 | | 79.5 |
| 81.0 | | 81.0 |
| 82.5 | | 82.5 |
| 84.0 | | 84.0 |
| 85.5 | | 85.5 |
| 87.0 | | 87.0 |
| 88.5 | | 88.5 |
| 90.0 | | 90.0 |

Printed Courtesy of the
New Jersey Drug Recognition
Expert Association
Revised 12/08

DRUG INFLUENCE EVALUATION

| | | | | | | |
|--|--|--|------------------------------|--|-------------------------------------|--|
| EVALUATOR Sgt. Kevin Bohn (#2057) | | DRE# ABC123 | ROLLING LOG # 18-6 | EVALUATOR'S AGENCY Cinnaminson Poice Dept | | CASE # XYZ-123 |
| RECORDER/WTNESS: Off. Chiumento | | CRASH <input type="checkbox"/> Fatal <input checked="" type="checkbox"/> Injury <input checked="" type="checkbox"/> Property <input type="checkbox"/> None | | ARRESTING OFFICER Sgt. Kevin Bohn | | <div style="background-color: black; color: white; text-align: center; padding: 20px; font-size: 2em; font-weight: bold;">9%</div> |
| ARRESTEE'S NAME (LAST, FIRST, MIDDLE) Doe, John | | DOB 5/1/62 | SEX M | RACE W | ARRESTING OFFICER Cinn PD | |
| DATE EXAMINED 8/25/18 2100hrs; CPD HQ | | BREATH RESULTS: 0.00 BAC | | REFUSED DOCUMENT # arnk-0023 | | |
| MIRANDA WARN GIVEN: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | WHAT HAVE YOU EATEN TODAY? WHEN? ham sandwich 5pm | | WHAT HAVE YOU BEEN DRINKING? nothing | | |
| TIME NOW?/ACT 2100hrs/2200hrs | | WHEN DID YOU LAST SLEEP? HOW LONG? last night /7 hous | | ARE YOU OR INJURED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| DO YOU TAKE ANY MEDICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | DO YOU HAVE ANY PHYSICAL DEFICIENCIES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | ARE YOU UNDER THE CARE OF A DOCTOR OR DENTIST? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| ARE YOU TAKING ANY MEDICATION OR DRUGS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | ATTITUDE cooperative | | COORDINATION poor | | |
| SPEECH: quiet, slow | | BREATH ODOR: ham | | FACE: flushed | | |
| CORRECTIVE LENSES: <input checked="" type="checkbox"/> Glasses <input type="checkbox"/> Contacts, if so <input type="checkbox"/> Hard <input type="checkbox"/> Soft <input type="checkbox"/> None | | EYES: <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Bloodshot <input type="checkbox"/> Watery | | BLINDNESS: <input checked="" type="checkbox"/> None <input type="checkbox"/> Left <input type="checkbox"/> Right | | |
| PUPIL SIZE: <input checked="" type="checkbox"/> Equal <input type="checkbox"/> Unequal | | RESTING NYSTAGMUS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | LOCAL NYSTAGMUS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| PULSE & TIME: 1. 80 / 2205 hrs 2. 83 / 2225 hrs 3. 81 / 2240 hrs | | HGN WALK AND TURN TEST  | | CONVERGENCE:  | | |
| MODIFIED ROMBERG BALANCE APPROX. APPROX.  | | CANNOT KEEP BALANCE <input checked="" type="checkbox"/> STARTS TOO SOON <input checked="" type="checkbox"/> STOPS WALKING <input checked="" type="checkbox"/> MISSES HEEL-TOE <input checked="" type="checkbox"/> STEPS OFF LINE <input type="checkbox"/> RAISES ARMS <input checked="" type="checkbox"/> | | ONE LEG STAND 30 / 30  L <input checked="" type="checkbox"/> R <input checked="" type="checkbox"/> SWAYS WHILE BALANCING <input type="checkbox"/> USES ARMS TO BALANCE <input type="checkbox"/> TIPPING <input type="checkbox"/> PUTS FOOT DOWN | | |
| TIME ESTIMATION 35 secs | | ESTIMATED AS 30 SEC. | | DESCRIBE TURN hesitant | | |
| FINGER TO NOSE DRAW LINES TO SPOTS TOUCHED  | | PUPIL SIZE LEFT EYE 2.4mm RIGHT EYE 2.4mm | | ROOM LIGHT 2.5 - 5.0 DARKNESS 5.0 - 8.5 DIRECT 2.0 - 4.5 | | |
| BLOOD PRESSURE 115/70mmHg | | TEMPERATURE 98.2 °F | | REBOUND DILATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| MUSCLE TONE: <input checked="" type="checkbox"/> NORMAL <input type="checkbox"/> FLACCID <input type="checkbox"/> RIGID | | COMMENTS: WHAT MEDICINE OR DRUG HAVE YOU BEEN USING? Oxycontin | | HOW MUCH? 10mg pills TIME OF USE? 1600 & 2000 hrs WHERE WERE THE DRUGS USED? (Location) residence | | |
| DATE/TIME OF ARREST 8/25/18 | | TIME OF DRE WAS NOTIFIED immediate | | EVALUATION START TIME 2200 hrs | | |
| OFFICER'S SIGNATURE  | | DRE# ABC123 | | REVIEWED/APPROVED BY/DATE: Lt. Chris Baxter--apprvd 8/26/18 | | |
| OPINION OF EVALUATOR: <input type="checkbox"/> NOT IMPAIRED <input type="checkbox"/> MEDICAL | | <input type="checkbox"/> ALCOHOL <input type="checkbox"/> CNS DEPRESSANT | | <input type="checkbox"/> CNS STIMULANT <input type="checkbox"/> HALLUCINOGEN | | |
| | | <input type="checkbox"/> DISSOCIATIVE ANESTHETIC <input checked="" type="checkbox"/> NARCOTIC ANALGESIC | | <input type="checkbox"/> INHALANT <input type="checkbox"/> CANNABIS | | |

INFRARED METHOD



SCIENCE STUFF

- At lower doses, marijuana “does not affect simple motor skills” (**Source:** DRE Student Manual)
- Alprazolam can actually increase pulse and irritability (contrary to DRE Student Manual which indicates it lowers pulse)(**Source:** Drugs.com)

DRUG INFLUENCE EVALUATION

| | | | | | |
|--|--|---|------------------------------|--|--|
| EVALUATOR Sgt. Kevin Bohn (#2057) | | DRE# ABC123 | ROLLING LOG # 18-6 | EVALUATOR'S AGENCY Cinnaminson Poice Dept | CASE # XYZ-123 |
| RECORDER/WITNESS: Off. Chiumento | | CRASH <input type="checkbox"/> Fatal <input checked="" type="checkbox"/> Injury <input checked="" type="checkbox"/> Property <input type="checkbox"/> None | | ARRESTING OFFICER (NAME, ID#) Sgt. Kevin Bohn (#2057) | |
| ARRESTEE'S NAME (LAST, FIRST, MIDDLE) Doe, John E. | | DOB 5/1/62 | SEX M | RACE W | ARRESTING OFFICER AGENCY: Cinn PD |
| DATE EXAMINED/TIME/LOCATION 8/25/18 2200hrs; CPD HQ | | BREATH RESULTS: 0.00 BAC | | <input type="checkbox"/> REFUSED | CHEMICAL TEST <input type="checkbox"/> Oral Fluid <input type="checkbox"/> refused |
| MIRANDA WARNING GIVEN: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | WHAT HAVE YOU EAT? ham sandwi | | | |
| BY: Sgt. Bohn | | CONFIRMATION BIAS | | | |
| TIME NOW?/ACTUAL 2100hrs/2200hrs | | | | | |
| WHEN DID YOU LAST SLEEP? HOW LONG? last night /7 hours | | DO YOU TAKE INSULIN? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | DO YOU TAKE ANY MEDICATION OR DRUGS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| SPEECH: quiet, slow | | ATTITUDE: coop | | BREATH: ham | |
| CORRECTIVE LENSES: <input checked="" type="checkbox"/> Glasses <input type="checkbox"/> Contacts, if so <input type="checkbox"/> Hard <input type="checkbox"/> Soft <input type="checkbox"/> None | | EYES: <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Bloodshot <input type="checkbox"/> Watery | | BLINDNESS: <input checked="" type="checkbox"/> None <input type="checkbox"/> Light <input type="checkbox"/> Night | |
| PUPIL SIZE: <input checked="" type="checkbox"/> Equal <input type="checkbox"/> Unequal (explain) | | RESTING NYSTAGMUS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | VERTICAL NYSTAGMUS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| PULSE & TIME: 1. 80 / 2205 hrs 2. 83 / 2225 hrs 3. 81 / 2240 hrs | | HGN na | LEFT EYE na | RIGHT EYE na | CONVERGENCE <input checked="" type="checkbox"/> RIGHT EYE |
| MODIFIED ROMBERG BALANCE APPROX. | | WALK AND TURN TEST | | CANNOT KEEP BALANCE STARTS TOO <input type="checkbox"/> STOPS <input type="checkbox"/> MISSTEPS <input checked="" type="checkbox"/> MISSTEPS TAKEN 9 10 | |
| TIME ESTIMATION 35 secs | | ESTIMATED AS 30 SEC. | | DESCRIBE TURN hesitant | |
| DRAW LINES TO SPOTS TOUCHED | | PUPIL SIZE | | DARKNESS 5.0 - 8.5 | |
| | | LEFT EYE 4mm | | 5.0mm | |
| | | RIGHT EYE 2.4mm | | 5.0mm | |
| BLOOD PRESSURE 115/70mmHg | | TEMPERATURE 98.2 °F | | REACTION TO LIGHT <input checked="" type="checkbox"/> No less than normal | |
| MUSCLE TONE: <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Flaccid <input type="checkbox"/> Rigid | | RIGHT ARM | | LEFT ARM | |
| COMMENTS: WHAT MEDICINE OR DRUGS YOU BEEN USING? Oxycontin | | HOW MUCH? 10mg pills | | TIME OF USE? 1600 & 2000 hrs | |
| DATE/TIME OF ARREST 8/25/18 | | TIME OF DRE WAS NOTIFIED immediate | | EVALUATION START TIME 2200 hrs | |
| OFFICER'S SIGNATURE | | DRE#: ABC123 | | REVIEWED/APPROVED BY/DATE: Lt. Chris Baxter--apprvd 8/26/18 | |
| OPINION OF EVALUATOR: | | <input type="checkbox"/> NOT IMPAIRED | | <input type="checkbox"/> ALCOHOL | |
| <input type="checkbox"/> MEDICAL | | <input type="checkbox"/> CNS DEPRESSANT | | <input type="checkbox"/> CNS STIMULANT | |
| | | <input type="checkbox"/> HALLUCINOGEN | | <input checked="" type="checkbox"/> DISSOCIATIVE ANESTHETIC | |
| | | | | <input type="checkbox"/> NARCOTIC ANALGESIC | |
| | | | | <input type="checkbox"/> INHALANT CANNABIS | |

OLENOWSKI

The Court also recognized that there are palpable risks of **CONFIRMATION BIAS** when a DRE officer administers the protocol, particularly in the more subjective aspects of the examination, such as the SFST's and the eye tests.

Such bias may consciously or subconsciously affect the DRE's opinion concerning a driver, despite an officer's good faith and training to remain objective (**Peer Reviewed Studies example-blind**)

In many instances, drivers admit to the arresting officer or DRE that they have been using drugs which potentially influences how the DRE evaluates other steps of the protocol. DRE's are called only when there is a suspected drugged driver

How To Use Confirmation Bias

IN CONJUNCTION WITH

- Low rolling log percentages
- Drift Analysis: Rolling log in training v. real world
 - Low DRE “matrix” percentages
- Fair Game now: “consistent with” and “cross examination” safeguards of *Olenowski*

Rolling Log & Training Results/Field Results & Cognitive Bias

DRUG EVALUATION AND CLASSIFICATION PROGRAM

[Redacted]

ACCURACY

88%

DRUG RECOGNITION EXPERT :
IACP CERTIFICATE NUMBER :

[Redacted]

PAGE: 1

| CONTROL NUMBER | SUSPECT'S NAME | BOOKING NUMBER | DATE | OPINIONS OF DRE | TOXICOLOGIC RESULTS | WITNESSES/ COMMENTS |
|----------------|----------------|----------------|----------|---|---|---------------------|
| 13-01 | FRED Stone | A-2013 0120 | 3/12/13 | CNS Depressant CANNABIS | CNS Depressant CANNABIS | Evaluator |
| 13-02 | Mary Black | A-2013 0140 | 4/7/13 | MEDICAL Rule out | --- | Evaluator |
| 13-03 | Sam Adams | A-2013 0195 | 7/4/13 | CNS Depressant Narcotic Analgesic | CNS Stimulant Narcotic Analgesic | Witness |
| 13-04 | Bud weiser | A-2013 0215 | 8/1/13 | CANNABIS | CANNABIS | Evaluator |
| 13-05 | Sally WALLS | A-2013 0375 | 11/20/13 | CNS Depressant CNS Stimulant Narcotic Analgesic | CNS Stimulant CNS Depressant Narcotic Analgesic | Witness |
| | | | | | | |
| | | | | | | |
| | | | | | | |

ROLLING LOGS

A record (written or electronic) maintained by each DRE which lists *all* of the DRE evaluations in which the DRE has participated either as an evaluator, witness or DRE instructor
(see handout)

HOW?

“MULTIPLE CALLS” HISTORY

- **Alprazolam, d-amphetamine, codeine, and Marijuana:** DRE drug class decisions were consistent with toxicology in **32%** of cases, according to standards of the International Association of Chiefs of Police (“IACP”)
- **Ethanol, Cocaine, and Marijuana:** DRE opinions were consistent with toxicology in **44%** of cases
- **Terrible efficacy on overlap of stimulant/MJ & stimulant/CNS**

SAY WHAT??

Heishman II (1998)

The DRE protocol was worse than not using a diagnostic tool at all. The DRE materials authors concluded that the trained officers would find improved results if they opined **more than one drug class simply because of increased probability of compliance with IACP standards**. While this strategy would improve the outcome data, it does not improve the specificity of the testing and does not reduce the rate of false positive DRE ratings

I'M SORRY



**I'M A LITTLE ALLERGIC
TO BULLSHIT**

ROLLING LOGS

HANDOUT

&

HOW TO

ROLLING LOG ANALYSIS

TY COBB & DATA DRIFT ANALYSIS

- Analyze Rolling Log
- Get percentage called correctly
- Get DRE to acknowledge his/her protocol on calling 2x
- Get DRE to acknowledge AC result as accurate
- Present to your expert
- Argue in closing-data bias/drift and Ty Cobb
.366



EMS Training v. DRE Training

- Preparatory for Medical
- Patient Assessment
- Airway Management
- Pharmacology
- Shock and Resuscitation
- Medical Emergencies
- Traumatic Emergencies
- Special Patient Populations
- EMS Operations

STATE v. OLENOWSKI

The Safeguards

1. The DRE testimony must be confined to an opinion that the evaluation is “*consistent with*” the driver’s ingestion or usage of one or more of the identified drug categories. The DRE may not present opinions as to whether the driver’s observed impairment was actually caused by such drugs and, if so, to what extent;
2. If feasible, the State must make a reasonable attempt to obtain a toxicology report based on a blood or urine sample from the driver. If the State fails to make such a reasonable attempt without persuasive justification, the DRE opinion testimony must be excluded;
3. The defense must be afforded a fair opportunity to impeach the DRE and present competing proof.

Why *Olenowski* says toxicology is needed

Summary: DRE is Voodoo Horseshit

Corroboration

When assessing the proofs, trial judges must consider the evidential ramifications of the presence or absence of a toxicology report under Step 12. They must also consider whether such a report, if one exists, corroborates or conflicts with the DRE's consistency opinion under Step 11

DRE Opinion does not establish a *per se* case

A positive DRE opinion at Step 11, though admissible under *NJRE 702* subject to the strictures prescribed today, is not dispositive of a driver's guilt of DUID. Unlike a BAC reading of .08% or more in a drunk driving case, the DRE's opinion is not used as a *per se* test of guilt. Instead, the DRE testimony is just one part of the evidence as a whole, and it can be amplified or rebutted

Heightened Burden on State Without It

We note the State would have a much steeper burden to prove a driver's guilt when it lacks corroborating proof from a toxicology report. Although we do not require the completion of Step 12 when it is not *feasible*, we anticipate that prosecutors will have considerable incentives to obtain corroborating toxicology evidence before they pursue these cases

NEED AND EFFORT

Consent v. Warrant

If consent given, examine knowing/voluntary nature-Form? No form?
Compare to exemplars consent form

If consent denied, then post-*McNeeley* cases are a good start for strategy

- *Missouri v. McNeeley*, 569 U.S. 141 (2013)
- *State v. Adkins*, 221 N.J. 300 (2015)
- *State v. Zalcborg*, 232 N.J. 335 (2018)

Differences between *Zalcborg* and DRE cases

EtOH case: “natural dissipation” given
substantial weight – not a factor in *urine*
CDS case

Fatal MVA in *Zalcborg*

Absence of an established telephonic
warrant system in 2018

OLENOWSKI & QUANTIFICATION

A toxicology report can detect only drug presence, it cannot establish the amount or timing of the driver's drug usage

"Sort of"

Urine v. Blood Matrix Differences Acknowledged

Corroboration Important

URINE AS A MATRIX

- Benzoylcegonine (inactive metabolite) detected for 2-3 days in urine after cocaine abstinence v. 12 hours or less for cocaine; (**Source:** J. Anal. Tox., Jufer, RA, 2000)
- It is 100% *SCIENTIFICALLY IMPOSSIBLE* to extrapolate drug metabolite levels in urine to blood equivalents
- THC-COOH (inactive metabolite) can be detected in urine more than 30 days after cannabis abstinence; non-psychoactive metabolite (**Source:** Multiple Huestis studies, etc)

Marijuana

Possible Compounds

- *Delta-9 THC*- parent drug; psychoactive properties
- *Delta-9-hydroxy-THC* (THC-OH) – 1st pass metabolite; psychoactive properties
- *THC-COOH* (carboxy THC)- inactive metabolite; no psychoactive effect whatsoever

DISCOVERY ISSUES

Absence of video/audio of DRE exam

- AG Directive 2021-5 governs BWC use
- It requires their active use (“ON”) whenever LEO interacts with public (with limited exceptions inapplicable to DRE exams)
- NJSA 40A:14-118.5 codifies this and adds a rebuttable presumption upon violation of statute

Absence of video/audio of DRE exam

NJSA 40A:14-118.5 (q)

If a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this act, or intentionally interferes with a body worn camera's ability to accurately capture audio or video recordings:

(1) the officer, employee, or agent shall be subject to appropriate disciplinary action;

(2) there shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured

VIDEO SPOILATION CASES BAD FAITH v. PROCEDURE

- R. 7:7-7(b)(6) Procedural
- *State v. Stein*, 225 N.J. 582, 596 (2016)
- *State v. P.S.*, 202 N.J. 232, 253 (2010)
(objective evidence, improves police work, saves judicial resources by discouraging frivolous motions when can't see the evidence)

DRE RE-CERTIFICATION (discovery)

1. MINIMUM OF 4 ACCEPTABLE EVALUATIONS SINCE LAST CERTIFICATION – ALL OF WHICH ARE REVIEWED BY A DRE INSTRUCTOR, AND **AT LEAST 1 WITNESSED BY A DRE INSTRUCTOR** (DRUG OR ALCOHOL & CLASS OR STREET)
2. COMPLETE MINIMUM OF 8 HOURS OF RE-CERTIFICATION TRAINING SINCE MOST RECENT CERTIFICATION
3. PROVIDE AN UPDATED CURRICULUM VITAE AND **ROLLING LOG** TO THE APPROPRIATE NJSP ADTU COORDINATOR FOR REVIEW

IACP Drug Evaluation and Classification Certification Progress Log

Please Print or type

IACP use only-DRE #

Date

Candidate's Name

Agency Mahwah Police Department

Phone (201) 529-1000

Address 201 Franklin Ave.

City Mahwah

State NJ

Zip 07430

| Item or Step | Date Completed | Location | Authorized Signature | IACP DRE # | Agency |
|--|----------------|----------|----------------------|------------|-----------|
| DRE Pre School | 3/16/11 | OCPA | Sgt C. [Signature] | 015133 | Camden CC |
| SBST Proficiency | 3/16/11 | OCPA | Sgt C. [Signature] | 015133 | Camden CC |
| DRE School | 3/16/11 | OCPA | [Signature] | 015133 | Camden CC |
| DRE School Final Exam | 3/16/11 | OCPA | [Signature] | 015133 | Camden CC |
| Evaluation # 1 | 3/22/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 2 | 3/22/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 3 | 3/22/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 4 | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 5 | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 6 | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 7 | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 8 | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 9 | 3/31/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 10 | 3/31/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 11 | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Evaluation # 12* | 3/28/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Certification Knowledge Exam | 4/18/11 | OCPA | [Signature] #6353 | 014810 | NJSP |
| Returns reviewed and approved | 4/15/11 | OCPA | [Signature] #6353 | 014810 | NJSP |
| Completed Minimum Number of Evaluations** | 3/31/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| Identified the Minimum Number of Drug Categories | 3/31/11 | Camden | [Signature] #6353 | 014810 | NJSP |
| *Rolling* Log Reviewed | 4/5/11 | OCPA | [Signature] #6353 | 014810 | NJSP |
| Toxicologies Consistent** | 6/2/11 | HAMILTON | [Signature] #6322 | 010464 | NJSP |

| Recommendations for Certification (Standard 1.15) | Authorized Signature | IACP DRE# | Date |
|--|-----------------------|-----------|---------|
| We certify that this student satisfactorily met the IACP National Standards for the Drug Evaluation and Classification Program and is recommended for certification (Standard 1.15— two certified DRE instructors who have observed the candidate during the field certification process must sign). I recommend this student for certification. (Agency Coordinator— if applicable) I recommend this student for certification. (State Coordinator— required) | (1) [Signature] #6353 | 014810 | 4/15/11 |
| | (2) [Signature] #6322 | 010464 | 4/15/11 |
| | [Signature] | | 4/15/11 |

*Please use the reverse side to record additional evaluations if necessary.
**Please see reverse side for the exact language of these standards.

DRE SCENARIOS AND DEFENSE PATHS

CASE TACTICS

NOT EVERY CASE IS DEFENDABLE!!

**YOU
SUCK
COP!!**

**I
WIN!**



DEFENSE ATTACK VECTORS

- ATTACK THE DRE PROGRAM
- ATTACK THE DRE'S EXAM AND OPINION
- ATTACK THE ANALYTICAL CHEMISTRY
- ATTACK THE DRE *AND* THE AC

DEFENSE ATTACK VECTORS

- ~~ATTACK THE DRE PROGRAM~~
- ATTACK THE DRE'S EXAM AND OPINION
- ATTACK THE ANALYTICAL CHEMISTRY
- ATTACK THE DRE *AND* THE AC

FIVE POSSIBLE DUI-D SCENARIOS

- NO DRE, BUT HAVE ANALYTICAL CHEMISTRY (“AC”)
- NO DRE AND NO AC
- DRE WITH AC THAT FULLY CORROBORATES THE CALL
- DRE WITH AC THAT DOESN'T ENTIRELY CORROBORATE THE CALL
- DRE WITH NO AC

DUI-D SCENARIOS

- NO DRE, BUT HAVE ANALYTICAL CHEMISTRY ("AC")

- NO DRE AND NO AC

- DRE WITH AC THAT FULLY CORROBORATES THE CALL

- DRE WITH AC THAT ENTIRELY CORROBORATES THE CALL

- DRE WITH NO AC

ATTACK THE ANALYTICAL CHEMISTRY

DUI-D SCENARIOS

- ~~NO DRE, BUT HAVE ANALYTICAL CHEMISTRY ("AC")~~

- NO DRE AND NO AC

- DRE WITH AC THAT FULLY CORROBORATES THE CALL

- DRE WITH AC THAT ENTIRELY CORROBORATES THE CALL

- DRE WITH NO

EVEN CHRIS BAXTER
CAN WIN THAT ONE!

DUI-D SCENARIOS

- ~~NO DRE, BUT HAVE ANALYTICAL CHEMISTRY ("AC")~~

- ~~NO DRE AND NO AC~~

- DRE WITH AC THAT FULLY CORROBORATES THE CALL

USE OLENOWSKI
FOR SUPPORT

- DRE WITH AC THAT DOESN'T ENTIRELY CORROBORATE THE CALL

- DRE WITH NO AC

DUI-D SCENARIOS

- ~~NO DRE, BUT HAVE ANA
CHEMISTRY ("AC")~~

ATTACK THE EXAM IN THE
CASE AND OFFICER
COMPETENCY (LOGS, ETC)

- ~~NO DRE AND NO AC~~

- DRE WITH AC THAT FULLY
CORROBORATES THE CALL

- DRE WITH AC THAT DOESN'T
ENTIRELY CORROBORATE THE CALL

- ~~DRE WITH NO AC~~

DUI-D SCENARIOS

- ~~NO DRE, BUT HAVE ANALYTICAL CHEMISTRY ("AC")~~

- ~~NO DRE AND NO AC~~

- DRE WITH AC THAT FULLY CORROBORATES THE CALL

- ~~DRE WITH AC THAT DOESN'T ENTIRELY CORROBORATE THE CALL~~

ATTACK THE DRE EXAM;
TWO EXPERTS

BONUS MATERIALS

RESOURCES

New Jersey State Police

DRE INSTRUCTOR MANUAL

&

DRE STUDENT TRAINING MANUALS

<https://www.nj.gov/njsp/division/investigations/alcohol-drug-testing.shtml#dre>

BAXTER'S DRE DISCOVERY REQUEST

SEE HANDOUT