

Standardized Field Sobriety Tests and Strict Compliance

How much discretion do police officers have in the administration of standardized field sobriety tests? According to one state Supreme Court – none. In a 4 to 2 decision, the Ohio Supreme Court recently held in *Ohio v. Homan*, 732 N.E.2d 952 (Ohio 2000), that standardized field sobriety tests conducted in a manner that departs from the methods established by NHTSA "are inherently unreliable" and thus inadmissible. The majority based its decision on a portion of the NHTSA SFST STUDENT MANUAL that states "if any one of the standardized field sobriety test elements is changed, the validity is compromised."

Obviously, officers should strive to fully comply with NHTSA's guidelines when administering standardized field sobriety tests. However, should deviations occur, prosecutors should be prepared to argue that any deviation goes to the weight of the evidence, not its admissibility. This argument is consistent with the preface of the NHTSA SFST Student Manual, which states that the procedures outlined in the manual describe how SFSTs should be administered under ideal conditions, and that ideal conditions do not always exist in the field. The preface goes on to state that variations from ideal conditions may have some affect on the evidentiary weight given to the results, but this does not necessarily make SFSTs invalid.

Courts in Florida, Georgia, Hawaii, Illinois, Pennsylvania, Tennessee, Texas, Wisconsin and Wyoming have reviewed the admissibility of field sobriety tests that assess physical coordination and have held that deviations in the administration of the tests, including departing from NHTSA's guidelines, should not result in the suppression of test results. In reaching this conclusion, these courts have found that field sobriety tests, including the walk-and-turn and the one-leg-stand, are simple physical dexterity exercises that can be interpreted by the fact-finder through common sense and experience. Thus, even if NHTSA's guidelines were not strictly complied with when the tests were administered, the tests still have evidentiary value and should be considered by the court. [A cautionary note: The admissibility of Horizontal Gaze Nystagmus may be treated differently due to its "scientific nature". Consequently, those results face the possibility of being excluded if the test is not administered in strict compliance with established protocols.]

The importance of field sobriety tests cannot be overemphasized. A successful prosecution may be impossible without the testimony of the officer describing in detail the defendant's performance on the tests. To the fact-finder, especially a juror, the picture created by this description could easily be at least as important as the results of a BAC test when assessing whether a defendant was impaired by the use of alcohol. Prosecutors must be willing to fight the battle to keep these results in their cases.

For a complete case law summary relative to SFSTs and strict compliance, access "SFSTs and Strict Compliance: *Ohio v. Homan* Case Law Summary" on our website at www.ndaa-apri.org.

NHTSA's Prosecutors' Public Relations Kit

The Prosecutors' Public Relations Kit for Highway Safety is now available through NHTSA's website at www.nhtsa.dot.gov or by contacting Brian Chodrow directly at 202-366-9765. These kits are designed to house public relations documents related to NHTSA's impaired driving enforcement campaigns.

National .08 Update

Congress recently passed .08 BAC as the national per se limit for impaired driving. The law gives states until 2004 to adopt the new standard. After that, the states will lose a portion of their federal highway funding each year. The provision, however, does provide for a period in which the states could conform to the standard and have the lost funding restored.

Nineteen states and the District of Columbia already have per se limits at .08 BAC. Those states are: Alabama; California; Florida; Hawaii; Idaho; Illinois; Kansas; Kentucky; Maine; New Hampshire; New Mexico; North Carolina; Oregon; Rhode Island; Texas; Utah; Vermont; Virginia; and Washington. All of the other 31 states have per se limits at .10 BAC.

Many people who oppose the .08 legislation argue that reducing the limit would not save lives and that .08 laws would only punish responsible drinkers and clog the court system. However, a NHTSA study of all 50 states found that .08 laws resulted in 275 fewer fatalities in the 15 states with that limit in effect in 1997 and estimated that

approximately 600 lives in total would have been saved if all 50 states had such laws in place. (www.nhtsa.dot.gov/people/injury/alcobol/limit.08). Furthermore, another NHTSA study of eleven states found that in five of the eleven states, implementation of the .08 law itself was associated with significantly lower rates of alcohol-related fatalities. (www.nhtsa.dot.gov/people.ncsa/Effectsof08). Finally, Setting Limits, Saving Lives, a third NHTSA study, found that .08 is a level at which everyone shows signs of impairment -- even the most experienced drivers. (www.nhtsa.dot.gov/people/outreach/traftech/pub/tt220.html)

Arresting Developments

Bradenton, Florida. A teenage driver who was seriously injured in a traffic accident is suing the city because he says police officers failed to prevent him from driving drunk minutes before he crashed into a tree. The police went to the home of a man who had found the teenager climbing into his stepdaughter's window. The police instructed the boy, who claims to have been visibly drunk, to drive home. Moments later, the boy hit a curb and struck a tree, rupturing his aorta. The teenager's BAC level was found to be twice the legal limit for adults.

St. Paul, Minnesota. A school bus driver pleaded guilty to child endangerment and driving while intoxicated for driving a school bus while drunk. State troopers arrested the driver after his bus was seen weaving across traffic lanes and then apparently hit a truck. The offense occurred during the morning route, and there were five children on the bus at the time of the offense. The driver, who had no previous DWI convictions and was properly licensed, refused to submit to a chemical test. He was said to have been swaying in his seat and walked unsteady.

Baltimore, Maryland. For the first time in the department's 130-year history, two police officers were killed in a single incident when a truck ran a stop sign, came down a one-way street, and broadsided a police cruiser. The driver of the truck had a blood alcohol concentration of .13 and has been charged with two counts of manslaughter.