

SFSTs; Back to the Basics

Mark Ryan Thiessen

The Thiessen Law Firm

733 E. 12 ½ Street

Houston, Texas 77008

mark@thetexasattorney.com

Cell: (832) 654-3058

**EDUCATE,
DON'T
DESTROY**







1st Question

If Mrs. Smith would have taken the breath test and blow a 0.000 (or even under .08) would you have let her go home?

Standard Field Sobriety Tests (SFSTs)

- 1975 NHTSA w South California Research Institute (SCRI)
 - California 1977 (Lab);
 - California 1981 (Lab and Field); and
 - Maryland, D.C., V.A., N.C. 1983 (Field).
- From 6 tests down to 3:
 - Horizontal Gaze Nystagmus (HGN)
 - Walk and Turn (WAT)
 - One Leg Stand (OLS)

Standard Field Sobriety Tests (SFSTs)

- 20+ YEARS Later....
- 3 validation tests (1995-98)
 - Colorado 1995
 - Florida 1997
 - San Diego 1998
- Created in the 70s and validated in the 90s

OFFICER TRAINING

- 1 week course (24-40 hours)
- Taught by fellow officers
 - Not... Ophthalmologist, Optometrist, Lens Crafter, Anyone Wearing a White Coat?
- First Day
- Textbook
- Study
- Knew What Graded On
- Given Credit for Correct Answers
- 70% to Pass

TRE 803(18) Learned Treatise

- EXCEPTIONS TO HEARSAY:
- (18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:
 - (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - (B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
- If admitted, the statement **may be read into evidence** but not received as an exhibit.

**I'M NOT HERE
TO BUST YOUR
CHOPS**

HGN

- Training: Ophthalmologist, Optometrist, Lens Crafters, Anyone in A White Lab Coat
- 88 Different Types of Nystagmus
 - Bruns, latent, pendular, vestibulo ocular, spasmus, or rebound
- Wet Lab only showed HGN
 - Optokinetic, rotational, post rotational, caloric, positional
- Variety of Reasons

HGN

- How far do the eyes have to jerk? (___mm)
- How many times do they have to jerk? (___x)
- No Definition of Jerks
- Does NOT Measure Mental or Physical Faculties
 - Not a divided attention test
 - Brain nor eye muscles can control
 - DA black and white video shows 4 clues on sober eyes

HGN

- How can I tell you they didn't jerk?
- TRUST ME
- 4/6 indicates impairment
- 6/6 = 100% of the clues
- 12-15" from face/ 12-15" from your eye/ dark/ mm of jerking
- Never said clues on video (*Layton v. State*)
- Wrote the clues after arrest, tow, station, sample
- Didn't Arrest Him/Her

WAT

- **8 CLUES:**
- 1. Can't Maintain Balance;
- 2. Starts too Soon;
- 3. Steps Off Line;
- 4. Misses Heel to Toe;
- 5. Raises Arms;
- 6. Stops While Walking;
- 7. Incorrect Number of Steps;
- 8. Improper Turn.

WAT

- **18 Unique Instructions:**

- 1. Place your feet on a line,
- 2. In a heel-to-toe manner,
- 3. Left foot behind right foot,
- 4. With arms at sides and give a demonstration. Tell subject
- 5. Not to begin until instructed to so do and asks if subject understands. Tell subject to take
- 6. Nine,
- 7. Heel-to-toe steps,
- 8. On the line and demonstrates. Explain and demonstrate the turning procedure:
- 9. Lead foot planted,
- 10. Take a series of small steps,
- 11. To the left direction. Tell the subject to
- 12. Return on the line,
- 13. Taking nine,
- 14. Heel-to-toe steps.
- 15. Count out loud.
- 16. Look at feet while walking.
- 17. Not raise arms from their sides. And
- 18. Do not stop once they have started. Do they understand?

WAT

- 18 Instructions
- 1 Demo
- 0 Practice
- 0 Clues Told
- 0 Credit Given
- Age, Weight, Leg, Back and Neck May Affect
 - How do you take it into consideration?
- 2 = Impairment
- Normal or Abnormal?

WAT

- Define the Clues:
- 1. Can't Maintain Balance;
- 2. Starts too Soon;
- 3. Steps Off Line; (How far?)
- 4. Misses Heel to Toe; (how far? Show me...)
- 5. Raises Arms; (How far?)
- 6. Stops While Walking; (How long?)
- 7. Incorrect Number of Steps; (why 9?)
- 8. Improper Turn. (3 ways)

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WAT

- Not that Anyone Would Try These...
- 0 or a 1 to go home
 - Or do they?
- Didn't get all 8
- Didn't arrest after this test

OLS

- **4 CLUES:**
 - 1. Sways,
 - 2. Hops,
 - 3. Drops, and
 - 4. Raises Arms.
- 30 SECONDS

OLS

- **12 Unique Instructions:**

- 1. Stand straight,
- 2. Place feet together,
- 3. Hold arms at sides.
- 4. Tell subject not to begin until instructed to do so and if they understand.
- 5. Raise one leg, either leg,
- 6. Approximately 6 inches from the ground,
- 7. Keeping the raised foot parallel to the ground and give a demonstration.
Tell subject
- 8. Keep both legs straight and
- 9. Look at the elevated foot.
- 10. Count out loud, in the following manner:
- 11. One thousand and one, one thousand and two, one thousand and three,
- 12. Until told to stop.

OLS

- 12 Instructions
- 1 Demo
- 0 Practice
- 0 Clues Told
- 0 Credit Given
- Age, Weight, Leg, Back and Neck May Affect
 - How do you take it into consideration?
- 2 = Impairment
- Normal or Abnormal?

OLS

- **DEFINE THE CLUES:**
 - 1. Sways, (How far? ___”)
 - 2. Hops,
 - 3. Drops, and
 - 4. Raises Arms. (How far? Just one arm?)

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OLS

- Not that Anyone Would Try These...
- 0 or a 1 to go home
 - Or do they?
- Didn't get all 4
- Finally Arrested

HGN

- Come Back Around
- Or...Save Until Closing
- $3/8$, $2/4$ but $6/6$???
- Trust you...

MIRANDA

- Handcuffed
- Stuffed
- Read him/her Miranda?
- Don't Make Too Big of a Deal

ALT. TESTS

- Not Standardized/ Not Validated
- Rhomberg
- Finger to Nose
- Alphabet/ Counting/ Backwards
- DRE Tests – SFSTs only for alcohol
- BWI Tests – Don't Even Get Me Started

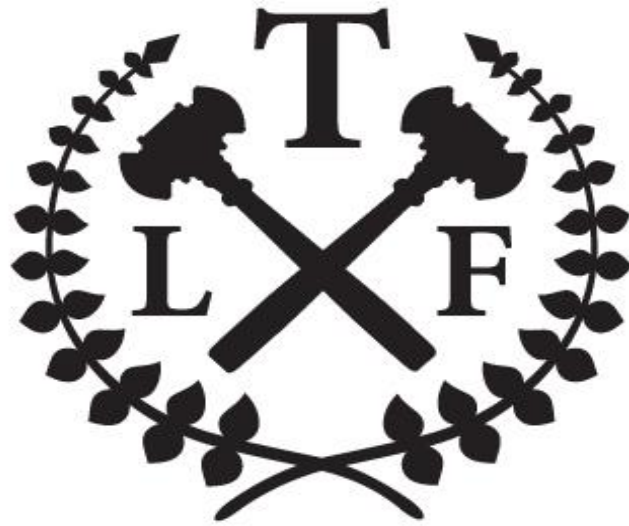
Mental and/or Physical

- Definition of Intoxication?
 - Not having the normal use of....
- I agree you saw a loss of PHYSICAL faculties
 - (M B4 P with the Expert)
- Where did you see a loss of mental due to intox and not:
 - Inexperience, Incoordination, Unfamiliarity, Nervousness..
 - Can't rule those out?
- In the end, all you need is Probable Cause

QUESTIONS???

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