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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 224  
April 24, 1998

COURT UPHOLDS USE OF HORIZONTAL GAZE NYSTAGMUS (HGN)  
TEST--WITH QUALIFICATIONS

Reference: David G. Ballard  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1584  
P.2d  
April 3, 1998

FACTS:

State Troopers observed a vehicle pull off the side of the Glenn Highway. The troopers decided to check the welfare of the driver who turned out to be Ballard. When Ballard got out of his vehicle, he was unsteady on his feet and staggered toward the troopers. Smelling alcohol on his breath, the troopers administered several field sobriety tests--all of which he failed. One was the HGN test, which consists of the officer looking for "nystagmus," an involuntary jerking movement of the eyeball. This is usually accomplished by the officer using a pen held at eye level across the subject's field of vision.

Ballard was arrested for DWI. At his trial, he objected to the HGN test and further argued that the trooper was not qualified to administer the test. Numerous experts testified for the defendant and the State.

ISSUE:

Is there a sound scientific basis for concluding that a person's performance on the HGN test is a relevant factor to be considered when determining whether that person is under the influence of alcohol?

HELD: Yes--with qualifications.

REASONING:

1. Testimony concerning a defendant's performance on a properly administered HGN test is admissible on the issue of impairment, provided that the prosecution claims no greater reliability or

weight for the HGN evidence than it does for evidence of the other standard field sobriety tests and, further, provided that the prosecution makes no attempt to correlate the HGN test result with any particular blood-alcohol level, range of blood alcohol level, or level of impairment.

2. A police officer may testify to the results of HGN testing, but the prosecutor must establish as a foundational matter that the officer has been adequately trained in the administration and assessment of the test.

NOTES:

The HGN test can be used, along with other sobriety tests such as the standard heel-to-toe, to determine if a person is under the influence of alcohol. However, an opinion as to what degree of intoxication the person is under cannot be offered. Excessive statements to the jury, such as "The HGN test showed he was a very impaired individual," are impermissible and could result in a mistrial.

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