

1 the -- before I started the field sobriety test.
2 Then I did the field sobriety test. Then we had
3 to wait another five or so minutes until the PBT
4 got there, so 13 minutes.

5 Q. Throughout this whole time did he ever
6 ask if he had the right to remain silent?

7 A. No, he did not.

8 Q. Did he ever ask if he was under
9 arrest?

10 A. No, he did not.

11 Q. Did he ever ask if he was being
12 detained?

13 A. No, he did not.

14 Q. So what order did you give these tests?

15 A. Started with the HGN.

16 Q. And so where was Mr. [REDACTED] when you
17 started with the HGN?

18 A. On the sidewalk.

19 Q. And in relation to the cruiser, where
20 was he?

21 A. He was right by his bumper of his car.

22 Q. All right. So he was facing east or
23 west?

24 A. He was facing the east.

25 Q. He was facing eastbound, all right. And

1 you're not licensed in any way to diagnose eye
2 function?

3 A. No.

4 Q. To determine the causes of nystagmus?

5 A. No.

6 Q. And you've never been qualified as an
7 expert?

8 A. No.

9 Q. You did receiving training in nystagmus
10 somewhere, though, right?

11 A. Yes, I did.

12 Q. Where was that? Can we list them?

13 A. That was in Bucks County when I first
14 took the field sobriety test. I'm not definite
15 on the date.

16 Q. How many hours was this training?

17 A. I don't remember how many hours it was.
18 It's on the -- it was eight hours a day, I
19 believe.

20 Q. But you got the same training as every
21 other officer?

22 A. Yes.

23 Q. So you don't have any specialized
24 training relative to other officers?

25 A. I have specialized training in ARIDE,

1 which is another 16 hours.

2 Q. And what is that exactly?

3 A. Advanced Roadside -- can I just look at
4 the --

5 THE COURT: Advanced Roadside
6 Impaired Driving. November 9-10, 2010.

7 MR. MADSEN: Thank you, Judge.

8 Q. So when you gave the HGN, did you give
9 that from a manual?

10 A. From what I learned from the school.

11 Q. Do you carry a manual in the car?

12 A. No, I do not.

13 Q. So you started by telling the defendant
14 to put his feet together?

15 A. I told him to stand up straight.

16 Q. Why don't you give me all the
17 instructions as you gave them to him.

18 A. Told him to stand up straight, keep his
19 head still. Held up a pen. Told him to look at
20 the top of the pen. Keep his head still.
21 Follow the pen with his eyes only, which he did.

22 Q. Did you demonstrate that to him at all?

23 A. I held a pen up.

24 Q. To yourself. Did you do it in [REDACTED] of
25 yourself at all?

1 A. No, I did not.

2 Q. So you told him to keep his head
3 still?

4 A. Yes.

5 Q. Did he keep his head still?

6 A. Yes, he did.

7 Q. Did he keep his arms at his sides?

8 A. Yes.

9 Q. Did he not sway -- was he swaying at
10 that point?

11 A. I do not recall if he was.

12 Q. So as you were eyeballing him for the
13 test, how far away from him were you?

14 A. I was -- if I could show you.

15 Q. Show me with your hand, I guess.

16 A. I was like this and he was about right
17 there.

18 THE COURT: For the record,
19 we're talking about two to three feet. Two feet
20 in [REDACTED] of you?

21 OFFICER MANFREDO: A foot.

22 Q. So he was a foot in [REDACTED] of you, face
23 to face?

24 A. Yes.

25 Q. Did you check to see if his pupils were

1 the same size?

2 A. Yes, I did.

3 Q. Did you ask if he was wearing contact
4 lenses?

5 A. Yes, I did.

6 Q. What was his answer?

7 A. No.

8 Q. Were his pupils the same size?

9 A. Yes, they were. Would you like to see
10 the DUI investigative report? All those
11 questions are on there.

12 Q. We'll go through the questions. I'll
13 look at them later. Thank you.

14 So which eye did you start with
15 first?

16 A. Started with the right eye -- well, my
17 right his left.

18 Q. How far away were you holding the pencil
19 or light?

20 A. Approximately, say, half -- there was
21 eight to six inches.

22 Q. You were holding it six inches away from
23 his eyes?

24 A. Yes.

25 Q. How far did you go in each direction?

- 1 A. The required amount.
- 2 Q. And what is that amount?
- 3 A. To follow for which test?
- 4 Q. For the HGN.
- 5 A. For which part of the HGN?
- 6 Q. At the most, how far did you go?
- 7 A. Maximum deviation.
- 8 Q. And how many inches is that?
- 9 A. Which is (Indicating.) I would say
10 maybe six inches to his left or right.
- 11 Q. You know the proper distance for the
12 test is to hold the pencil or whatever object 12
13 to 15 inches away, right?
- 14 A. Yes.
- 15 Q. And that would be impossible to do
16 because your face was 12 inches away.
- 17 A. I'm estimating. I'm not exactly sure.
18 I did it the same way I always do it.
- 19 Q. But you're sure it was six inches away.
- 20 A. I'm not sure.
- 21 Q. How many passes did you make?
- 22 A. For which part of the test?
- 23 Q. Each part.
- 24 A. Two passes for each eye.
- 25 Q. And how many degrees did you observe the

1 nystagmus at?

2 A. It was prior to 45.

3 Q. How do you know that?

4 A. The maximum is 45 degrees. It was prior
5 to that.

6 Q. How do you know what 45 degrees was?

7 A. That is when his eye is all the way
8 either to the right or left.

9 Q. So when his eye was all the way to the
10 right, could you see any white of his eye
11 between his iris and the side of his eyelid?

12 A. No, I could not.

13 Q. So you were holding the tip of this
14 object level with his eyes, below them, above
15 them?

16 A. Slightly above.

17 Q. And nystagmus occurs naturally in
18 people, is that right?

19 A. For some, yes.

20 Q. And disease can cause it as well?

21 A. Yes.

22 Q. And do you know if the flu was one of
23 those?

24 A. I do not know.

25 Q. How about hypertension?

1 A. I do not know.

2 Q. Vertigo?

3 A. I don't know.

4 Q. Osteosclerosis?

5 A. I do not know.

6 Q. Sunstroke?

7 A. I do not know.

8 Q. Do you know the consumption of caffeine
9 can cause it?

10 A. I'm not a doctor, I don't know.

11 Q. How about aspirin, do you know that?

12 A. I'm pretty sure aspirin would not.

13 Q. How about nicotine, can nicotine cause
14 it?

15 A. I don't know.

16 Q. Do you know if he had a cigarette before
17 you stopped him?

18 A. I don't know.

19 Q. Do you know if he had coffee before you
20 stopped him?

21 A. I do not know.

22 Q. Do you know if he had any soft drink
23 before you stopped him?

24 A. I have no idea.

25 Q. Do you know whether eye strain can cause

1 nystagmus?

2 A. Eye strain?

3 Q. Looking at a computer too long, for
4 example?

5 A. I don't know.

6 Q. How about circadian rhythm, do you know
7 whether that can cause it?

8 A. I don't know.

9 Q. How about a hangover?

10 A. I have no idea.

11 Q. Do you consider yourself an expert in
12 this test?

13 A. No, I do not.

14 Q. Can you explain to us exactly what
15 nystagmus is?

16 A. The involuntary bouncing of the eye.

17 Q. So what does that look like?

18 A. If you're staring at an object and your
19 eyes bounce.

20 Q. And you can't tell me at exactly what
21 angle you started to realize he had nystagmus?

22 A. No, I do not. I know it was present at
23 the maximum deviation.

24 Q. So was there smooth pursuit?

25 A. No, there was not.

1 Q. In either eye?

2 A. No.

3 Q. In which eye was there nystagmus in
4 prior to 45 degrees?

5 A. Both of them.

6 Q. And did each eye exhibit nystagmus at
7 the maximum deviation?

8 A. Yes.

9 Q. So you're saying he failed every single
10 part of this test?

11 A. Yes, he did.

12 Q. So if somebody has nystagmus, can they
13 even tell themselves?

14 A. I don't know.

15 Q. Do you know whether it affects your
16 vision?

17 A. I would think it would.

18 Q. So you think that it impairs somebody's
19 ability to drive if they have nystagmus?

20 A. No.

21 Q. But you think it impacts the vision?

22 A. It could. I'm not a doctor. I don't
23 know.

24 Q. What test did you do next then?

25 A. The walk and turn.