

Online Reference: FLWSUPP 2807BOOK

Criminal law -- Driving under influence -- Evidence -- Field sobriety exercises -- Expert testimony regarding administration or reliability of field sobriety exercises is precluded -- Officer's testimony regarding his training and experience with regard to exercises goes to credibility and weight of evidence regarding his observations and does not make him expert witness subject to cross-examination under section 90.706

STATE OF FLORIDA, v. RONALD LEE BOOK, Defendant. County Court, 17th Judicial Circuit in and for Broward County, Criminal Action. Case No. 19-005520MU-10A (JKL) (CMB). August 27, 2020. Jill K. Levy, Judge. Counsel: Connor M. Boe, Assistant State Attorney, Naples, for State. J. David Bogenschutz & Jaclyn E. Broudy, Fort Lauderdale, for Defendant.

ORDER GRANTING STATE'S MOTIONTO PRECLUDE EXPERT TESTIMONY REGARDINGFIELD SOBRIETY EXERCISES ANDHEARSAY EVIDENCE WITHOUT AN EXCEPTION

The State's Motion to Preclude Expert Testimony Regarding Field Sobriety Exercises and Hearsay Evidence Without an Exception having come on for hearing, and the Court having been advised in the premises on both the facts and the law respecting the said Motion, the State's Motion is GRANTED and it is hereby ORDERED AND ADJUDGED:

1.) There shall be no expert testimony regarding the field sobriety exercises, their administration, or their scientific reliability. See *State v. Meador*, 674 So.2d 816 (4th DCA 1996) [21 Fla. L. Weekly D1152a]. Field Sobriety Exercises, with the exception of the Horizontal Gaze Nystagmus exercise, are "simple psychomotor tasks within a juror's common experiences and understanding". *Id* at 831. An officer's observations of the defendant during these exercises should be treated no different than that of a lay witness. It is this Court's finding that an officer testifying to their training and experience does not go towards whether they are an expert, but to the credibility of the officer testifying. A witness' training and experience goes to the weight of the evidence, of what they have seen, heard and experienced, not the admissibility of that testimony. As Field Sobriety Exercises are within the common understanding of jurors per *Meador*, any expert testimony would only serve to enhance the significance of the exercises. It is the jury's decision of what weight to give these exercises.

2.) There shall be no mention of anything contained in any National Highway Traffic Safety Administration manuals or training materials, any training materials used by the Florida Highway Patrol, or any other materials that discuss administration, reliability, or accuracy of Field Sobriety Exercises. The officer shall be allowed to testify as to his training and experience with regards to the field sobriety exercises and that testimony does not per se make him an expert subject to cross-examination under §90.706. See, *State v. Feinstein*, 21 Fla. L. Weekly Supp. 587a (Fla. Broward Cty., December 9, 2013). Any cross-examination using any Statements of facts or opinions on a subject of science, art, or specialized knowledge contained in a published treatise, periodical, book, dissertation, pamphlet, or other writing on a lay witness would be hearsay without an exception. Fla. Stat. §90.706. If the Officer testifies as to his training and experience in giving the FSE's, the Defendant is precluded from cross examination or confronting that "training and experience" by any cross examination relating to what type of training he received, the source of that training, or any training manuals that direct how to proceed with FSE's, what kind of experience he has, and why the Officer gave those specific tests as opposed to any other tests he could have given.

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