

Witness: Rick Swope

Subject/Topic: Standardized Field Sobriety Testing

Area of Cross Exam: Qualifications and personal knowledge to talk about standardized field sobriety testing generally and specifically in the case at hand.

Fact Points

Source/Exhibit

“Certified” by the State of Florida to teach SFST and SFST Instructor Course.

Concessions:

- 1) Attended and completed SFST basic and instructor courses when he was LEO.

Tip: Hasn't been LEO since 1990, that means he hasn't been to An SFST refresher and is not current or trained in most recent SFST.

- 2) Has taught SFST to both cops and at private seminars all over the country and at Florida universities and training academies.

Tip: This claim is debatable in transcripts where it just really isn't clear where he has “taught” and what that has consisted of. This claim is very exaggerated, for example, he claims he has “taught” at Harvard and Emory. This teaching consisted of one hour teaching in a multi day seminar where his teaching may have consisted of assisting or participating in an one hour workshop type deal.

- 3) Teaches SFSTs to defense attorneys and makes a lot of \$\$\$ doing it.

Tip: see Qualification/CV Cross Exam Approach Point Worksheet on this guy.

- 4) He's certified or properly credentialed to be a substitute teacher in Florida Schools and possesses the requisite permit to instruct and further to instruct in the subject matter. He states that he has assisted in teaching courses. He is allowed to assist with the teaching, but is not authorized to sign off on the certificates or permits of the participants. Again, he's present at the trainings and helps write course outlines, but cannot sign off as the official trainer.

Tip: NHTSA Certified Instructor. He claims to be certified by NHTSA to instruct SFST basic and instructor and that he has done so many times in two transcripts. Truth is, NHTSA doesn't “certify” and he certainly would have nothing on NHTSA stationary that shows he is “certified” to teach. At most he has a “certificate” that he completed the basic and instructor courses.

SFSTs improperly given and therefore, invalid and unreliable.

Kierst,

Concessions:

- 1) NHTSA manual does say in almost a side note that if not Administered under ideal conditions, the validity may be Compromised, but will probably concede when confronted With the appropriate edition and NHTSA Preamble.

Tip: In Kierst, he was allowed to testify about whether the trooper had properly done the walk and turn and the one leg stand. He maintained that the two tests were “invalid” because the officer didn’t perform them on a flat and level surface, i.e. under proper, “ideal” conditions as required by NHTSA, therefore, the results, the failure, were “invalid” because test not conducted properly. Test was performed on a grassy area at the side of the road. Trooper testified that the area was flat and grassy. He also claimed that the trooper didn’t give the instructions for the sfsts properly, thus, the tests were “invalid”. Know and be aware of the NHTSA SFST manual and ask him for cites, ask him about the studies, and confront him with that preamble!