

Operating Under the Influence of Marijuana and Field Sobriety Testing

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A Review of Commonwealth v. Thomas J. Gerhardt

In the recent decision, [the Supreme Judicial Court](#) made a decision regarding the Admissibility of Standardized Field Sobriety Tests in cases involving a police officer's suspicion of a driver that is operating under the influence of marijuana. The decision reached by [Review of Commonwealth v. Thomas J. Gerhardt](#) answers the following questions. *Commonwealth v. Gerhardt*, SJC-11967, slip op. at 9 (Mass. Sep. 19, 2017).

May a police officer testify to the administration and results of standard field sobriety tests in prosecutions for Operating Under the Influence (OUI) Marijuana, as they do in OUI Alcohol prosecutions?

Short Answer: No

- Officers *may* only testify to the administration of “road side assessments”
- Lack of scientific agreement on the results of the standardized field sobriety test for impairment does not make them irrelevant, though the relevance threshold is very low. at 13.
- There is no doubt that an officer can testify to his or her observations, such as the driver's appearance, demeanor, odors that are relevant to impairment.
- Field Sobriety Tests CANNOT BE TREATED AS SCIENTIFIC TESTS that establish impairment as a result of marijuana consumption. The test should neither be treated as a definitive test of impairment nor should it be excluded from the entirety by the finder of facts. at 15.
- A Police Officer need not be qualified as an expert. Tests can be admitted without satisfying the Daubert-Lanigan requirements.
- The Officer cannot suggest that the defendant was under the influence of marijuana due to their performance on the field sobriety tests and cannot say the defendant PASSED or FAILED. at 16.
- Must be made clear under all circumstances to the fact finder that the WAT, OLS and other FSTs do not directly test marijuana impairment. at 17.
- Must be referred to as “roadside assessments”
- Evidence of impairment on SFSTs cannot be evidence sufficient alone to support a defendant's ability to drive safety was impaired due to the consumption of marijuana. at 18.

Are the effects of marijuana consumption sufficient with the common knowledge of a lay person, such that a non-expert witness may offer opinion evidence whether a person is “high” on marijuana.

Short Answer: No

- A lay witness may not offer an opinion that another person is “high” on marijuana.

May a police officer who has not been qualified as an expert witness, testify to the effects of marijuana on a person such as bloodshot eyes, lack of coordination and or balance, reaction times, slow speech, paranoia, or relaxed responses?

Short Answer: Yes

- A police officer may testify to observed physical characteristics of the driver such as blood shot eyes, drowsiness, and lack of coordination.
- However, the officer is not permitted to offer an opinion that these characteristics mean that the driver is under the influence of marijuana. at 20.
- Officer may not testify to the effects of marijuana consumption or give an opinion that a defendant was intoxicated by marijuana without being qualified as an expert.
- No general knowledge among individuals exists for marijuana impairment due to a great variation between individuals of the physical and mental effects of marijuana consumption. at 19.
- “Where no scientific consensus on what, if any, physical characteristics indicate marijuana intoxication, no lay opinion can be admissible as common knowledge or understanding of that subject.” at 20.
- A lay witness can only offer testimony about defendant’s observable appearance.

May a juror rely on their own experience and common sense about the effects of marijuana as they may do in an OUI alcohol prosecution?

Short Answer: Yes

- Jurors are permitted to utilize their common sense in assessing trial evidence. at 21.
- May use common sense in evaluating whether the Commonwealth introduced sufficient evidence to satisfy its burden of proof. at 21-22.

Operating Under the Influence (OUI) Lawyer

At Cohen Cleary, P.C., we are here to assist you with your Operating Under the Influence of Marijuana case. We have locations in Raynham, Quincy, and Plymouth, MA. Please contact us at (508) 880-6677 or 24/7 at cellphone (508) 269-3051