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SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Davis, J., concurring:

I agree fully with the majority opinion in this case. I haven chosen to write separately merely to impress that, while the opinion does announce new points of law pertaining to the horizontal gaze nystagmus field sobriety test (hereinafter referred to as the “HGN test”), in practical effect the opinion does not change current practice or impose any additional burden on law enforcement officers in this state.

Indeed, the new syllabus points serve to reinforce principles that have been discussed or alluded to in earlier opinions of this Court. By clarifying and elevating earlier comments of this Court, the new points of law will actually provide a set of guidelines for law enforcement officials to follow when they are called to testify in license revocation proceedings. By following these guidelines, law enforcement officers can ensure that the evidence they collect will be properly considered by the relevant tribunal, thereby bolstering their cases against accused motorists. Specifically, new Syllabus point one of the majority opinion serves two basic functions: (1) to make clear that the HGN test is admissible evidence that is relevant to the issue of whether a driver may have consumed alcohol, and (2) to clarify that the HGN test is entitled to no greater weight than other field sobriety tests.

New Syllabus point two sets forth the items about which an officer should be expected to testify, thus aiding the officer to fully prepare for an administrative proceeding. New Syllabus point three reminds officers that they must have evidence of impaired driving *in addition* to HGN test results, again instructing officers on what evidence is needed to support a license revocation.

The West Virginia State Police is the agency charged with the responsibility of training nearly all of the law enforcement officers of this state. They take seriously their obligation to properly train officers to administer and interpret field sobriety tests. This opinion will aid those officers in making sure the evidence they have collected is properly considered in license revocation proceedings. Accordingly, I respectfully concur.