
YEAR 2005 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Trial court did not abuse its discretion in excluding drug test evidence under *Rule 403*. [In the Matter of J.A.C.](05-3-15)

On June 14, 2005, the Houston Fourteenth Court of Appeals held that trial court did not abuse its discretion in excluding all evidence regarding the drug test results on the bases of reliability and jury confusion.

05-3-15. In the Matter of J.A.C., MEMORANDUM, No 14-02-00806-CV, 2005 Tex.App.Lexis 4519 (Tex.App.— Houston[14th], 6/14/05).

Facts: The day after appellant was arrested, he went to his regularly-scheduled visit with his probation officer, who administered a routine drug test. The test result was negative. However, the probation officer failed to test the sample for adulterants that could produce a false negative because she was out of the necessary supplies. She told appellant to go to an official lab the next day for retesting to verify the negative result, but, for reasons not specified in the record, appellant did not obtain the follow-up test.

Appellant sought to admit the drug test result and have an expert testify about the accuracy of the test and the meaning of the results. Appellant contends the negative drug test result is relevant and highly probative because, contrary to the testimony of the undercover officer, it would show appellant did not smoke marijuana and therefore likely did not possess it either. The trial court held a hearing outside the presence of the jury and then excluded all evidence regarding the drug test results on the bases of reliability and jury confusion. In his third issue, appellant challenges this ruling.

Held: Affirmed.

Opinion: For scientific evidence to be admissible, the proponent must establish that the evidence is both relevant and reliable. *Robinson*, 923 S.W.2d at 556-57; *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992). The trial court is the gatekeeper and is to admit evidence only if it is sufficiently reliable and relevant to assist the jury. *Owens v. State*, 135 S.W.3d 302, 306-07 (Tex. App.--Houston [14th Dist.] 2004, no pet.). Unreliable evidence is of no assistance to the trier of fact. *Robinson*, 923 S.W.2d at 557.

Appellant's expert testified that the type of urinalysis the probation officer conducted was, as a general matter, accurate and reliable. However, he also testified that there are many possible ways to adulterate a urine sample and that without testing for such adulterants, "we would not know if it was a true test or not" and the test would not provide a "complete analysis." A reliability analysis concerns not just the soundness of the test but also the proper application of the test. *See Kelly*, 824 S.W.2d at 573; *Porath v. State*, 148 S.W.3d 402, 416 (Tex. App.--Houston [14th Dist.] 2004, no pet.). Errors in conducting an otherwise valid test can render the result unreliable. *See McRae v. State*, 152 S.W.3d 739, 743-44 (Tex.

App.--Houston [1st Dist.] 2004, pet. filed) (holding that the trial court abused its discretion in admitting the results of a field sobriety test based on officer's admitted significant errors in administering the test). Based on the evidence from appellant's own expert, the trial court determined the test result was unreliable and refused to admit appellant's proposed evidence. The evidence in the record supports this conclusion, and we cannot say the trial court abused its discretion in excluding the evidence on this basis.

The trial court also found that the evidence had low probative value and was outweighed by the risk of jury confusion under *Texas Rule of Evidence 403*. The undercover officer testified that he saw appellant take approximately two puffs from the marijuana cigar. Appellant's expert testified that if appellant had only smoked such a small amount of marijuana, there was only a fifteen percent chance that he would have tested positive for marijuana on a urinalysis test. Thus, the trial court concluded, the test result had little probative value to rebut the possession charge. Further, because only the undercover officer testified that he saw appellant smoking the marijuana but all three officers said they saw appellant holding the marijuana cigar, the test results, at most, could have impeached one officer's credibility and thus had little probative value for impeachment. Because the evidence supports the trial court's findings, the trial court did not abuse its discretion in excluding the drug test evidence under *Rule 403*.

Conclusion: We overrule appellant's third issue.