

COURT OF CRIMINAL APPEALS OF TEXAS

Mata v. State

46 S.W.3d 902 (Tex. Crim. App. 2001) · No. No. 133-00 · Decided June 6, 2001

SUMMARY

The Texas Court of Criminal Appeals held that expert testimony using retrograde extrapolation to estimate a defendant's blood alcohol concentration at the time of driving did not satisfy the reliability requirements of Texas Rule of Evidence 702, Daubert, and Kelly. The court focused on the variability of alcohol absorption and elimination and the expert's inconsistent and unsupported assumptions regarding the defendant's BAC. The court also held that the defendant preserved his challenge to the reliability of the expert testimony.

CASE DETAILS

COURT	Court of Criminal Appeals of Texas
WRITING FOR THE COURT	Keasler, J.; Hervey; Holcomb; Holland; Johnson; Keasler; Keller; Meyers; Price; Womack
JURISDICTION	Texas
DECIDED	June 6, 2001
DOCKET	No. 133-00
DISPOSITION	remanded
PROCEDURAL POSTURE	Mata was convicted of driving while intoxicated after the trial court admitted expert testimony using retrograde extrapolation to estimate his blood-alcohol concentration at the time of driving. The court of appeals affirmed the admission of the testimony. The Court of Criminal Appeals granted discretionary review.
STANDARD OF REVIEW	A trial court's ruling on the admission of scientific evidence is reviewed for abuse of discretion. Reliability of scientific evidence must be established by clear and convincing evidence under Texas Rule of Evidence 702 and Kelly v. State.
PRECEDENTIAL VALUE	Published precedential opinion of the Texas Court of Criminal Appeals; decided en banc.
PARTIES	Raul Mata v. The State of Texas

TOPICS

expert testimony

daubert standard

evidence

suppression of evidence

appellate procedure

PRACTICE AREAS

criminal procedure

evidence

DWI/DUI defense

appellate procedure

QUESTIONS PRESENTED

1. Whether Mata preserved his challenge to the reliability of the expert's retrograde-extrapolation testimony.
2. Whether the expert's retrograde-extrapolation testimony satisfied the reliability requirements of Daubert, Kelly, and Texas Rule of Evidence 702.
3. Whether the trial court abused its discretion by admitting the expert testimony.

HOLDINGS

1. Mata preserved error because he timely informed the trial court that he sought to exclude the expert's testimony as unreliable, and his complaint was stated with sufficient specificity.
2. Retrograde extrapolation may be reliable in an appropriate case, but the proponent must establish by clear and convincing evidence that the expert reliably applied the underlying science and clearly and consistently explained it.
3. The trial court abused its discretion by admitting the portion of McDougall's testimony that extrapolated Mata's BAC back to the time of driving because the State failed to prove by clear and convincing evidence that the extrapolation was reliable.

KEY QUOTATIONS

"We believe that the science of retrograde extrapolation can be reliable in a given case. The expert's ability to apply the science and explain it with clarity to the court is a paramount consideration." (916-917)

"Given McDougall's inconsistent testimony, along with the single breath test conducted over two hours after the driving, we conclude that, in this case, the State failed to prove by clear and convincing evidence that McDougall's retrograde extrapolation was reliable." (917)

"We conclude the trial court abused its discretion in admitting that part of McDougall's testimony pertaining to the extrapolation of Mata's BAC." (917)

FACTUAL BACKGROUND

At approximately 3:05 a.m., Officer Kenneth Thompson stopped Raul Mata for a traffic violation, detected alcohol on Mata's breath, administered field sobriety tests, and arrested him for driving while intoxicated. At 5:14 a.m., more than two hours after the stop, Mata submitted to two breath tests approximately two minutes apart; the readings were approximately .19. The State's expert, George Allen McDougall, attempted to extrapolate Mata's blood-alcohol concentration back to the time of driving, although he did not know Mata's weight, eating or drinking history, drinking pattern, or time of last drink.

PROCEDURAL HISTORY

Mata moved to suppress the breath-test results and related expert testimony as unreliable under Texas Rules of Criminal Evidence 403 and 702. The trial court denied the motion and admitted the testimony; the jury convicted Mata, and the trial court imposed a ninety-day jail sentence, probated for two years, plus a \$400 fine. The court of appeals affirmed, and the Court of Criminal Appeals granted discretionary review. The Court held that error was preserved, that the expert's retrograde-extrapolation testimony was unreliable under Kelly and Rule 702, and remanded to the court of appeals for a harm analysis.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The cause was remanded to the court of appeals for a determination of harm under Texas Rule of Appellate Procedure 44.2.

CASES CITED

- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Kelly v. State, Kelly v. State, 824 S.W.2d 568 (Tex. Crim. App. 1992)
- Jackson v. State, 17 S.W.3d 664, 670 (Tex. Crim. App. 2000)
- Jordan v. State, 928 S.W.2d 550, 554-55 (Tex. Crim. App. 1996)
- Hinojosa v. State, 4 S.W.3d 240, 250-51 (Tex. Crim. App. 1999)
- Griffith v. State, 983 S.W.2d 282, 287 (Tex. Crim. App. 1998)
- Emerson v. State, 880 S.W.2d 759, 764-65 (Tex. Crim. App. 1994)
- Mata v. State, 13 S.W.3d 1 (Tex. App.—San Antonio 1999)
- Hartman v. State, 2 S.W.3d 490, 493-94 (Tex. App.—San Antonio 1999, pet. ref'd) (en banc)
- Wirth v. Commonwealth, 936 S.W.2d 78, 84 (Ky. 1996)
- Ring v. Taylor, 141 Ariz. 56, 685 P.2d 121 (Ariz. Ct. App. 1984)
- Smith v. Tuscaloosa, 601 So. 2d 1136, 1140 (Ala. Crim. App. 1992)
- Mireles v. Department of Public Safety, 9 S.W.3d 128 (Tex. 1999)
- McCafferty v. State, 748 S.W.2d 489 (Tex. App.—Houston [1st Dist.] 1988, no pet.)
- Haas v. State, 597 So. 2d 770 (Fla. 1992)