

SUPREME COURT OF FLORIDA

State of Florida v. Kyle R. Queior

191 So. 3d 388 (Fla. 2016) · No. SC15-367 · Decided April 21, 2016

SUMMARY

The Supreme Court of Florida held that a probation officer's testimony about the result of a field drug test personally administered by the officer is competent, nonhearsay evidence in a violation-of-probation proceeding. The court concluded that this testimony, together with hearsay evidence including a confirmatory laboratory report, sufficiently established that Kyle R. Queior violated his probation. The court quashed the Second District Court of Appeal's contrary decision and disapproved portions of several conflicting district court decisions.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Polston, J.; Labarga, C.J.; Pariente, J.; Lewis, J.; Quince, J.; Canady, J.; Perry, J.
JURISDICTION	Florida
DECIDED	April 21, 2016
DOCKET	SC15-367
DISPOSITION	quashed
PROCEDURAL POSTURE	The State sought review of the Second District Court of Appeal's decision reversing an order revoking Queior's probation. The Second District certified direct conflict with the Fifth District's decision in <i>Terry v. State</i> concerning whether a probation officer's testimony about a personally administered field drug test constitutes competent, nonhearsay evidence of a probation violation.
STANDARD OF REVIEW	A probation-revocation decision is reviewed for abuse of discretion. Whether evidence is competent, nonhearsay evidence is a legal question reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Florida v. Kyle R. Queior

TOPICS

hearsay

evidence

probation

criminal procedure

appellate procedure

PRACTICE AREAS

Criminal law

Evidence

Probation and supervised release

Appellate procedure

QUESTIONS PRESENTED

1. Whether a probation officer's testimony about the result of a field drug test personally administered by the officer is competent, nonhearsay evidence in a violation-of-probation proceeding.
2. Whether that testimony, together with hearsay evidence including a confirmatory laboratory report, is sufficient to establish a probation violation under Florida's relaxed evidentiary standards.
3. Whether a probation officer must possess scientific expertise or be qualified as an expert concerning the operation or reliability of a personally administered field drug test.

HOLDINGS

1. Testimony by a probation officer about the results of a field drug test that the officer personally administered and observed is personal-observation testimony and is competent, nonhearsay evidence.
2. A probation officer is not required to be qualified as an expert or possess scientific expertise concerning the workings or reliability of a field drug test in order to testify about the results of a test personally administered by the officer.
3. The field-test testimony, combined with the hearsay evidence including the confirmatory laboratory report, was sufficient to establish that Queior violated probation by using illegal drugs.

KEY QUOTATIONS

“For the reasons below, we hold that it is and that, in Queior’s case, this evidence together with the hearsay evidence, including a lab report confirming the presence of opiates in Queior’s urine, is sufficient to establish that Queior violated the conditions of his probation.” (191 So. 3d at 388)

“A probation officer “testifying at hearing, subject to cross-examination, to what [he or] she personally did and observed. . . . is classic non-hearsay testimony.” (191 So. 3d at 395)

“Accordingly, like the Fifth District in Bell, we find no justification for holding “that direct testimony from a probation officer who conducted the positive on-site drug test, confirmed by a report from an independent laboratory, is insufficient to meet the relaxed burden of proving a probation violation.” (191 So. 3d at 399)

“Rather, in a VOP proceeding, the officer’s training and experience in administering field drug tests goes to the weight to be given to the officer’s testimony, which is an issue for the trial court.” (191 So. 3d at 400)

FACTUAL BACKGROUND

The State alleged that Queior violated probation by using illegal drugs. The State introduced a laboratory report showing opiates in Queior's urine, but the report was hearsay because it was not admitted through a records custodian, and it also presented hearsay testimony about an anonymous tip. To corroborate that evidence,

Queior's probation officer testified that the officer personally administered a field drug test on Queior's urine and observed that Queior failed the test before the sample was sent to a laboratory for confirmation.

PROCEDURAL HISTORY

The trial court revoked Queior's probation after relying on a laboratory report, hearsay testimony concerning an anonymous tip, and the probation officer's testimony that Queior failed a field drug test personally administered by the officer. The Second District reversed, concluding that the field-test testimony was not competent, nonhearsay evidence and that the remaining evidence was hearsay. It certified conflict with Terry, and the Supreme Court of Florida quashed the Second District's decision and disapproved several First and Third District decisions to the extent they were inconsistent with its holding.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The Supreme Court quashed the Second District's decision. No additional remand instructions were stated.

CASES CITED

- Queior v. State, 157 So. 3d 370 (Fla. 2d DCA 2015)
- Terry v. State, 777 So. 2d 1093 (Fla. 5th DCA 2001)
- Russell v. State, 982 So. 2d 642, 646 (Fla. 2008)
- Bell v. State, 179 So. 3d 349, 352-58 (Fla. 5th DCA 2015)
- Dawson v. State, 177 So. 3d 658, 659 (Fla. 1st DCA 2015)
- Rothe v. State, 76 So. 3d 1010, 1011 (Fla. 1st DCA 2011)
- Bray v. State, 75 So. 3d 749, 750 (Fla. 1st DCA 2011)
- Carter v. State, 82 So. 3d 993, 996 (Fla. 1st DCA 2011)
- Weaver v. State, 543 So. 2d 443, 443-44 (Fla. 3d DCA 1989)
- Thomas v. State, 125 So. 3d 928, 929 (Fla. 4th DCA 2013)
- Cuciak v. State, 410 So. 2d 916, 918 (Fla. 1982)
- Turner v. State, 179 So. 3d 526, 527-29 (Fla. 4th DCA 2015)
- Isaac v. State, 971 So. 2d 908, 909 (Fla. 3d DCA 2007)
- Peters v. State, 984 So. 2d 1227, 1234 (Fla. 2008)
- United States v. McCormick, 54 F.3d 214, 222-23 (5th Cir. 1995)
- United States v. Bell, 785 F.2d 640, 642-43 (8th Cir. 1986)
- Gainesville Bonded Warehouse, Inc. v. Carter, 123 So. 2d 336, 338 (Fla. 1960)
- Brumley v. State, 500 So. 2d 233, 234 (Fla. 4th DCA 1986)
- Moore v. State, 788 So. 2d 385, 386 (Fla. 5th DCA 2001)
- Linic v. State, 80 So. 3d 382, 391 (Fla. 4th DCA 2012)

