

ELEVEN DEFENDANTS CHARGED WITH AGGRAVATED DRIVING UNDER THE INFLUENCE HAD THEIR BLOOD TESTED BY THE SCOTTSDALE CRIME LABORATORY.

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State v. Bernstein

Arizona Supreme Court, April 23, 2015

Eleven defendants charged with aggravated driving under the influence had their blood tested by the Scottsdale Crime Laboratory. Defendants moved to exclude the evidence of their blood alcohol (BAC) results under Rule 702, arguing that the instrument used to measure BAC had unresolved flaws that undermined its reliability. They pointed to the instrument's occasional failure to produce any results for a sample, mislabeling of vials, and emails among lab staff expressing concerns about the instrument. After a 17-day Daubert hearing, the court found no evidence that instrument's flaws had infected these defendants' test results, but nevertheless excluded the test results because the staff's emails showed the lab staff's confidence in the instrument's reliability was undermined.

The Arizona Supreme Court held the exclusion order erroneous and vacated it. Though the lab staff had expressed general concerns that the instrument's occasional failures might become subject to legal challenge, their concerns did not undermine the reliability of these defendants' actual test results. In so holding, the court clarified the trial judge's Rule 702 "gatekeeping role" in determining the admissibility of expert evidence.

As gatekeepers, trial courts should assure that proposed expert testimony is reliable and thus helpful to the jury's determination of facts at issue. In that role, the trial court properly considers whether an expert reliably applied the pertinent methodology when expert testimony concerns the facts of a particular case. But not all errors in the application of reliable principles or methods will warrant exclusion. Expert testimony can be "shaky" yet admissible. The overall purpose of Rule 702 is simply to ensure that a fact-finder is presented with reliable and relevant evidence, not flawless evidence. Errors in the application of a generally reliable methodology should not result in the exclusion of evidence unless they so infect the procedure as to make the results unreliable. With respect to test results, for example, the omission of a step necessary to obtain valid results or a procedural misstep that could skew the outcome might justify excluding the results and any opinion based on them. Whether errors in application render evidence unreliable will not always be clear. In close cases, the trial court should allow the jury to exercise its fact-finding function, for it is the jury's exclusive province to assess the weight and credibility of evidence.

In this case, the parties did not dispute that the lab's instrumentation is a reliable methodology for determining BAC, and that expert testimony on that topic is relevant and helpful. But these defendants' BAC results should not have been excluded due to the instrument's unreliability. The fact that the instrument sometimes failed to produce a reading did not itself imply that the results it did generate were inaccurate. And the record did not show that the identified errors rendered these defendants' test results unreliable. Under these circumstances, the evidence should have been allowed, and it was for the jury to consider the weight and credibility to give the test results given the instrument's malfunctioning issues and the staff's related concerns. A different conclusion would have resulted if the instrument had not accurately measured a known standard, or if it failed to produce consistent results for replicate samples within a required range.

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