



For a Better Result.....

Driver Claims “A False Positive” by Police

In this case, Mr White was charged with driving whilst an illicit drug was present in his saliva.

He elected to take the matter to Trial and was tried before the Magistrates Court at Emerald.

Mr White asserted that he had been prescribed the drug Duromine by his doctor.

He was apprehended by police performing usual patrols.

The police were put to proof in this matter. The police called expert evidence about the process of analysing the specimen of saliva that is taken from a person.

By way of background, if there is a positive at the road side in the initial saliva test, the Defendant is asked to take a second saliva test. This test sample is then analysed in a laboratory.

Unfortunately today, we still do not have the technology available to assess the nature of the drug precisely and/or the quantity of the drug that is present in the person's system.

Therefore, it is conceivable that even minute quantities of drugs can cause a positive reading.

The Court referred to the fact that under the legislation Section 16B states that a certificate is conclusive evidence of the presence of the drug in the person's saliva.

It was the Defendant's case that because he was taking the Duromine, it produced a false positive result. He denied deliberately taking any form of methyl amphetamine and was adamant in his evidence that the taking of the Duromine tablet produced a false positive test.

Unfortunately, the Court found that Mr White had not thrown any doubt over the evidence in the certificate nor that offered by the police expert, a State Analyst.

The State Analyst did give evidence that the laboratory analysis conducted is able to discern between phentermine, an active ingredient in Duromine tablets and methyl amphetamine.

Although the Court accepted that Mr White may not have knowingly taken methyl amphetamine, the Defence of mistake of fact was not available to him under the relevant section of the law here that he had been charged with. Therefore, unfortunately for Mr White, he had no Defence available to him and was found guilty by the acting Magistrate.

For advice or representation contact Robert Bakker