

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1998 SESSION

<p>FILED</p> <p>December 9, 1998</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

STATE OF TENNESSEE,)	
)	C.C.A. No. 01C01-9712-CC-00571
Appellee,)	
)	Dickson County
v.)	
)	Honorable Robert E. Burch
MIKEL PRIMM,)	
)	(Possession of Marijuana,
Appellant.)	Possession of Drug Paraphernalia)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

L. T. LAFFERTY, SENIOR JUDGE

OPINION

The appellant, Mikel Primm, herein referred as the defendant, appeals as of right from a judgment of the Dickson County Circuit Court in which a jury found the defendant guilty of possession of marijuana and possession of drug paraphernalia. For the possession of marijuana, the trial court sentenced the defendant to eleven months and twenty-nine days and imposed a fine of \$250. The trial court ordered the defendant to serve six months in confinement and five months and twenty-nine days on probation. As to the conviction for possession of drug paraphernalia, the trial court sentenced the defendant to eleven months and twenty-nine days which the court suspended and placed the defendant on probation. The sentences were ordered to run consecutively.

The defendant presents one appellate issue:

Whether the trial court erred by introducing evidence of a field test performed by the arresting officer which indicated a substance found in the defendant's home to be marijuana.

After a review of the entire record in this cause, briefs of all parties, and the applicable law on this issue, we affirm the trial court's judgment.

BACKGROUND

In lieu of a transcript of the trial testimony and proceedings, the record in this cause contains an agreed-upon statement of the evidence. According to the agreed statement the following facts were established at trial.

Detective Stewart Goodwin of the Dickson County Sheriff's Office testified that on May 15, 1996, he and Detective Michael Holman went to the defendant's house to talk to him. After they went to the door, the defendant invited them into the house. Detective Goodwin testified that he saw a blue box lying on a coffee table with a "roach clip" on top of the box.

The detectives asked the defendant for permission to search the box and he consented. They also read him his *Miranda* warnings. Detective Goodwin looked in the box and found what he believed to be several marijuana cigarettes. The officer's opinion that the substance contained in the cigarettes was marijuana was based on his many years of experience. There was no one else present at the house at the time, but Rosalind Long also lived there. Detective Goodwin testified that, "Mikel told me that it was his and it was for his own personal use."

Detective Michael Holman testified that he took a sample of the substance found in the cigarettes and performed a field test with a Narcopack field kit manufactured by Trittech and that the test indicated a positive result for marijuana. This testimony regarding the test results was contemporaneously objected to by the defense on the grounds the test kit had not been proven to be scientifically reliable, but the objection was overruled. He also testified that he had been trained to use this test kit, and that he had many years of experience in law enforcement and drug investigations. Based on this experience, it was his opinion that the substance in the blue box was marijuana. The box and its contents were admitted into evidence as exhibit one. A field test kit similar to the one used by Detective Holman at the scene was admitted into evidence as exhibit two.

Based on this evidence, the jury found the defendant guilty of both offenses.¹

LEGAL ANALYSIS

Since the defendant did not appeal his conviction for possession of drug paraphernalia, the remaining issue to be determined is: was the trial court correct in permitting the Narcopack field test kit to be admitted into evidence?

The defendant contends that Officer Holman's expertise was not established by

¹We assume the defendant did not testify since the agreed statement is silent on this matter. Also, the agreed statement indicates a "roach clip" was found on the box containing the marijuana; we assume this "roach clip" was the drug paraphernalia.

Rule 702 of the Tennessee Rules of Evidence, there is no evidence that the Narcopack field test kit is one based on scientific principles, and the state failed to establish the general acceptance of the test in the scientific community. The state concedes the prosecution failed to lay a proper foundation for Officer Holman's testimony regarding the field test, but the admission by the trial court was harmless error.

Ordinarily, law enforcement officers in arrests for illegal drug offenses will run a field test on suspected controlled substances for an indication as to whether the suspected substance is positive of a controlled substance. Thus, if the field test is positive, then the suspected controlled substances are subjected to a chemical or scientific analysis for confirmation and utilized at trial. In this case, the state apparently elected to rely on Officer Holman's opinion that the test results were positive for marijuana. Law enforcement officers may, based upon proper training, testify as to the results of field tests indicating the existence of suspected controlled substances. *State v. Anderson*, 644 S.W.2d 423, 424 (Tenn. Crim. App.), *per. app. dismissed* (Tenn. 1982); *State v. Hill*, 638 S.W.2d 827, 830 (Tenn. Crim. App. 1982).

We agree with the defendant that the results of a field test to indicate the existence of a controlled substance are based on scientific process. The agreed statement of evidence is silent as to the extent of Officer Holman's training. There was no evidence presented regarding the process, or its accuracy and reliability, to determine which controlled substance was present. When the state elects not to offer an expert in drug analysis and relies entirely on the opinion of a law enforcement officer to establish the existence of a controlled substance through a field test, we believe the state must comply with the requirement of Rule 702, Tennessee Rules of Evidence, Testimony by Experts.

Tennessee Rule of Evidence 702 states:

If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

If the state was relying totally upon the field test to establish that the suspected substance was in fact marijuana, we would be compelled to reverse and remand for a new trial. However, the test was not the sole evidence indicating the substance was marijuana. We find the admission of the test results was harmless error. There is sufficient evidence to support the conviction of the defendant by Officers Goodwin and Holman's opinions that the substance was marijuana, based upon their experience. Officer Goodwin testified the defendant admitted the substance was marijuana when he said, "Mikel told me that it was his and it was for his own personal use." The finding of the "roach clip" corroborates the officer's testimony. The judgment is affirmed.

L. T. LAFFERTY, SENIOR JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

JOE G. RILEY, JUDGE