

State Of New Jersey v. Christopher Haas
Superior Court Of New Jersey Appellate
Division
July 3, 2019 (Not For Publication)

This is a summary of the final section of this case. It deals with the application of New Jersey's gate keeping Rule, The Net Opinion Rule, in the municipal court. Here the appellate division overturned a conviction of N.J.S.A. 39:4-49.1 (drugs in a motor vehicle charge). Often, the police will charge a defendant with his offense in conjunction with a N.J.S.A. 2C:35-10(a) possession of CDS, or N.J.S.A. 2C:36 paraphernalia charge, or N.J.S.A. 39:4-50 DWI. A conviction of the 4:49 drugs in a motor vehicle carries a 2 year loss of license while a 1st tier first offense DWI only carrier a 3-7 month loss of drivers license penalty. As a result, this often will be an even more important charge to beat at trial.

FACTS:

During a DWI motor vehicle stop, during a probable cause investigation/search of the automobile, the officers found pills. The defendant was charged with the unlawful possession of the drugs as a traffic/motor vehicle code offense under N.J.S.A.

39:4-49.1. At trial, the defendant moved to dismiss this charge unsuccessfully. The key facts supporting this charge are as follows:

On appeal, the Defendant claims the trial court erred in denying the motion to dismiss the possession of CDS in a motor vehicle charge. Officer Mosakowski testified at trial the pills were attached to defendant's keys. The pills were taken and verified on a particular pill identifier website. Mosakowski was unable to describe in detail the precise website that was used in order to

identify the captured pills as Vicodin. Defendant objected to the pill identifier testimony basing his argument that it was hearsay. The trial court overruled defendant's objection regarding the results of the pill identifier and relied on the testimony of Galadick's and Mosakowski's to find defendant guilty of possession of Vicodin.

The appellate court reviews the trial judge's decision and found there is no exception to the hearsay rule which would permit Mosakowski to testify regarding the contents of the pill identifier program. The officer is not an expert who would be entitled to testify what type of pills were on the defendant's keys. "An expert witness must possess the minimal technical training and knowledge essential to the expression of a meaningful and reliable opinion." The appellate court also found Mosakowski's testimony impermissible lay opinion

testimony under N.J.R.E. 701. During Mosakowski's testimony he admitted to using an unidentified "drug identification bible," to verify and charge defendant with possessing Vicodin. Rule 703 states, "The corollary of [Rule 703] is the net opinion rule, which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." The website the officer used is not supported by facts which makes it not credible. The appellate court finds, "Mosakowski's and Galaydick's testimony regarding his use of the pill identifier program and drug identification bible, as the sole evidence that defendant possessed CDS in a car, is insufficient to establish the pills' classification as CDS beyond a reasonable doubt." Therefore, the appellate court reverse the trial court's finding that defendant is guilty of possession of CDS in a motor vehicle.

The key import here is the appropriately applied Net Opinion rule on the police and these untrained officer's testimony regarding the type and specific pills found in the defendant's possession. The fact that the appellate division applied the gate keeping functions, which only recently was applied in *In Re Accutaine*, the 2018 New Jersey Supreme Court Decision throwing out a nationwide class-action suit against one of the largest pharmaceutical companies in the world, to this motor vehicle stop, is comforting to see uniform enforcement of the blanket prohibition against junk science in New Jersey's court rooms.