Affirmed and Supplemental Opinion on Rehearing filed October 26, 2000; Motion for Rehearing En Banc Overruled as Moot.

In The

Fourteenth Court of Appeals

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NO. 14-99-00064-CR

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PAUL RANDALL SCHIELACK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 752,805

SUPPLEMENTAL OPINION ON REHEARING

Appellant has filed a motion for rehearing en banc in which he contends our analysis in the instant case is inconsistent with this Court's opinion in *Rodriguez v. State*, 2 S.W.3d 744 (Tex. App.—Houston [14th Dist.] 1999, no pet.). The panel has, on its own motion, granted rehearing to clarify its original opinion. Thus, appellant's motion for rehearing en banc is overruled as moot.[1]

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[1] "After a motion for rehearing is decided, a further motion for rehearing may be filed within 15 days of the court's action if the court . . . issues an opinion in overruling a motion for rehearing." TEX. R. APP. P. 49.5(c).

In *Rodriguez*, this Court reversed a judgment revoking probation, holding the evidence was insufficient to show Rodriguez violated any one of the conditions of his probation. *See id.* Appellant contends that because the facts in *Rodriguez* are identical to the facts in the instant case, we should grant his motion for rehearing en banc. We disagree.

In *Rodriguez*, the State failed to provide evidence that the defendant was observed submitting his urine samples according to proper procedure. *See id.* at 747. The State also failed to show the proper chain of custody of the urine samples. *See id.* at 749. As a result, the Court found the evidence insufficient to support the order of revocation. *See id.* *Rodriguez* is distinguishable, however, from the instant case. First, Arthur Baines, an employee with the Harris County Community Supervision and Corrections Department, testified that he personally observed appellant submit the urine samples on the alleged dates, that he personally sealed the containers in which the samples were submitted, and that those containers could only be opened by the medical examiner's office. Furthermore, Dr. Ashraf Mozayani, the chief toxicologist at the Harris County Medical Examiner's Office, testified that she knew at each stage of testing who was handling appellant's urine samples and that the records admitted into evidence were the results of the testing done on those samples. The combined testimony of Baines and Mozayani is sufficient to show the proper chain of custody of appellant's urine.

Appellant further contends that *Rodriguez* supports the proposition that inadmissible evidence should not be considered when determining the sufficiency of the evidence in a revocation review. Appellant's contention is misplaced. In *Rodriguez*, the State failed to show a proper chain of custody of the defendant's urine samples. Where there is no allegation of tampering, objections concerning chain of custody go to the weight rather than the admissibility of evidence. *See Madison v. State*, 825 S.W.2d 202, 205 (Tex. App.–Houston [1st Dist.] 1992, no pet.). Thus, this Court reviewed *all* the evidence in *Rodriguez*, but because its weight had been so diminished by the State's failure to prove up the chain of custody, we deemed the evidence insufficient to support the order revocation.

Here, we have likewise reviewed all the evidence. Accordingly, our analysis does not conflict with *Rodriguez*.[2] The trial court's judgment is affirmed.

/s/ J. Harvey Hudson
Justice

Supplemental Opinion filed October 26, 2000.

Panel consists of Chief Justice Murphy and Justices Anderson and Hudson.

Do Not Publish — TEX. R. APP. P. 47.3(b).

[2] In light of this Court's supplemental opinion on rehearing, appellant's motion for rehearing en banc is premature. Appellant may, however, refile his motion for rehearing en banc within 15 days after the issuance of this opinion. *See* TEX. R. APP. P. 49.1.