



1993

Recent Developments: Patrick v. State: Results of Polygraph Tests Are Discoverable As "Scientific Tests"

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Recommended Citation

Davis, Paula L. (1993) "Recent Developments: Patrick v. State: Results of Polygraph Tests Are Discoverable As "Scientific Tests","
University of Baltimore Law Forum: Vol. 23 : No. 3 , Article 11.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol23/iss3/11>

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extracurricular, community, and social activities which occur at or near schools. *Id.* Therefore, the court noted that children often may be present in school areas during non-school hours. *Id.* In addition, the court emphasized that the statute was not aimed at regulating the hours of drug marketplaces, but instead at deterring such activity within school zones entirely. *Id.* The court reasoned that preventing a school zone from becoming known as a drug market would reduce children's exposure to drug activities by discouraging the presence of persons involved in drug activities and reducing the litter of drug paraphernalia. *Id.* Furthermore, the court recognized that one of the purposes behind the statute was to make the risks associated with drug activity within a school zone outweigh the potential for drug profits. *Dawson*, 329 Md. at 286, 619 A.2d at 116-117. Thus, the court concluded that the statute was a reasonable and rational method of achieving the state's goals, and accordingly, was constitutional. *Dawson*, 329 Md. at 287, 619 A.2d at 117.

The court completed its analysis by comparing Maryland's drug-free school zone statute with its federal counterpart, 21 U.S.C. § 845a, and with similar statutes in other states. The court noted that allegations similar to those

made by Dawson have been rejected in federal courts on the ground that the objective of the federal drug-free school zone statute could not be achieved by allowing drug activity during non-school hours. *Dawson*, 329 Md. at 288, 619 A.2d at 117-18 (quoting *United States v. Crew*, 916 F.2d 980, 983 (5th Cir. 1990)). In addition, the court emphasized that its holding was in accord with all other states which have reviewed the constitutionality of similar statutes. *Dawson*, 329 Md. at 288-89, 619 A.2d at 118.

In *Dawson v. Maryland*, the Court of Appeals of Maryland held that Maryland's drug-free school zone statute does not violate the equal protection or due process clauses of either the United States Constitution or the Maryland Constitution. In so holding, the court took a positive step in fighting the drug war which plagues this country by recognizing that Maryland's drug-free school zone statute legitimately functions to protect children from the evils of the drug trade. The court's decision has placed Maryland in accord with both federal and nationwide state law, and therefore, has created a more unified front in fighting the war on drugs.

-Kimberly A. Kelly

***Patrick v. State:* RESULTS OF POLYGRAPH TESTS ARE DISCOVERABLE AS "SCIENTIFIC TESTS."**

In *Patrick v. State*, 329 Md. 24, 617 A.2d 215 (1992) the Court of Appeals of Maryland held that non-exculpatory polygraph test results of potential witnesses qualified as "scientific tests" within the meaning of Maryland Rule 4-263(b)(4), and were therefore discoverable by a defendant upon request. Though this holding has no effect upon the admissibility of polygraph test results as evidence at trial, it makes them available to the defendant as an investigatory aid for the purpose of preparing his defense.

Delmar William Patrick, III ("Patrick") was charged with the murder and attempted rape of a thirteen year old girl whose body was found in a wooded area near his home. Originally, Patrick denied any involvement in the crime, stating that had he found the girl's body but had been afraid to tell anyone. Subsequently, he provided various conflicting admissions and accounts. During the investigation, police experts for the State conducted polygraph tests of several potential witnesses. Patrick sought discovery of these test results including the questions asked, the responses given, and the tracings made by the polygraph machine. The State, however, refused to comply with his pretrial discovery motions.

At trial, Patrick renewed his efforts to obtain the polygraph test results and informed the court of the State's failure to cooperate. Patrick argued that he was entitled to this information under Maryland Rule 4-263(b)(4) even though the materials were not admissible in evidence. The relevant portions of this criminal discovery rule provides for the disclosure of reports, including the results of any scientific test, made in connection with experts consulted by the State, upon the defendant's request. The Circuit Court for Cecil County denied Patrick's motion to compel dis-

closure stating that the inadmissibility of the polygraph tests into evidence precluded their discoverability. After a jury trial, Patrick was convicted of felony murder and sentenced to life imprisonment without parole. The Court of Special Appeals of Maryland affirmed the circuit court's decision. The Court of Appeals of Maryland granted certiorari.

On appeal, Patrick argued that even if the polygraph tests are inadmissible in evidence, they may materially assist him in preparing his defense, and that by mandating disclosure of scientific tests, Maryland Rule 4-263(b)(4) intended to secure this access. *Patrick v. State*, 329 Md. at 29, 617 A.2d at 217.

The State countered Patrick's arguments, contending that because polygraph test results are of such questionable reliability as to be inadmissible in evidence, they do not qualify as scientific tests under the rule. *Id.* The State further argued that disclosure of polygraph test results would give the defendant access to confidential information about the witness being examined. Moreover, the State asserted that police-conducted polygraph tests constituted an investigatory police report to which a criminal defendant has no access. *Id.* at 30, 617 A.2d at 218 (citing *Faulk v. State's Attorney for Harford County*, 299 Md. 493).

The Court of Appeals of Maryland reversed the holding of the court of special appeals and held that a polygraph test constitutes a discoverable "scientific test" within the meaning of Maryland Rule 4-263(b)(4). As a preliminary matter, the court noted that the text and history of Maryland Rule 4-263(b)(4) suggests that the polygraph results were indeed discoverable. *Patrick* at 31, 617 A.2d at 218. The court recognized that the rule provides a criminal defendant with access to state experts' reports and statements regardless of whether these reports are reasonable or material to the development of his defense. Since polygraph results are indisputably reports of state experts, the court stated that such re-

sults should be discoverable under the general scope of the rule. *Id.*

However, turning to the defendant's characterization of the polygraph tests as discoverable scientific tests, the court noted that nothing in the rule's text or history clearly indicated whether polygraph tests would qualify as such. Critical to the court's conclusion was the absence of any language in the text of the rule that would limit the discovery of scientific tests to those that would be material to the defendant's formulation of his defense and intended for use as evidence by the State. *Id.* Thus, the inadmissibility of the test results at trial had no bearing on their discoverability.

Although many cases from other jurisdictions have held that polygraph test results are not discoverable, none of the criminal discovery statutes under which they were decided required the disclosure of results of scientific tests conducted by experts for the State. *Id.* at 33, 617 A.2d at 216.

However, *People v. Mondon*, 492 N.Y.S.2d 344 (N.Y. Sup. Ct. 1985), held that polygraph reports were discoverable despite being inadmissible in evidence. *Id.* at 33-34, 617 A.2d at 219. The New York discovery statute in *Mondon*, which was substantially similar to the Maryland Rule, provided for discovery of "scientific tests" conducted in relation to a case without regard to their admissibility in evidence. The New York Supreme Court stated that the questions and responses in a polygraph test "may provide investigatory leads that, together with the examiner's conclusions, will help a defendant to determine" the best course for his defense. *Id.* at 34, 617 A.2d at 220 (quoting *Mondon*, 492 N.Y.S.2d at 346-47). The Court of Appeals of Maryland further held that "it is for defense counsel to determine whether the test results will be of any assistance to the defense...." *Patrick*, at 35, 617 A.2d at 220.

The court rejected the State's contention that disclosure of the polygraph results could give the defendant access to confidential information about the

witness being examined regarding matters not relevant to the defendant's case. *Id.* at 36, 617 A.2d at 221. The court pointed out that to alleviate any potential confidentiality problem, upon motion and a showing of good cause, the court can restrict the particular disclosures involving confidential material pursuant to Maryland Rule 4-263(i).

The court also rejected the State's argument that the results of the police-conducted polygraph tests constituted an investigatory police report to which a criminal defendant has no access. *Id.*, 617 A.2d at 220-21. The court found nothing in the case cited by the State to support this conclusion.

Finally, upon holding that Patrick should have been able to discover the polygraph test results, the court noted that the lower court's denial of his discovery motions did not automatically entitle him to a new trial or reversal of his conviction. *Id.*, 617 A.2d at 221. Instead, the court remanded the case to the circuit court to determine whether the denial of Patrick's discovery requests was prejudicial to his case. The court of appeals held that only if the circuit court concludes that it was prejudicial to his case should a new trial be granted.

By holding that polygraph test reports are discoverable as "scientific tests," the court of appeals clarified the scope and meaning of Maryland Rule 4-263(b)(4). As a result, *Patrick v. State* broadens the scope of discoverable materials by eliminating any real or imagined restrictions based on the inadmissibility of polygraph test reports.

- Paula L. Davis