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⌘ Vol. 13, No. 2 - January 17, 2005

Case Name: [Matthew Reid Mechler v. The State of Texas](#)

- OFFENSE: DWI
- COUNTY: Ft. Bend
- COURT OF APPEALS: Houston [14th] 2003
- C/A CITATION: 123 S.W.3d 449
- C/A RESULT: Suppression Order Reversed
- CCA. CASE No. PD-0075-04
- DATE OF OPINION: January 12, 2005
- DISPOSITION: Court of Appeals Affirmed
- OPINION: Keasler, J. VOTE: 5-4-0
- TRIAL COURT: CCL 4; Hon. R.H. Bielstein
- LAWYERS: Brian Wice, Allan Cease (Defense); David Newell (State)

⌘ [253 Physical Evidence / Intoxilyzer Results](#): Appellant moved to suppress results of an Intoxilyzer test because the State could not produce admissible testimony on retrograde extrapolation, and because its probative value did not outweigh the danger of unfair prejudice. The trial court granted the motion, but the Court of Appeals reviewed the issue de novo and reversed (see ⌘, [Vol. 11, No. 39](#); 10/06/2003).

**Holding:** [Mata](#) did not require exclusion of breath test results if the expert testimony on retrograde extrapolation was inadmissible, it just made the flawed testimony inadmissible. [Mata](#) did not support exclusion of the test results themselves. The Court of Appeals should have applied an abuse of discretion standard, not review de novo, but they reached the right result. Intoxilyzer results are relevant to both intoxication per se and whether there is loss of faculties due to alcohol consumption, so its probative value outweighs any danger of unfair prejudice under the 4-factor [Montgomery](#) test.

**Concurring / Dissenting Opinions:** Judge Meyers delivered a concurring opinion and argued that a probity/prejudice analysis is appropriate for a pretrial hearing. Judge Cochran filed a separate concurring opinion. She agreed with Judge Meyers, but also agrees with the majority that the probative value was not outweighed by unfair prejudice. She further opined that breath test results might be inadmissible sometimes under a Rule 403 analysis.

**Sidebars:** ([David A. Schulman](#)) (DAS) Since [Mata](#) was delivered, we have been saying that it does not create a rule of exclusion, but, rather is a roadmap for admissibility. If the parameters for testimony are met, the testimony is admissible.