

'Passive smoking' defence clears woman of drug driving as research casts doubt on roadside testing

ABC North Coast By Gemma Sapwell

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PHOTO: Police officers take saliva swabs from drivers as part of the roadside drug driving tests. (ABC North Coast: Gemma Sapwell)

The accuracy of drug driving tests has been called into question after a landmark court ruling and new research by a leading academic.

Data collected by Sydney University has revealed roadside mobile saliva tests returned inaccurate results more than 20 per cent of the time when testing oral fluids for tetrahydrocannabinol (THC), the main psychoactive ingredient in cannabis.

Researchers at the university's Lambert Initiative for Cannabinoid Therapeutics conducted hundreds of tests on drivers with varying levels of THC in their system to study whether there was any link between cannabis and driver impairment.

The program's academic director Iain McGregor said the research, which is yet to be published, raised concerns.

"The tests are particularly poor at detecting when people have a lot of THC in their system so they can be really stoned and getting a negative test," he said.

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PHOTO: A driving simulator is used in the Sydney University research into THC impairment. (Supplied: Professor Iain McGregor)

But he said what was even more alarming was the number of false positives recorded.

"We found on occasion the tests gave a false positive when people have very low levels of THC and that is a concern for the carriage of justice, people are not impaired and they have not had cannabis for quite a long time.

"We had someone test positive for THC who was using a placebo," he said.

In a statement to the ABC, the Department of Transport said a Mobile Drug Test (MDT) ran a small risk of a false positive but it was uncommon with around 97 per cent of NSW roadside tests confirmed positive in the laboratory.

New South Wales police use three stages of testing for THC.

The first two tests are done roadside and if the initial test is positive, the sample is sent away to undergo a third laboratory analysis.

Professor McGregor said the "extremely accurate" laboratory result could take months and its high level of sensitivity meant it could detect THC from passive smoking.

Driver successfully uses 'passive smoking' defence

This was illustrated last month when a driver, who had tested positive for cannabis in northern NSW, had her charges dismissed after a magistrate accepted her passive smoking defence.

Driver Nicole Spackman said she had not smoked cannabis in the weeks leading up to her roadside test, but she had visited her terminally ill neighbour who was smoking medicinal cannabis in her presence.

The police argued it was not possible to test positive to THC from passive smoking alone.

However Magistrate David Heilpern ruled the prosecution did not provide enough evidence to refute Ms Spackman's claim.

He added that "scientists do not know everything about THC and its rate and method of absorption".

Ms Spackman's lawyer Steve Bolt said he believed the decision was the first of its kind.

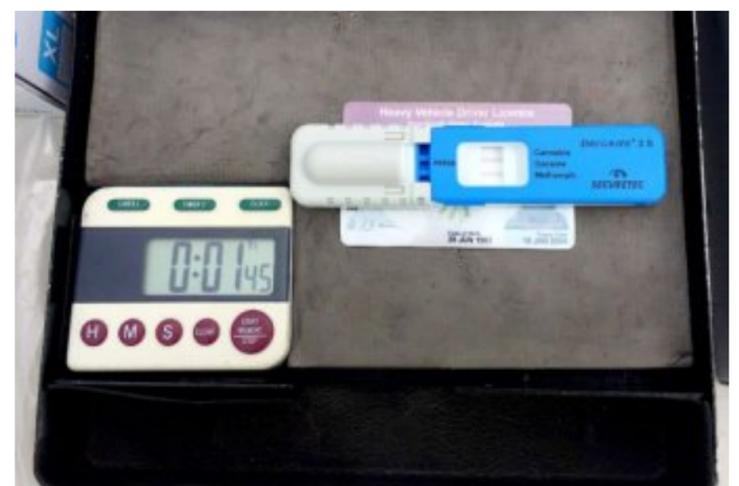


PHOTO: A DrugWipe saliva test is used to detect the presence of cannabis, cocaine and methamphetamines (ABC North Coast: Bruce MacKenzie)

"It's landmark in the sense it's the first case I'm aware of that passive smoking has been accepted as a defence.

"It's significant because it throws into doubt the fairness of the law, that someone can inadvertently have drugs in their system for being a good Samaritan, spending time with a terminally ill friend, not be impaired and still be charged and face losing their licence."

Driving under influence of cannabis and alcohol not the same: Academic

With the increasing use of legal medicinal cannabis, Professor McGregor said drug drive testing without clear links to impairment was creating challenges for politicians, police, magistrates and users.

Research conducted by Professor McGregor's team found that on some measures, drivers intoxicated with cannabis were safer drivers.

"Drivers using cannabis tend to leave a bigger distance between you and the car in front and your speed tends to be lower.

"But in a situation where you have to process information rapidly, you're not safe if you're intoxicated.



PHOTO: Police officers carry out random drug driving tests near Byron Bay. (ABC North Coast: Elloise Farrow-Smith)

"So I'm certainly not an advocate for driving under the influence of cannabis but it's a mistake to consider that cannabis driving is equivalent to alcohol driving," Professor McGregor said.

The Department of Transport's executive director for road safety Bernard Carlon stood by research which showed THC could affect reaction times to unexpected hazards.

"The simple message is that if you think that you may have illegal drugs in your system, the best decision is not to drive," he said.

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