



produce any evidence of causation.

Solomon alleges Mission failed to follow a number of the steps outlined in the DOT protocol. Specifically, Solomon complains of Mission's collection of the urine sample by his immediate supervisor rather than a non-supervising employee, removal of the container from the collection kit prior to Solomon's arrival for testing, failure to have Solomon wash his hands before providing the sample, failure to restrict access to the collection site, failure to maintain blue water in the toilet, failure to turn off all external water sources, and failure to keep the collection container in view while Solomon washed his hands after providing the sample. Yet, Solomon never produced evidence to show a causal link between these failures and the false-positive test result.

When reviewing a "no evidence" point, we must view the evidence in a light that tends to support the finding of a disputed fact and disregard all evidence and inferences to the contrary. *Bradford v. Vento*, 48 S.W.3d 749, 754 (Tex. 2001); *Weirich v. Weirich*, 833 S.W.2d 942, 945 (Tex. 1992). A jury's finding will be upheld if the evidence supporting it "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions." *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 25 (Tex. 1994).

To establish causation, Solomon was required to show that Mission's negligence proximately caused his urine sample to test positive for marijuana metabolite. Though he presented several theories on this issue, Solomon did not present any evidence to make these theories anything more than guesses.

Solomon's expert witness testified that marijuana metabolite, the substance detected in Solomon's urine sample, is a substance produced by the human body that does not derive directly from the marijuana itself.

Solomon speculates that the urine sample could have been contaminated with marijuana metabolite from another source. He alternatively asserts the unsealed test kit could have been contaminated before he arrived at the office. Solomon even hypothesizes that his supervisor could have switched urine samples while Solomon left the room to wash his hands. However, Solomon failed to present any evidence to substantiate these theories. Nor did he attempt to raise *res ipsa loquitur* as the basis for a finding of negligence.

Solomon did not offer any probative evidence to show that any of the steps Mission failed to follow caused the appearance of the marijuana metabolite in his urine sample. We cannot “convert mere suspicion or surmise into some evidence.” *Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 928 (Tex. 1993). I would therefore reverse the court of appeals judgment because Solomon failed to show a causal link between Mission’s acts and the appearance of marijuana metabolite in Solomon’s urine sample.

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Michael H. Schneider, Justice

Opinion delivered: May 15, 2003