

Order filed January 12, 2012



In The

# Eleventh Court of Appeals

---

No. 11-10-00158-CR

---

STATE OF TEXAS, Appellant

V.

CHRIS LOLLAR, Appellee

---

---

On Appeal from the 259th District Court

Jones County, Texas

Trial Court Cause No. CR-024118

---

---

## ORDER

The State is appealing from a trial court's order granting a defendant's motion to suppress. In the motion, Appellee alleged that the search warrant used to obtain blood from him contained false statements, and he requested a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). After the trial court granted the motion, the State requested findings of fact and conclusions of law. The State's request was made twenty-one days after the court announced its ruling in a letter to the parties. The trial court denied the request, ruling that it was untimely

under Rule 296 of the Texas Rules of Civil Procedure. We abate the appeal and remand to the trial court to enter findings of fact and conclusions of law.

The Court of Criminal Appeals has mandated that, upon request by the losing party in a motion to suppress, the trial court must state findings of fact and conclusions of law in order to provide the appellate court with a basis on which it can review the trial court's application of the law to the facts. *State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006). The court stated that an appellate court should not be forced to make assumptions or guesses about the trial court's ruling on a motion to suppress. *Id.* at 698. The court looked to Rule 297 of the Texas Rules of Civil Procedure to give guidance on the timing of filing requested findings. *Id.* at 699. The court ruled that the trial court has twenty days from the date of its ruling in which to file findings of fact and conclusions of law, if it has not made oral findings on the record. *Id.* at 699–700.

In general, the Texas Rules of Civil Procedure do not apply to criminal cases. *Ex parte Donaldson*, 86 S.W.3d 231, 233 (Tex. Crim. App. 2002). In *Cullen*, the Court of Criminal Appeals neither changed this holding nor adopted Rule 297. As noted above, the court looked to the rule for guidance in deciding how long a trial court had to make findings in a criminal case when they were requested by the losing party. The court did not say when a request for findings was timely. *Id.*

In this case, the trial court found that the State failed to file its request for findings within the twenty-day time period required in Rule 296. The Court of Criminal Appeals has not adopted Rule 296. There is one court in Texas that has applied Rule 296 to criminal cases in dicta. *See Jackson v. State*, No. 13-11-031-CR, 2011 WL 2651793 (Tex. App.—Corpus Christi July 7, 2011, no pet.) (mem. op., not designated for publication). We, however, are not persuaded that putting additional roadblocks in the way of findings of fact and conclusions of law in motions to suppress serves the goal of the Court in *Cullen* of not forcing appellate courts to speculate or guess on the basis of a trial court's ruling. *See Cullen*, 195 S.W.3d at 698. Absent clear guidance from the Court of Criminal Appeals, we decline to adopt additional rules of civil procedure into criminal practice. *See Blocker v. State*, 231 S.W.3d 595, 597 n.2 (Tex. App.—Waco 2007, no pet.) (“We do not believe that *Cullen* intended any importation of the civil procedure rules relating to requesting findings of fact and conclusions of law . . . .”);

*Scheideman v. State*, No. 02-10-00154-CR, 2011 WL 2682948 (Tex. App.—Fort Worth May 17, 2011, order), *disp. on merits*, 2011 WL 4008123 (Tex. App.—Fort Worth Sept. 8, 2011, no pet.) (adopting only that portion of Rule 297 to which the Court of Criminal Appeals looked for guidance).

Accordingly, we abate the appeal in this case and remand the case to the trial court to make findings of fact and conclusions of law with respect to its order granting the motion to suppress. *See* TEX. R. APP. P. 44.4. We direct the trial court to make and file such findings and conclusions within thirty days from the date of this order. Those findings and conclusions shall be included in a supplemental clerk’s record to be filed with the clerk of this court within fifteen days after the trial court enters its findings and conclusions.

After the filing of the trial court’s findings and conclusions, if the State decides that it should amend or supplement its brief, such brief will be due thirty days after the supplemental record is filed. If the State does file an amended or supplemental brief, then the Appellee will have thirty days to file a response.

PER CURIAM

January 12, 2012

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,  
McCall, J., and Kalenak, J.