

Affirmed and Memorandum Opinion filed June 24, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00995-CR

TAI NGUYEN, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 12
Harris County, Texas
Trial Court Cause No. 1559459**

MEMORANDUM OPINION

Appellant Tai Nguyen appeals the trial court's denial of his motion to suppress. In a single issue, appellant asserts that the affidavit filed in support of the search warrant was not properly sworn and does not support issuance of the warrant. We affirm.

Appellant refused to submit to a breath test after he was arrested for driving while intoxicated. Officer Jose Aguilar, who stopped appellant and administered field sobriety tests, signed an affidavit in support of a search warrant to obtain evidentiary samples of appellant's breath, blood, or urine. The affidavit is signed by Officer Aguilar and contains another illegible signature under the words, "Sworn to and Subscribed before me on this the 2nd of November, 2008, A.D." The second signature appears on a line above the

words, “Notary Public/Peace Officer.” Appellant’s blood was obtained as a result of the execution of the search warrant.

Appellant filed a motion to suppress the results of the blood test alleging that the affidavit in support of the warrant was defective because the identity of an officer was not reflected on the jurat. In other words, appellant contends that because the second signature on the affidavit is illegible, the affidavit is defective. The trial court held a hearing at which Harris County Assistant District Attorney Brent Mayr testified. Mayr, as chief of the Vehicular Crimes section of the District Attorney’s office, supervises a “No Refusal” program in which the District Attorney’s office provides assistance for police officers in obtaining search warrants to take blood samples from individuals who refuse to submit to a breath test.

Mayr testified that in the “No Refusal” program, once the affidavit in support of the search warrant is prepared and the affiant has read and reviewed the information to verify that it is true and correct, the affiant will go before another Houston police officer who is working in his capacity as an officer and will swear that everything in the affidavit is true and correct. After the affiant signs the affidavit, the officer then signs on the blank that reads, “Notary public/peace officer.” Mayr testified that he was working the night of appellant’s arrest and was assisting officers with the search warrant affidavits connected to the “No Refusal” program. Mayr recognized that Officer Paul Lassalle provided the second signature on the affidavit. Mayr testified that in the course of working on these “No Refusal” nights, Officer Lassalle is one of two supervising officers. On a typical night, they will process approximately 15 to 20 warrants, and he will witness Officer Lassalle have the officer swear to the affidavit as being true and correct then sign his name to it. He is very familiar with Officer Lassalle’s signature, and has seen it multiple times. Mayr further testified that Judge Harmon, who signed the search warrant, is also familiar with Officer Lassalle’s signature.

The trial court subsequently denied appellant's motion to suppress the blood test results. Appellant entered a guilty plea and the trial court gave permission to appeal its ruling on the motion.

An appellate court reviews a trial court's ruling on a motion to suppress under an abuse-of-discretion standard. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). The trial court is the sole judge of the weight and credibility of the evidence at a hearing on a defendant's motion to suppress evidence. *Wood v. State*, 18 S.W.3d 642, 646 (Tex. Crim. App. 2000). We give almost total deference to the trial court's determination of historical facts that depend on credibility and demeanor, but review de novo the trial court's application of the law to the facts if resolution of those ultimate questions does not turn on the evaluation of credibility and demeanor. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). When the trial court does not file any findings of fact, as in this case, the appellate court will review the evidence in the light most favorable to the trial court's ruling. *Toms v. State*, 182 S.W.3d 899, 902 (Tex. Crim. App. 2005).

Appellant contends the affidavit is defective because the identity of the officer cannot be determined solely from reading the jurat. A sworn affidavit setting forth substantial facts establishing probable cause must be filed in every instance in which a search warrant is requested. Tex. Code Crim. Proc. Ann. art. 18.01(b) (Vernon Supp. 2009). The purpose of this oath is to call upon the affiant's sense of moral duty to tell the truth and to instill in him a sense of seriousness and responsibility. *Smith v. State*, 207 S.W.3d 787, 790 (Tex. Crim. App. 2006). Although the affiant's signature on an affidavit serves as an important memorialization of the officer's act of swearing before the magistrate, it is the act of swearing, not the signature itself, that is essential. *Id.* at 792.

The Court of Criminal Appeals has held that an affiant's failure to sign his affidavit is not necessarily fatal if it can be proved by other means that he did swear to the facts contained within the affidavit before the magistrate. *Id.* at 793. This case differs in the

fact that the affiant signed the affidavit, but the jurat indicating before whom the affidavit was sworn is illegible. However, the court's analysis in *Smith* can be applied in this instance. It is the act of swearing, not the signature that is essential. Further, the act of swearing can be proved by means other than the signature. *Id.* In this case, Mayr testified that he recognized the signature of Officer Paul Lassalle, who was working in the "No Refusal" program the night of appellant's arrest in his capacity as a Houston police officer. Mayr further testified that Judge Harmon, who signed the search warrant, was also familiar with Officer Lassalle's signature and would have recognized it. Therefore, the illegibility of the signature in the jurat does not render the affidavit defective.

Appellant further contends that the State cannot "bolster" the jurat through Mayr's testimony because the trial court cannot look beyond the "four corners" of the warrant to determine its validity. The Court of Criminal Appeals specifically addressed this issue in *Smith* and found, "The four corners rule applies only to the assessment of probable cause; it does not apply to the issue of whether the affiant swore to the affidavit's truthfulness." *Id.* at 794. Because appellant does not challenge the assessment of probable cause, the four corners rule does not apply in this case.

We conclude the affidavit in support of the search warrant is valid despite the illegibility of Officer Lassalle's signature. Therefore, we overrule appellant's issue and affirm the judgment of the trial court.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Seymore.

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