Affirmed and Memorandum Opinion filed February 14, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00110-CR

ELLENA ARREDONDO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from County Criminal Court at Law No. 13
Harris County, Texas
Trial Court Cause No. 2012451

M E M O R A N D U M O P I N I O N

Appellant Ellena Arredondo was charged with driving while intoxicated. She pleaded guilty under a plea-bargain agreement after the trial court denied her motion to suppress the results of her blood test and now appeals the denial of the motion. *See* Tex. R. App. P. 25.2(a)(2)(A) (allowing defendant in plea bargain case to appeal rulings on written pretrial motions). She asserts the court erred in denying her motion to suppress because the warrant was not timely executed. The

State responds that appellant failed to preserve error but execution was timely in any event. We affirm.

FACTUAL BACKGROUND

Appellant was driving on the Southwest Freeway in Houston in the middle of the night on February 28, 2015. She hit a guardrail, moved back into her lane, changed lanes twice without signaling, and almost hit the guardrail again. Officer M. Francois of the Houston Police Department pulled her over. She showed signs of intoxication, including slurred speech, red glassy eyes, a strong odor of alcohol on her breath, and swaying as she stood in place. It was raining, so Francois took her to the police station to administer standard field sobriety tests. Appellant performed field sobriety tests but refused to provide a breath sample to test for intoxication.

Based on appellant's performance on the tests and her refusal to consent to a breath test, Francois wrote and signed an affidavit for a search warrant for a sample of appellant's blood. The notary form at the end of the affidavit contains space for the date and time the affidavit was sworn. The date "February 28, 2015" is computer-printed. The time "5:32 A.M." is handwritten.

A magistrate signed a search warrant, which states in relevant part:

> WHEREAS, Complaint in writing, under oath, has been made by Officer M. Francois, a peace officer employed by the Houston Police Department, in reference to incident # 025577315, which complaint is attached hereto and expressly made a part hereof for all purposes and said complaint having stated facts and information in my opinion sufficient to establish probable cause for the issuance of this warrant;
>
> YOU ARE THEREFORE COMMANDED to forthwith search the body of the person therein named, to wit: Ellena Arredondo. . . .

The warrant states it was signed on "FEB 18, 2015." The date is handwritten. The time is also handwritten, but the numbers are obscured and only "A.M." is legible. The return and inventory for the warrant states it was executed on "the 28th day of February A.D., 2015." Each component of the date is handwritten.

MOTION TO SUPPRESS

Appellant moved to suppress the blood test results on the ground that the warrant was facially insufficient.[1] The motion does not identify the defects that render the warrant insufficient.

The trial court held a hearing on the motion. Francois's affidavit, the search warrant, and the return and inventory were admitted into evidence on the State's proffer. Appellant did not offer evidence. No witnesses testified.

After the evidence was admitted but before argument of counsel, the trial court stated "there is probable cause for the magistrate in this case to have issued a warrant." Appellant asked to present argument, which the trial court allowed. Appellant then argued, for what the record suggests was the first time, that the warrant was not timely executed under article 18.06 of the Texas Code of Criminal Procedure because it was issued on February 18, and the return was signed on February 28. The trial court rejected the argument and found the warrant was actually signed and issued on February 28:

> The pleading says the 28th. The four corners of the affidavit say February 28th is the day that the event occurred. The warrant was sworn to and signed before a magistrate on February 28th. The

[1]The record contains two motions to suppress the blood test results: one on the basis that the warrant was facially insufficient, and the second on the basis that she was unlawfully arrested. Appellant did not pursue the unlawful-arrest motion in the trial court and does not mention it on appeal. Accordingly, only the warrant-sufficiency motion is at issue on appeal, and "the motion to suppress" as used in this opinion refers to that motion only.

> warrant has a date of February 18th, the warrant; and the return is on February 28th.
>
> . . .
>
> I see a mistake in the date signed by the magistrate, assuming that this is indeed the magistrate that signed it. Every other date in the document indicates that it was all done timely, including receiving the warrant and executing the warrant.

The trial court denied the motion. Appellant pleaded guilty under a plea bargain agreement that day. The trial court certified appellant's right to appeal matters raised by written pretrial motion.

ANALYSIS

I. Failure to preserve error

We first consider the State's contention that appellant's motion to suppress was insufficient to preserve error.

The Court of Criminal Appeals has "long eschewed hyper-technical requirements for error preservation." *Vasquez v. State*, 483 S.W.3d 550, 554 (Tex. Crim. App. 2016). Specific words are usually not required to preserve a complaint; rather, a party need only "let the trial court know what he wants and why he feels himself entitled to it clearly enough for the judge to understand him." *Id.* Still, a general or imprecise objection "will not preserve error for appeal unless the legal basis for the objection is *obvious* to the court and to opposing counsel." *Buchanan v. State*, 207 S.W.3d 772, 775 (Tex. Crim. App. 2006) (emphasis in original); *see* Tex. R. App. P. 33.1(a)(1)(A) (to raise complaint on appeal, party must have stated complaint in trial court "with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context"). The requirement of a timely, specific objection serves two purposes: (1) it informs the trial judge of the basis of the objection and affords the judge an opportunity to rule

on it, and (2) it affords opposing counsel an opportunity to respond to the objection. *Douds v. State*, 472 S.W.3d 670, 674 (Tex. Crim. App. 2015).

A motion to suppress is a specialized objection to the admissibility of evidence. As such, a motion to suppress must meet all the requirements of an objection—that is, it must be timely and sufficiently specific to inform the trial court of the complaint. *Johnson v. State*, 171 S.W.3d 643, 647 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd); *Porath v. State*, 148 S.W.3d 402, 413 (Tex. App.—Houston [14th Dist.] 2004, no pet.). We may not consider arguments in isolation when we resolve questions of preservation of error; we must look to the context of the entire record. *Douds*, 472 S.W.3d at 674; *Resendez v. State*, 306 S.W.3d 308, 313 (Tex. Crim. App. 2009).

Appellant's written motion states in its entirety:

> COMES NOW [Defendant] . . . and pursuant to Article I, Sections 9 and 10 of the Texas Constitution and the Fourth and Fourteenth Amendments to the United States Constitution and moves to suppress the results of any analysis of the illegally seized blood specimen in this case saying more particularly for cause the following:
>
> 1) On February 28, 2015 Defendant was arrested for suspicion of driving while intoxicated.
>
> 2) Defendant's blood was forcibly seized from his [sic] body pursuant to a search warrant. The search warrant is facially insufficient.
>
> 3) WHEREFORE, Defendant prays that this Court conduct a hearing on this motion, and upon hearing the evidence, order that the blood test results be suppressed.

Appellant did not explain how the warrant was "facially insufficient."

Article 18.04 of the Code of Criminal Procedure provides:

> A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

1. that it run in the name of "The State of Texas";

2. that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

3. that it command any peace officer of the proper county to search forthwith the person, place, or thing named;

4. that it be dated and signed by the magistrate; and

5. that that magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

Tex. Code Crim. Proc. Ann. art. 18.04.

Appellant's motion to suppress on the basis of facial insufficiency implies she is asserting the warrant is not sufficient under article 18.04. But appellant did not make that assertion in the trial court or on appeal. That is, she does not suggest the warrant is not dated and signed, or that it does not meet the other requirements of article 18.04. To the contrary, she relies on the fact that the warrant **is** dated to support her contention that the warrant was not timely executed after its issuance. That is a claimed violation of article 18.06, which states warrants must be timely executed. Tex. Code Crim. Proc. Ann. art. 18.06(a); *see also id.* art. 18.07(a) (setting deadlines to execute particular types of warrants).

The written motion to suppress was not the only objection to the warrant in the record, however. Like the defendant in *Douds*, appellant raised the point she asserts on appeal at the hearing on the motion to suppress. *Douds*, 472 S.W.3d at 674–75. The hearing transcript reflects the trial court understood the complaint and the State responded to it. Considering the whole record, we conclude appellant's discussion of the article 18.06 issue at the suppression hearing preserved error. *See* Tex. R. App. P. 33.1(a)(1)(A).

A separate question is whether appellant is estopped from raising this point on appeal. The State asserts appellant should not be permitted to complain of the lack of extrinsic evidence to support the ruling because appellant objected when the State offered to produce such evidence. A party may be estopped from asserting a claim inconsistent with that party's prior conduct. *Arroyo v. State*, 117 S.W.3d 795, 798 (Tex. Crim. App. 2003); *Prystash v. State*, 3 S.W.3d 522, 532 (Tex. Crim. App. 1999); *see also Vennus v. State*, 282 S.W.3d 70, 73–74 (Tex. Crim. App. 2009) (holding appellant was barred by invited-error doctrine, a form of estoppel, from raising complaint concerning court's denial of motion to suppress). We need not decide if appellant is estopped from asserting this error on appeal, though, because we conclude that, even without extrinsic evidence by the State, the trial court did not err in denying the motion to suppress.

II. Motion to suppress

A. Standard of review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Wade v. State*, 422 S.W.3d 661, 666 (Tex. Crim. App. 2013); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). The trial court is the sole finder of fact and is free to believe or disbelieve any or all of the evidence presented at a suppression hearing. *Wiede v. State*, 214 S.W.3d 17, 24 (Tex. Crim. App. 2007). We give almost total deference to the trial court's determination of historical facts that depend on credibility and demeanor.

By contrast, we review de novo the court's application of the law to the facts, because resolution of those ultimate questions does not turn on the evaluation of credibility and demeanor. *See Guzman*, 955 S.W.2d at 89. When, as in this case, there are no written findings of fact in the record, we uphold the ruling on any theory of law applicable to the case and presume the trial court made implicit

findings of fact in support of its ruling so long as the record supports those findings. *State v. Ross*, 32 S.W.3d 853, 855–56 (Tex. Crim. App. 2000). We view the evidence on a motion to suppress in the light most favorable to the trial court's ruling. *Wiede*, 214 S.W.3d at 24. If supported by the record, a trial court's ruling on a motion to suppress will not be overturned. *Mount v. State*, 217 S.W.3d 716, 724 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

B. Warrant requirements

A search warrant must be dated and signed by the issuing magistrate. Tex. Code Crim. Proc. Ann. art. 18.05(4). The magistrate must endorse on the warrant the date and hour of its issuance. *Id.* art. 18.07(b). With certain exceptions not applicable in this case, a warrant must be executed within three days of its issuance, exclusive of the day of issuance and the day of execution. *Id.* arts. 18.06(a), 18.07(a)(3).

A search warrant becomes *functus officio*, meaning it has no further official force or effect, if it is not executed timely. *Green v. State*, 799 S.W.2d 756, 759 (Tex. Crim. App. 1990). However, "[p]urely *technical* discrepancies in dates or times do not automatically vitiate the validity" of a search warrant. *Id.* (emphasis in original). The question for the court is whether there is evidence to support a finding that the discrepancy is merely a clerical or technical error. *See id.* Usually that evidence takes the form of testimony by a knowledgeable witness, often the magistrate who signed the warrant. *See id.* But "[t]hat does not mean such evidence must always be in the form of extraneous testimony." *Id.* at 760. The warrant and supporting affidavit must be read together, and the warrant's validity must be determined based on the totality of the circumstances. *See id.*

In *Green*, the warrant stated it was signed and issued on March 20. The affidavit in support of the warrant was dated March 25, and the return stated the

warrant was executed on March 25. No evidence explaining the discrepancy was offered. The trial court found the notation that the warrant was issued on March 20 was incorrect and it was actually issued on March 25. Based on that finding, the trial court denied the motion to suppress. *See id.* at 759–60. The intermediate court of appeals reversed, writing:

> [T]here is no reason, other than a, perhaps, laudable desire to affirm, to conclude under the guise of 'common sense' that the March 20 date, rather than the March 25 date, is a mistake. . . . The record reveals no evidence which indicates the March 20 issuance date is in error. We conclude that the warrant was stale when executed and the seizure was invalid.

Id. at 758. The Court of Criminal Appeals agreed with the intermediate court's conclusion. *See id.* at 761.

Appellant relies on *Green* to support his assertion that the trial court wrongly presumed the February 18 date on the warrant, rather than the February 28 date on the affidavit and return, was a mistake. We find *Green* distinguishable in a key respect. The warrant in *Green* was based on information an officer received from a confidential informant. *Id.* at 760. The officer wrote in the affidavit that he received the information on March 25. *Id.* His statement was the only evidence about when the event at issue in the warrant—his receipt of information—occurred, and there is no suggestion in *Green* that the defendant conceded the information was received on March 25.

By contrast, the events at issue in the warrant in this case undisputedly occurred on February 28: the car crash, appellant's arrest for driving while intoxicated, and appellant's refusal to consent to a test for intoxication. The charging instrument, which the trial court considered during the suppression hearing, states appellant was driving a motor vehicle on February 28 and was

arrested on February 28. Appellant's motion to suppress states she was arrested on February 28. These undisputed facts support the trial court's finding that the February 18 date on the warrant, not the February 28 date on the affidavit and return, was a clerical error. Accordingly, because the record showed the warrant was timely executed, the trial court properly denied appellant's motion to suppress.

CONCLUSION

We overrule appellant's sole issue and affirm the judgment of the trial court.

/s/ Ken Wise
Justice

Panel consists of Justices Boyce, Busby, and Wise.
Do Not Publish — TEX. R. APP. P. 47.2(b).