



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-20-00052-CR

CARLOS ROBERSON, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from the County Criminal Court No. 5
Denton County, Texas¹
Trial Court No. F18-1817-158, Honorable Coby Waddill, Presiding**

November 18, 2021

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

Appellant, Carlos Roberson, appeals his conviction for the felony offense of driving while intoxicated, third or more, and sentence of eight years' incarceration. We affirm the judgment of the trial court.

¹ Pursuant to the Texas Supreme Court's docket equalization efforts, this case was transferred to this Court from the Second Court of Appeals. See TEX. GOV'T CODE ANN. § 73.001.

Factual and Procedural Background

At around 3:20 a.m. on February 11, 2018, a Lewisville Police Officer observed a vehicle parked in the entrance to an apartment complex. The vehicle was running with appellant as its sole occupant. The officer approached the vehicle and saw that appellant was asleep. The officer woke appellant and had appellant roll down his window. The officer detected a strong odor of alcohol coming from the vehicle. Upon talking to appellant, the officer noticed that appellant's speech was slurred. The officer also observed an open container in the center console of the vehicle. Appellant admitted that he had consumed alcohol.

Based on these facts, the officer conducted field sobriety tests on appellant. The results of these tests indicated that appellant was intoxicated. The officer placed appellant under arrest for driving while intoxicated. After appellant was read his statutory warnings, he refused to provide a specimen of his breath or blood.

The officer sought a search warrant for extraction of appellant's blood. Based on the officer's identification of indicia of appellant's intoxication, a search warrant was granted. The search warrant, however, did not expressly authorize the chemical testing of appellant's blood. Chemical testing of appellant's blood was, nonetheless, conducted and revealed that appellant had a blood alcohol concentration of .193.

Before trial, appellant moved to suppress the results of the testing done on the seized blood on the basis that, under *State v. Martinez*, 570 S.W.3d 278 (Tex. Crim. App. 2019), the chemical analysis of appellant's blood was a separate search that was not authorized by the warrant. However, appellant's motion did not contest the search

warrant authorizing the extraction of his blood sample. The trial court denied appellant's motion to suppress.

The case proceeded to trial, where appellant pled not guilty. The results of the blood alcohol testing were admitted over appellant's objection. The trial court found appellant guilty of felony driving while intoxicated and sentenced him to eight years' incarceration. Appellant timely appealed his conviction.

Appellant's sole appellate issue contends that the trial court erred by denying appellant's motion to suppress because *Martinez* and the particularity requirement of the Fourth Amendment require that a separate warrant be issued authorizing the testing of the blood drawn from appellant.

Analysis

In his brief, appellant acknowledges that courts of appeals, including the Second Court of Appeals, have expressly rejected appellant's argument regarding *Martinez*. One of the cases appellant references is *Crider v. State*, No. 04-18-00856-CR, 2019 Tex. App. LEXIS 8095 (Tex. App.—San Antonio Sept. 4, 2019) (mem. op., not designated for publication). After appellant filed his appellate brief, the Texas Court of Criminal Appeals affirmed the Fourth Court of Appeals' decision in *Crider*. See *Crider v. State*, 607 S.W.3d 305, 309 (Tex. Crim. App. 2020). The Court of Criminal Appeals explained that when blood is drawn pursuant to a search warrant that was supported by probable cause, it is not necessary for the state to obtain a separate search warrant authorizing the testing of that blood. *Id.* at 308. The Court explained that this is true "even if the warrant itself did not expressly authorize the chemical testing [of the blood] on its face." *Id.* The Court

distinguished its holding in *Martinez* because, in *Martinez*, the blood that was tested had been obtained from a treating hospital without a search warrant. *Id.* Blood that is obtained via a search warrant that was issued on probable cause to suspect that a person had committed the offense of driving while intoxicated is obtained for the purpose of testing the person's blood alcohol concentration. *Id.* Because the probable cause that justified the issuance of the blood-draw search warrant is the same probable cause that would justify the issuance of a blood-testing search warrant, the issuance of a separate search warrant for testing is not necessary under *Martinez* or the Fourth Amendment. *See id.*

Conclusion

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

Judy C. Parker
Justice

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