REL: January 11, 2019

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2018-2019

CR-17-0745

State of Alabama

v.

Sylvia Martin

Appeal from Autauga Circuit Court
(CC-17-149)

JOINER, Judge.

Sylvia Martin was indicted for chemical endangerment of a child, see § 26-15-3.2, Ala. Code 1975. Martin filed a pretrial motion to suppress the urine and meconium test results obtained by Baptist Medical Center South in Montgomery, Alabama, following the birth of her child.[1] On

[1]The test results revealed the presence of opiates and amphetamine.

April 26, 2018, after a hearing, the circuit court issued an order granting the motion to suppress. The State appeals.

At the hearing on the motion to suppress, Martin challenged the admissibility of the test results based on two grounds: (1) that the results were unreliable and not properly authenticated pursuant to Rule 901, Ala. R. Evid.; and (2) that the results were obtained during an unconstitutional search under the Fourth Amendment. In response, the State argued and the circuit court held as follows:

> "[Prosecutor]: As to the defense's lack of authenticity argument, the State would argue that it's an untimely argument. This is an evidentiary matter. And whether or not the State can authenticate the documents is something that we're going to get to at trial. We're going to subpoena witnesses at that point, we're going to subpoena the people from the lab, if necessary, to authenticate the results, to explain the procedure to the jury. So we believe that the lack of authenticity argument is untimely. Additionally, it meets the business records exception to the Hearsay Rule. Even if this Court were to decide, at the time of trial, that it did not meet such a hearsay exception, we could offer that drug screen, not for the truth of the matter, but to show its effect on law enforcement or on what the hospital staff did as a result of the positive test.
>
> "THE COURT: Why would that be relevant?
>
> "[Prosecutor]: Well, I believe that treatment to some extent or monitoring is required if a baby tests positive for controlled substance. And so the

medical staff would have treated the baby accordingly.

"THE COURT: I think the problem you've got really is one that you're not addressing, and that is the very face of the test says that it's not--has not been confirmed, has not been conducted by the hospital, they don't conduct the test. It says in plain black and white that it's not to be used for legal--you know, it's not intended to be. It has not been confirmed. They don't say it's not reliable, but they say everything but, that it's not reliable. It's not approved by the FDA. There has to be some indicia of reliability before the Court gets the evidence that could frankly turn the issues in the case. And I think [defense counsel's] point is well taken concerning the very face of the test itself. If you want to talk to me about that, I would certainly be happy to hear what you have to say.

"....

"[Prosecutor]: The law still allows for its admission under the business records exemption of the Hearsay Rule, As to authenticity--

"THE COURT: I disagree with you on that.

"[Prosecutor]: --we can call the individuals that conducted the test, the methods that they used, how reliable their tests are. This is not a document that speaks for itself. We're going to have to call a witness to authenticate the document and that witness is going to explain to the jury why what they do is correct and why the results--

"THE COURT: You're going to get somebody from Warde Medical Laboratory?

"[Prosecutor]: Yes, Judge.

"THE COURT: Where are they?

"[Prosecutor]: I have no idea. But if they're required, Judge, we will get them here.

"THE COURT: Ann Arbor, Michigan?

"[Prosecutor]: We can get them. Judge.

"THE COURT: You're representing to the Court that you're going to have a witness here from Ann Arbor, Michigan?

"[Prosecutor]: If we have to, Judge, yes. This is a child that was born testing positive for drugs.

"THE COURT: Was there any damage to the child? Did the child suffer any effect?

"[Defense counsel]: No, Your Honor. I'm sorry I didn't put it in with my motion. But when the hospital, which they are required by law to report, when they reported to the Department of Human Resources, they specifically said that the infant was born healthy with no known issues.

"[Prosecutor]: With no known issues at the time that they made that statement. We don't know what time this meconium and urine sample was taken in relation to that statement. That could have been a statement made immediately after the birth of the child saying, oh, the baby seems well, the baby seems normal, then let's run the normal testing--

"THE COURT: Is there a date on that?

"[Prosecutor]: Yes, Your Honor. Actually, the baby was born May 20th and the mother and baby were released from the hospital May 22nd. The test results came back on May 26th. So it would have been at least May 26th.

"THE COURT: A week later?

> "[Defense counsel]: A week later Your Honor. Before the hospital--And like I said, the mother and child had already been discharged.
>
> "[Prosecutor]: But medical records are made throughout the treatment process. Not all medical records are put together upon discharge. That statement could be in those records and could have been made upon the birth of the child. And yes, the test results came in on the 26th.
>
> "THE COURT: Thank you, folks. I'll get an order.
>
> "[Prosecutor]: Judge, I haven't addressed the Fourth Amendment violation issue.
>
> "THE COURT: I don't need to hear it. Thank you."

(R. 7-11.) After the hearing, which consisted of arguments from counsel and the introduction of the test results,[2] the circuit court granted the motion. Specifically, it held:

> "This case was called for hearing before the Court on April 26, 2018, for hearing on [Martin's] Motion to Suppress the urine and meconium test results intended to be offered by the State of Alabama. The Court, having considered the said motion and the

[2]At the hearing, Martin submitted "Discovery A," which purported to show the test results taken from Martin's newborn child, which included the language: "This is a medical urine drug screen and can only be used for treatment purposes. These are unconfirmed screening results and must not be used for non-medical purposes such as legal or employment testing." (C. 39.) Also, Martin submitted "Discovery B" explaining that, among other things, the testing was conducted by Warde Medical Laboratory located in Ann Arbor, Michigan. (C. 40.)

> argument in support and opposition thereof, it is ORDERED as follows:
>
> "1. That [Martin's] Motion to Suppress the urine and meconium test results is hereby granted and said testing result shall not be offered by the State or admitted by the Court at trial."

(C. 48.) On May 1, 2018, pursuant to Rule 15.6, Ala. R. Crim. P., the State filed a timely notice of appeal and certified that the circuit court's ruling would be fatal to the case and that the appeal was not brought for the purpose of delay.

On appeal, the State argues that the circuit court erred by granting Martin's motion to suppress the test results. Specifically, the State argues that the circuit court's pretrial ruling on the authenticity of the evidence was "premature" and, thus, that the State was deprived of the opportunity to lay a proper predicate.

> "'This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute. See State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996); State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 1999).' State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004). In the instant case, the facts are uncontested; the only issue is the circuit court's application of the law to those facts. Therefore, this Court affords no presumption in favor of the circuit court's ruling."

Jones v. State, 217 So. 3d 947, 954 (Ala. Crim. App. 2016).

Rule 15.6, Ala. R. Crim. P., in pertinent part, provides:

> "(a) Unlawful Search. A defendant aggrieved by an allegedly unlawful search or seizure may move the court to suppress for use as evidence anything so obtained.
>
> "(b) Admissibility of Evidence. Upon motion of either party or upon its own motion, the court may order that the question of the admissibility of any specified evidence be submitted for pre-trial determination as if a motion to suppress had been filed by the party opposed to the introduction of the evidence."

"A motion to suppress evidence is a '[d]evice used to eliminate from the trial of a criminal case evidence which has been secured illegally.' Black's Law Dictionary 914 (5th ed. 1979). See also Rules 15.6(a), (b), Ala. R. Crim. P." Bacot v. State, 597 So. 2d 754, 756 (Ala. Crim. App. 1992). "If the motion is granted, any suppressed property that was seized ... shall not be admissible in evidence at any further stage of the proceedings." Rule 15.6(d), Ala. R. Crim. P.

Rule 15.7(a), Ala. R. Crim. P., addresses pretrial appeals by the State and specifically provides:

> "In any case involving a felony, a misdemeanor, or a violation, an appeal may be taken by the state to the Court of Criminal Appeals from a pre-trial order of the circuit court (1) suppressing a confession or admission or other evidence, (2) dismissing an indictment, information, or complaint (or any part of an indictment, information, or complaint), or (3) quashing an arrest or search warrant. Such an appeal may be taken only if the prosecutor certifies to the

> Court of Criminal Appeals that the appeal is not brought for the purpose of delay and that the order, if not reversed on appeal, will be fatal to the prosecution of the charge. A municipality may appeal any pre-trial order entered by the circuit court on trial de novo of any municipal ordinance violation, in like manner."

(Emphasis added.)

The circuit court's order "suppressing" the test results appears to be a pretrial ruling that the evidence at issue is inadmissible based solely on the reliability of the tests and the "disclaimers" printed on the test results.[3] Our review of the record indicates that the circuit court's ruling suppressing the evidence was erroneous for two reasons.

As to the notion that the "disclaimers" on the face of test results draw into question the reliability or admissibility of the evidence, our research has revealed no Alabama case where the language included in the test results in this case completely bars the admission of those results in

[3]It does not appear that the circuit court suppressed the evidence on the basis that it had been illegally or unconstitutionally seized. As noted, the circuit court expressly declined to hear arguments regarding the legality or constitutionality of the seizure. See Committee Comments to Rule 15 ("[A] motion to suppress may be used only to test the admissibility of evidence alleged to have been illegally seized.").

a criminal prosecution. Second, we agree with the State's argument that the circuit court's ruling was "premature" and that it deprived the State of the opportunity to lay a proper predicate for the admission of the evidence at issue. "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), Ala. R. Evid.

In Jones v. City of Summerdale, 677 So. 2d 1289 (Ala. Crim. App. 1996), this Court held:

> "While we find no Alabama cases which specifically outline all requisite elements of a predicate for the admission of scientific test results, it is generally held that such a predicate must show that the circumstances of the taking of the sample, the identification, maintenance, and transporting of it, and the testing itself are scientifically acceptable and reasonably expected to produce results which are accurate and reliable."

Jones, 677 So. 2d at 1291.

Here, the circuit court's ruling foreclosed any opportunity for the State to call a witness to testify regarding the methods used in performing the test or how reliable the test is. If the test is admitted at trial, Martin would have the ability to call and to examine the

technician or other expert witnesses to explain that such tests are not always reliable or that the technician or other personnel might have made a mistake, and the jury could then decide how much credit, if any, to accord the test. See, e.g., Williams v. State, 55 So. 3d 366, 374 (Ala. Crim. App. 2010) ("The credibility of witnesses and the weight or probative force of testimony is for the jury to judge and determine."). Therefore, we hold that the circuit court abused its discretion when it granted Martin's motion to suppress the test results. Accordingly, the circuit court's judgment is reversed, and the cause is remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and Welch, Kellum, and McCool, JJ., concur.