



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1372-18

THE STATE OF TEXAS

v.

JOHN PHILLIP COUCH, Appellee

ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD COURT OF APPEALS
COMAL COUNTY

KELLER, P.J., filed a dissenting opinion in which YEARY and SLAUGHTER, JJ., joined.

The Court summarily grants, vacates, and remands in light of our recent opinion in *State v. Garcia*,¹ regarding how to analyze a claim that a police officer had exigent circumstances to obtain a blood draw without a warrant. The question is whether, under the facts known to the officer, “an objectively reasonable officer would conclude that in the time it would take to secure a warrant the

¹ ___ S.W.3d ___, PD-0344-17, 2018 Tex. Crim. App. LEXIS 1209 (Tex. Crim. App. December 12, 2018).

efficacy of the search would be ‘significantly undermined.’”² I see no need to remand for this analysis because it is clear, even under the trial court’s findings, that the officer reasonably believed he had exigent circumstances.

State Trooper Kral was called out to Appellee’s traffic accident at around 8:00 p.m., arrived 30 minutes later, and ultimately transported Appellee to the hospital for medical reasons. The trial court found that Trooper Kral began drafting a warrant after he arrived at the hospital at 10:05. The dashcam video in Trooper Kral’s car shows that, after arriving at the hospital, he made an unsuccessful attempt to contact a judge to sign a warrant. The trial court found that it takes 30 minutes to compose and print a warrant and that it would, after the trooper began composing the warrant, take 45 to 60 minutes to get a judge to sign the warrant. Given that two hours had already elapsed, that an initial attempt to contact a judge had already failed, and that getting a warrant could take another hour, Trooper Kral was reasonable in believing that the passage of time required for a warrant would cause the evidence of intoxication in Appellant’s body to significantly dissipate.

I respectfully dissent.

Filed: May 8, 2019

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² *Id.*, 2018 Tex. Crim. App. LEXIS 1209 at *18 (brackets removed).