

Reverse and Remand; Opinion Filed October 2, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01419-CR

**THE STATE OF TEXAS, Appellant
V.
KEVIN HENRIQUEZ-CISNEROS, Appellee**

**On Appeal from the County Criminal Court No. 3
Dallas County, Texas
Trial Court Cause No. M18-31403-C**

MEMORANDUM OPINION

Before Justices Myers, Nowell, and Evans
Opinion by Justice Nowell

The State appeals the trial court's order granting appellee Kevin Henriquez-Cisneros's motion to suppress. After he was arrested for driving while intoxicated, the State obtained a search warrant to seize appellee's blood. After the blood was drawn, it was submitted for testing to determine appellee's blood-alcohol content. Appellee subsequently moved to suppress the blood-alcohol test result. The trial court granted the motion to suppress and issued findings of fact and conclusions of law. On appeal, the State argues the trial court erred by granting the motion to

suppress. We reverse the trial court's order granting the motion to suppress and remand this cause to the trial court for further proceedings.

After appellee was arrested, a magistrate executed a search warrant instructing the officer to take custody of appellee. Further, the search warrant states: "You shall search for, seize and maintain as evidence the property described in said Affidavit, to-wit: human blood from the body of" appellee. The warrant does not explicitly state the blood may be analyzed after it was drawn.

Following a hearing on appellee's motion, the trial court concluded that two separate searches occurred—one when the blood was seized and a second when it was analyzed. The trial court further concluded that because the search warrant only authorized seizure of appellee's blood, the State's testing of the blood was beyond the scope of the search warrant. The trial court granted the motion to suppress on this basis. On appeal, the State argues that because appellee's blood was legally seized under a valid evidentiary search warrant, he had no reasonable expectation of privacy against testing it for alcohol, and the trial court erred by granting the motion to suppress.

Since the trial court issued its order and this appeal was filed, the Texas Court of Criminal Appeals issued its opinion in *Crider v. State*, No. PD-1070-19, 2020 WL 5540130 (Tex. Crim. App. Sept. 16, 2020). Considering similar facts to those before us now, the court stated: "Here, the State obtained the blood sample by way of a magistrate's determination that probable cause existed to justify its seizure—for the

explicit purpose of determining its evidentiary value to prove the offense of driving while intoxicated. That magistrate’s determination was sufficient in this case to justify the chemical testing of the blood. And this is so, we hold, even if the warrant itself did not expressly authorize the chemical testing on its face.” *Crider*, 2020 WL 5540130, at *3. Based on *Crider*, in the case before us, the magistrate’s determination that probable cause existed to justify the seizure of the blood sample from appellee was sufficient to justify the chemical testing of the blood seized. *See id.* We conclude the trial court erred by granting appellee’s motion to suppress. *See id.*; *see also State v. Staton*, 599 S.W.3d 614, 618 (Tex. App.—Dallas 2020, pet. filed).

We reverse the trial court’s order and remand the cause to the trial court for further proceedings.

/Erin A. Nowell/
ERIN A. NOWELL
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-19-01419-CR V.

KEVIN HENRIQUEZ-CISNEROS,
Appellee

On Appeal from the County Criminal
Court No. 3, Dallas County, Texas
Trial Court Cause No. M18-31403-C.
Opinion delivered by Justice Nowell.
Justices Myers and Evans
participating.

Based on the Court's opinion of this date, the trial court's order granting appellee's motion to suppress is **REVERSED** and the cause **REMANDED** for further proceedings.

Judgment entered this 2nd day of October, 2020.