Opinion issued April 26, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00239-CR

NO. 01-15-00240-CR

OSCAR RENE RIVERA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Case Nos. 1423701 & 1423702

MEMORANDUM OPINION

Appellant Oscar Rene Rivera appeals his convictions for indecency with a child and sexual assault of a child. The trial court sentenced Rivera to ten years' confinement, probated, and a $10,000 fine, also probated, for the former charge,

and to eight years' confinement for the latter charge to run consecutively. Rivera contends that the trial court erred by denying his challenges for cause to several venire members and denying his motion to suppress evidence obtained pursuant to a search warrant. We affirm.

Background

In the fall of 2012, 38-year old Rivera began a sexual relationship with Jane,[1] the 15-year old daughter of his childhood friend, Charles Hearn, and Isela Hearn. At the time, Rivera was temporarily staying with the Hearns in their three bedroom apartment. During trial, Jane testified about several incidents of sexual activity between her and Rivera. Charles testified that, upon discovering that Rivera was engaging in sexual activities with his daughter, he kicked Rivera out of the family apartment and his wife called the police. Jane testified that, though an investigation was underway, she and Rivera continued to engage in sexual activities after he was kicked out of the family apartment. Rivera gave her a cell phone so that they could stay in touch with one another, and the pair met at nearby motels. Sometime later, Charles discovered that Rivera and Jane were still in contact with one another when he found Jane talking with Rivera on the cell phone.

An investigating officer with the Houston Police Department's Special Victims Unit, B. Morrow, sought and obtained a search warrant for the contents of

[1] We refer to the complainant using the pseudonym "Jane."

the cell phone. A member of the digital forensic unit analyzed the phone and SD card contents, finding sexually explicit photographs and text messages exchanged between Rivera and Jane. Rivera moved to suppress the products of the cell phone search, arguing that the warrant affidavit failed to provide sufficient facts to support a probable cause determination. The trial court denied Rivera's motion.

Before either party began its voir dire examinations, the trial judge explained to members of the venire that the defendant was not obliged to testify and that a defendant's decision to not testify has no import in determining guilt. The trial court went on to explain the range of punishment for both charges and to ask whether anyone would not be able to consider the full range of punishment. Venireperson 30 responded that she would only consider the maximum punishment and was subsequently released by agreement of both parties. Venirepersons 9, 12, 20, and 29 expressed that they would be unable to sit in judgment of others and were subsequently released by agreement of both parties.

Defense counsel revisited similar topics during his voir dire examination. Defense counsel asked venire members whether they would consider a defendant's decision not to testify as indicative of his guilt. Fifteen venirepersons responded that a defendant's decision not to testify would play some role in their analysis of guilt, including venirepersons 4, 38, 40, and 42. Defense counsel later explained the applicable range of punishment and asked whether each venire member could

consider probation in an appropriate case. Twenty-one venirepersons responded that they could not consider a minimum number of years of probation, including venirepersons 28, 54, and 57.

At the close of voir dire examinations, the trail court granted all of the State's 19 challenges for cause. Of defense counsel's 30 challenges for cause, 16 were granted by agreement. Several venirepersons challenged for cause were further examined by the court. Ultimately, of defense counsel's remaining 14 challenges for cause, 7 were granted without agreement and 7 were denied.

After making peremptory strikes, defense counsel requested 7 additional peremptory challenges based on the trial court's denial of 7 challenges for cause. The trial court denied his request, and the jury was seated. Defense counsel objected to the seated jury, explaining that, had he been afforded additional peremptory strikes, he would have stricken nine sitting jurors. The trial court overruled defense counsel's objection and swore in the jury.

Denial of Challenges for Cause

In his first issue, Rivera contends that the trial court improperly denied his challenge for cause to several venire members on the grounds that they would either (1) treat a defendant's decision not to testify as indicative of guilt or (2) not consider the full range of punishment.

A. Standard of Review

We review a trial court's decision to deny a challenge for cause by looking at the entire record to determine whether there is sufficient evidence to support the ruling. *Davis v. State*, 329 S.W.3d 798, 807 (Tex. Crim. App. 2010) (citing *Feldman v. State*, 71 S.W.3d 738, 744 (Tex. Crim. App. 2002)). "The test is whether a bias or prejudice would substantially impair the venire member's ability to carry out the juror's oath and judicial instructions in accordance with the law." *Id.* (citing *Gardner v. State*, 306 S.W.3d 274, 295 (Tex. Crim. App. 2009)). In applying this test, we must afford considerable deference to the trial court's ruling because the trial judge is in the best position to evaluate a venire member's demeanor and responses. *Id.* A trial court's ruling on a challenge for cause may be reversed only for a clear abuse of discretion. *Id.* (citing *Gardner*, 306 S.W.3d at 296). "When a venire member's answers are vacillating, unclear, or contradictory, we accord particular deference to the trial court's decision." *Id.* (citing *Gardner*, 306 S.W.3d at 296).

Before a venire member can be excused for cause, the law must be explained and venire members must be asked whether they can follow that law irrespective of their personal views. *Id.* The burden of establishing that a challenge is proper rests with its proponent. *Id.*; *Castillo v. State*, 913 S.W.2d 529, 534 (Tex. Crim. App. 1995) (citing *Hernandez v. State*, 757 S.W.2d 744, 753 (Tex. Crim. App.

1988)). That burden is not met until the proponent shows that the venire member understood the law and could not overcome his prejudice well enough to follow the law. *Davis*, 329 S.W.3d at 807.

B. Applicable Law

The Texas Code of Criminal Procedure provides that either party may raise a challenge for cause if a venire member has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment. TEX. CODE CRIM. PROC. ANN. art. 35.16(b)(3), (c)(2) (West 2006). For instance, a venire member may be challenged for cause if she would consider a defendant's failure to testify at trial as evidence of guilt. *Montoya v. State*, 810 S.W.2d 160, 168–69 (Tex. Crim. App. 1989).

Similarly, both the State and defense are entitled to jurors who will consider the full range of punishment. *Cardenas v. State*, 325 S.W.3d 179, 184 (Tex. Crim. App. 2010); *Johnson v. State*, 982 S.W.2d 403, 405 (Tex. Crim. App. 1998). Prospective jurors "must be able . . . to conceive both of a situation in which the minimum penalty would be appropriate and of a situation in which the maximum penalty would be appropriate." *Johnson*, 982 S.W.2d at 405–06 (quoting *Fuller v. State*, 829 S.W.2d 191, 200 (Tex. Crim. App. 1992), *cert. denied*, 508 U.S. 941, 113 S. Ct. 2418 (1993)). "Therefore, both sides may question the panel on the range of punishment and may commit jurors to consider the entire range of

punishment for the statutory offense." *Cardenas*, 325 S.W.3d at 184 (citations omitted).

C. Analysis

1. Whether a defendant testifies

Rivera maintains that the trial court erred in denying challenges for cause to venirepersons 4, 38, 40, and 42, because each of these four venirepersons indicated during voir dire that they would take a defendant's decision not to testify as some evidence of guilt. The State responds that the record does not support Rivera's claim.

As the trial court had done, defense counsel explained to venire members that Rivera had the right to choose whether or not to testify. He then asked:

> So my question is -- to you is if a defendant does not testify or Mr. Rivera does not testify in his own defense, could you keep from considering that when deliberating your verdict? Could you keep from considering someone's decision not to testify when you're deciding whether that person's not guilty? Would that cause you to lean toward finding the person guilty?

After posing the question, defense counsel then proceeded to solicit a response from each venire member. We will consider the responses offered by venirepersons 4, 38, 40, and 42, in turn.

Venireperson 4: Pritchett

After venireperson 4, Pritchett, offered an initial "yes" answer—suggesting that a defendant's failure to testify would cause her to lean toward finding the person guilty—the following exchange occurred:

> Counsel: So if a defendant did not testify in his or her own defense, you would -- no matter what --
>
> Pritchett: I would lean toward guilty.
>
> Counsel: Right. No matter what the judge told you or anyone else told you or instructed you or whatever the law said, you just couldn't do it. You would lean towards finding that person guilty. And in other words, you would take that as some evidence, however small it may be, of guilt, right?
>
> Pritchett: Yes, barring something that, okay I'm extremely nervous in public places, I can't speak.

At the close of voir dire, defense counsel moved to strike Pritchett for cause based on "failure to testify." The trial court called Pritchett to the beach and questioned her as follows:

> Court: Okay, Ms. Pritchett. I'm not exactly sure where you stand on this. We were talking about [how] the defendant has the right not to testify and you can't use that to help the State get over the hump to find them guilty. You made some comments about that, then you said, you know, they might not be a very good speaker, be nervous or whatever, so I'm sort of trying to figure out where you are.
>
> Pritchett: The question in my mind would be why wouldn't they testify.

Court: Okay. And that's not an issue. That's not -- you wouldn't ever know that.

Pritchett: Right.

Court: Okay. So, really, the issue for me is if you heard the State's case, you didn't believe it beyond a reasonable doubt, evidence just wasn't there --

Pritchett: If the evidence isn't there, then they're not guilty.

Court: Okay. Even if the defendant doesn't testify.

Pritchett: Right.

Court: That's what I --

Pritchett: I'd still be questioning.

Court: Of course. You can question all day long. What you can't do is use that evidence to get the State over the hump. I just want to make sure we're clear on that.

Pritchett: Okay.

Court: Okay. Thank you. Have your seat.

Defense counsel then objected to the trial court's rehabilitation. The trial court denied the challenge for cause.

In light of this record, we cannot say that Pritchett's responses conclusively demonstrated a bias against applicable law. *See Robison v. State*, 461 S.W.3d 194, 204 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd) (explaining that juror may not be challenged for cause unless bias is conclusively demonstrated). In response

to questions from Rivera's counsel, Pritchett did first express some personal bias—namely, that she would lean toward finding a defendant who elected not to testify guilty. However, in further conversation with the trial judge, Pritchett stated that, regardless of whether a defendant testifies, if the State does not present evidence of guilt, the defendant is not guilty. While she did express a continuing curiosity about *why* a defendant opts not to testify, such curiosity is not equivalent to a bias against applicable law on which the defendant is entitled to rely.

Pritchett's varied responses would lead us to characterize her as a vacillating venireperson—vacillating between statements doubting whether she could follow the law and statements asserting that she would be able to follow the law notwithstanding personal biases or curiosities. When confronted with a vacillating venireperson, we are bound to accord great deference to trial court's judgment in the matter. *See Moore v. State*, 999 S.W.2d 385, 400 (Tex. Crim. App. 1999) ("When the record reflects that a [venireperson] vacillates or equivocates on his ability to follow the law, the reviewing court must defer to the trial court."); *Mooney v. State*, 817 S.W.2d 693, 701 (Tex. Crim. App. 1991) (affording great deference to trial court's denial of challenge for cause of vacillating venire member because trial court was in best position to consider elements such as demeanor and tone of voice to determine the precise message intended). Thus, after reviewing

the complete voir dire of Pritchett, we conclude that the trial court did not abuse its discretion in denying Rivera's challenge for cause.

Venireperson 38: Diltz

Venireperson 38, Diltz, also indicated that she would not be able to ignore a defendant's decision not to testify in the following exchange with defense counsel:

> Counsel: The question is if you're a juror and it's time to deliberate and the accused in that case did not testify, for whatever reason, would you . . . despite what the judge or anyone else told you or what the law says, consider that as some evidence of guilt?
>
> Diltz: It would be hard for me to ignore and not have a shred of --
>
> Counsel: This is a hard job being a juror or lawyer or a judge in felony cases. Could you do it or not?
>
> Diltz: I don't think I could.
>
> Counsel: Yes or no?
>
> Diltz: No.

Later, the trial court called Diltz to the bench for further questioning, including the following exchange:

> Court: Ms. Diltz, I have a couple questions just because I want to clear something up in my mind. Okay. The law says that the defendant has a right not to testify. . . . If you listen to the State's case and you don't believe they proved it beyond a reasonable doubt, and the defendant doesn't testify, would you use that to help the State – would you use that against him to find him guilty even though --

Diltz: Yeah, I understand.

Court: See where I'm coming from?

Diltz: Yeah.

Court: I get -- the question, I think, was the fact he doesn't testify make you lean in the direction of guilt.

Diltz: Yes.

Court: Really, the issue for me is if he doesn't testify, I instruct you you can't consider that when you're deliberating the case, can you follow my instruction? And I don't care where you fall, honestly. I just need to know because if you can't follow it, then I just need to know that now.

Diltz: I think I could.

Court: Let me tell you how nervous lawyers get when you say "I think." I mean, that's just what the law is.

Diltz: Yeah.

Court: So we just need to make sure that the people that are on the jury will follow the law. That's my only issue.

Diltz: I'd be able to.

Defense counsel reurged his challenge for cause to Diltz and objected to the trial court's rehabilitation.

Again, in light of the record, we cannot conclude that Diltz's responses conclusively demonstrated a bias against applicable law. *See Robison*, 461 S.W.3d at 204. Like Pritchett, Diltz provided different answers to the question of whether she would use a defendant's choice not to testify against him in determining guilt. Although Diltz first expressed that a decision to testify might make her lean toward guilt, Diltz then twice stated that she could follow the law. In light of these vacillating responses, we must defer to the trial court's judgment. *See Montoya*, 810 S.W.2d at 170–73; *Moore*, 999 S.W.2d at 400. Thus, after reviewing the complete voir dire of Diltz, we conclude that the trial court did not abuse its discretion in denying Rivera's challenge for cause.

Venireperson 40: Tidwell

Venireperson 40, Tidwell, also indicated an inability to ignore a defendant's decision not to testify in assessing guilt in the following exchange with defense counsel:

Counsel: Anyone else?

Tidwell: I just -- I believe that if a person is innocent, they're going to fight and they're going to talk.

. . .

Counsel: And if someone did not testify at their own trial, would you consider that as some evidence of guilt, yes or no?

Tidwell: Yes.

Later, the trial court called Tidwell to the bench for further questioning. In response to the trial court's questioning, Tidwell explained that she had always thought an accused had a choice whether to testify, and she "felt like if they were innocent, they would do it." The trial court further explained the importance of not allowing a defendant's decision not to testify to lessen the State's burden of proving guilt, and Tidwell expressed some confusion as a first time juror in a criminal case. After continued questioning, Tidwell clarified that "if there was a doubt in [her] mind, [she] would rather hear him testify." But, although she stated that she might prefer to hear a defendant testify, Tidwell continued to say that she could follow the law.

As above, Tidwell offered varied answers—some suggesting that she would not be able to ignore a defendant's choice not to testify in assessing guilt and others suggesting that she would follow the law notwithstanding a preference to hear testimony from a defendant in a close case. In light of these vacillating responses, we must defer to the trial court's ruling. *See Moore*, 999 S.W.2d at 400; *Mooney*, 817 S.W.2d at 701. Thus, we conclude that the trial court did not abuse its discretion in denying Rivera's challenge for cause to Tidwell.

Venireperson 42: Orellana

Finally, venireperson 42, Orellana, indicated an inability to ignore a defendant's decision not to testify in assessing guilt in the following exchange with defense counsel:

> Orellana: I would consider it in evidence of guilt.
>
> Counsel: You would consider it as evidence of guilt. What if the judge told you the law says you're not allowed to consider that? Would you be able to follow the judge's instruction or not?
>
> Orellana: I will be able to follow but I would want to hear him testify.
>
> Counsel: Of course.
>
> Orellana: I would follow it.
>
> Counsel: We would all rather that we -- everyone testify and we have some truth machine we hook up to them and find out what went on but we just don't have that. So my question is could you -- or would you consider it evidence of guilt if a defendant did not testify in his own defense?
>
> Orellana: I'd like to tell you that I'm a hundred percent sure but I'm not.

The trial court denied Rivera's challenge for cause to Orellana without further examination.

Though her answers did vary, Orellana twice stated that she would follow the law notwithstanding a personal desire to hear directly from a criminal

defendant. *Gardner*, 306 S.W.3d at 296. Thus, we conclude that the trial court did not abuse its discretion in denying Rivera's challenge for cause to Orellana.

In sum, we conclude that the trial court did not abuse its discretion in overruling Rivera's challenges for cause to these four veniremembers.

2. Range of punishment

Rivera maintains that the trial court erred in denying challenges for cause to venirepersons 28, 54, and 57, because each indicated during voir dire that they could not consider the full range of punishment. The State responds that the record does not support Rivera's claim.

As the trial court had done, defense counsel explained the applicable range of punishment for the two charged offenses. He then posed the question: "Who cannot consider the minimum number of years of probation in the appropriate case, whatever it is, for sexual assault of a child and indecency with a child?" After posing the question, defense counsel proceeded to solicit a response from each venire member. Venirepersons 28, 54, and 57 were among those answering that they could not consider the full range of punishment. Defense counsel did not ask any further questions. *See Cardenas*, 325 S.W.3d at 185 (explaining that complaining party need not ask follow-up questions regarding venireperson's full and complete understanding of law to preserve error when venire members have

already been informed of their obligations under law and have not indicated any confusion).

The trial court called venirepersons 28, 54, and 57 each to the bench for additional questioning. Asked again whether she could consider the full range of punishment, venireperson 28, Lankford, stated that after thinking about it more, "[i]t would depend on the case." Venireperson 54, Lehman, ultimately responded that he could "imagine there could be a set of circumstances that [probation] would be an appropriate punishment for." Venireperson 57, Vanbaale, similarly ultimately responded that she could consider a minimum term of probation in an appropriate case: "I can consider it, yes, I could consider it." The trial court denied Rivera's challenges for cause against each of these three venire members.

Though each of these three venirepersons initially stated during the defense's voir dire examination that they would be unable to consider the full range of punishment, further questioning from the trial court yielded the opposite response from each. *See Cardenas*, 325 S.W.3d at 185 (explaining that further examination by trial court may operate to "ensure that [venireperson] fully understands and appreciates the position that [venireperson] is taking"). Because each of these three venire members ultimately stated that they could follow the law and consider the full range of punishment and the trial court was in the best position to determine questions of credibility and demeanor, we must defer to the

trial court's judgment. *Moore*, 999 S.W.2d at 400; *Mooney*, 817 S.W.2d at 701. Thus, we conclude that the trial court did not abuse its discretion in denying challenges for cause to venireperons 28, 54, and 57.

We overrule Rivera's first issue.

Motion to Suppress

In his second issue, Rivera contends that the trial court erred in denying his motion to suppress because the underlying affidavit failed to provide sufficient facts to support probable cause.

A. Standard of Review and Applicable Law

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000); *Jones v. State*, 338 S.W.3d 725, 739 (Tex. App.—Houston [1st Dist.] 2011), *aff'd*, 364 S.W.3d 854 (Tex. Crim. App. 2012). We give almost total deference to a trial court's rulings on questions of historical fact, and we review de novo the trial court's application of the law. *State v. Cuong Phu Le*, 463 S.W.3d 872, 876 (Tex. Crim. App. 2015); *Jones*, 338 S.W.3d at 739. "[E]ven in close cases we give 'great deference' to a magistrate's determination of probable cause to encourage police officers to use the warrant process rather than make warrantless searches and later attempt to justify their actions by invoking consent or some other exception to the warrant requirement." *State v. Duarte*, 389 S.W.3d 349, 354 (Tex.

Crim. App. 2012) (first citing *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 1663 (1996), then citing *Illinois v. Gates*, 462 U.S. 213, 239, 103 S. Ct. 2317, 2331 (1983)). When no findings of fact were made, we assume the trial court made implicit findings of fact that support its ruling, so long as such implicit findings are supported by the record. *Torres v. State*, 182 S.W.3d 899, 902 (Tex. Crim. App. 2005).

A magistrate may not issue a search warrant without first finding probable cause that a particular item will be found in a particular location. *Duarte*, 389 S.W.3d at 354. Probable cause exists when, under the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found at the specified location. *Id.* The standard is flexible and nondemanding. *Id.* "Neither federal nor Texas law defines precisely what degree of probability suffices to establish probable cause, but a magistrate's action cannot be a mere ratification of the bare conclusions of others." *Id.* In order to ensure against an abdication of the magistrate's duty, "courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued." *Id.* (quoting *Gates*, 462 U.S. at 239). The test applied in that conscientious review is whether a reasonable reading by the magistrate would lead to the conclusion that the combined logical force of the facts included in the four corners of the affidavit provide a "substantial basis" for concluding that probable cause exists. *Id.* (first

citing *Massachusetts v. Upton*, 466 U.S. 727, 733, 104 S. Ct. 2085, 2088 (1984), then citing *Rodriguez v. State*, 232 S.W.3d 55, 60 (Tex. Crim. App. 2007)).

B. Analysis

In the course of trial, the State introduced photographs and text messages recovered from Rivera's cell phone pursuant to a search warrant. Rivera maintains that the trial court erred in denying his motion to suppress this evidence, which argued that the warrant affidavit contained insufficient facts to support a probable cause determination and issuance of a search warrant. Rivera argues that the affidavit is fatally deficient because it contains no averments regarding the credibility and reliability of Mrs. Hearn, the affiant's sole source of information about the cell phone.

In relevant part, the warrant affidavit explains:

> On or about February 19, 2013, your Affiant was assigned to investigate allegations of Sexual Assault and Indecency with A Child under Houston Police Department incident #2919413 J. Affiant was given the above mentioned Samsung Cellular phone bearing serial number A00000304B0EF6 by the COMPLAINANT'S Mother, Ms. Isela Hearn who stated the phone was a gift from the DEFENDANT to COMPLAINANT. Your Affiant was told that there were messages sent via the Cellular phone from the DEFENDANT to the COMPLAINANT which were recently intercepted by Ms. Hearn. Affiant believes the phone was used in the commission and grooming of the COMPLAINANT to perform Sexual Acts with the DEFENDANT for the above reasons and therefore requests in his experience knows that it is common for Sexual Assault victims to believe or be coached into believing that they initiated the Sexual Encounters by the Perpetrators. Affiant found the COMPLAINANT to be credible and reliable as she provided the same statement of facts

> to both the Officer generating the initial report, as she did to the Forensic Interviewer at the Harris County Children's Assessment Center, and as she adamantly believes she initiated sexual contact with the DEFENDANT, this in part rings of the truth because it is portrayed as a statement against her own interests.[2]

Rivera correctly notes that the affidavit does not set forth facts that establish Mrs. Hearn's prior reliability or credibility in providing information to the police. However, the absence of such averments is not necessarily fatal. *See Doescher v. State*, 578 S.W.2d 385, 388 (Tex. Crim. App. [Panel Op.] 1978).

The reliability of the affiant and his sources of information are within the "totality of the circumstances" which a magistrate should consider in making a probable cause determination. *Johnson v. State*, 803 S.W.2d 272, 289 (Tex. Crim. App. 1990), *overruled on other grounds by Heitman v. State*, 815 S.W.2d 681 (Tex. Crim. App. 1991). "A magistrate, however, is entitled to rely on source information supplied by an average citizen, since, unlike many police informants, they are 'much less likely to produce false or untrustworthy information.'" *Id.* (quoting *Jaben v. United States*, 381 U.S. 214, 224, 85 S. Ct. 1365, 1370 (1965));

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[2] The affiant repeats this same paragraph two additional times. On that basis, and without citation to supporting authority, Rivera urges us to question the thoroughness of any impartial review of the sufficiency of the affidavit. We are aware of no authority providing that repeated averments in an affidavit render the thoroughness of a magistrate's probable cause determination suspect. *Cf. Illinois v. Gates*, 462 U.S. 213, 235–36, 103 S. Ct. 2317, 2330–31 (1983) (recognizing that affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation" and warrants should not be invalidated by "interpreting affidavit[s] in a hypertechnical, rather than commonsense, manner.") (citing *United States v. Ventresca*, 380 U.S. 102, 109, 85 S. Ct. 741, 746 (1965)).

see also State v. Coker, 406 S.W.3d 392, 396 (Tex. App.—Dallas 2013, pet. ref'd) (finding that, in making probable cause determination, magistrate was entitled to rely on information in affidavit provided by private citizen); *State v. Wester*, 109 S.W.3d 824, 826–27 (Tex. App.—Dallas 2003, no pet.) (observing that there are "varying degrees of credibility with respect to informants" and "where a named informant is a private citizen, whose only contact with the police is a result of having witnessed a criminal act committed by another, the credibility and reliability of the information are inherent") (citing *Esco v. State*, 668 S.W.2d 358, 361 (Tex. Crim. App. 1982)).

Here, the affiant conveyed information provided by a named private citizen, Mrs. Hearn, whose only contact with the police resulted from Rivera's conduct towards her daughter. As a result, the credibility and reliability of the information she provided to the affiant are inherent, and the magistrate was entitled to rely on that information in making a probable cause determination. *See Johnson*, 803 S.W.2d at 289 (noting that no averments were based on information from confidential informants and magistrate entitled to rely on credibility of affiant and affiant's private-citizen sources); *Morris v. State*, 62 S.W.3d 817, 823–24 (Tex. App.—Waco 2001, no pet.) (magistrate entitled to rely on information supplied by private citizen that his former boyfriend had child pornography in his possession).

Thus, we conclude that the trial court did not err in denying Rivera's motion to suppress.

We overrule Rivera's second issue.

Conclusion

We affirm the trial court's judgment.

Rebeca Huddle
Justice

Panel consists of Justices Jennings, Massengale, and Huddle.

Do not publish. TEX. R. APP. P. 47.2(b).