Opinion issued July 30, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00756-CR

LAURIE MICHEL DAVIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 3
Harris County, Texas
Trial Court Case No. 2180203

O P I N I O N

A jury convicted appellant, Laurie Michel Davis, of the misdemeanor offense of driving while intoxicated (DWI).[1] The trial court sentenced Davis to 180 days in county jail, suspended the sentence, placed her on 15 months' community

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[1] *See* TEX. PENAL CODE § 49.04(a), (c).

supervision, and assessed a $750 fine. On appeal, Davis challenges the trial court's denial of her motion to suppress blood test results, arguing that (1) the government analyzed her blood sample without a search warrant because the warrant authorized only seizure of the blood sample, but not analysis of the blood, and (2) even if the warrant implicitly authorized the government's analysis of the blood, the analysis was not performed until after the warrant had expired.

We affirm.

Background

On December 4, 2017, Davis caused a car crash by rear-ending Prudence Bolding and pushing Bolding's vehicle into the rear of the vehicle in front of her, driven by Ashley Stricker. Stricker observed that Davis's "body language was off," and Davis was slurring words. Bolding also noticed "an extremely strong smell of alcohol" coming from Davis. Davis did not want to involve the police, but Stricker called them.

Deputy E. Sanchez with the Harris County Sheriff's Office (HCSO) arrived at the scene. He noticed Davis's slurred speech, poor balance, red glassy eyes, and an odor of alcohol. Davis admitted to drinking two beers, and there was also an open beer in the side compartment of Davis's door and several other cans in the vehicle. Deputy Sanchez believed, based on her behavior, that Davis was intoxicated. He performed field sobriety tests, and dashboard camera footage

showed Davis swaying, having trouble balancing, stepping off the line, and putting her foot down repeatedly.

Davis declined to take a breath test, so Deputy Sanchez obtained a search warrant to take a blood sample. The record indicates that Deputy Sanchez provided the magistrate with an affidavit explaining his arrest of Davis for DWI, his administration of field sobriety tests, and his observations supporting his belief that she was intoxicated at the time of the crash. The warrant issued by the magistrate referenced the HCSO incident report. The search warrant further provided:

> YOU ARE THEREFORE COMMANDED to forthwith search the body of the person therein named, to wit: Laurie Davis, . . . with the authority to search for and to seize any and all evidence that may be found therein, namely blood samples.
>
> FURTHERMORE, pursuant to Article 18.08 Texas Code of Criminal Procedure, the officer executing this warrant may call to his or her aid any number of citizens in Harris County, who shall be bound to aid in the execution of this search warrant. The officer executing this warrant is therefore directed to execute this warrant by taking the subject to any medical personnel, paramedic, nurse, doctor, or other person qualified to draw blood and that person is hereby bound to assist the officer in his attempt to obtain the requested sample.

The blood sample was collected on December 4, 2017, at approximately 11:00 p.m. The samples were submitted to the Harris County Institute of Forensic Science (HCIFS), which then tested the sample on December 28, 2017, and again on January 9, 2018. The analysis showed that Davis's blood alcohol content was 0.22, almost three times the legal limit.

Davis moved to suppress the blood alcohol analysis, arguing that the warrant did not authorize analysis of the blood and, even if it did, the warrant had expired by the time HCIFS conducted the testing. The trial court denied the motion to suppress. The trial court found that the search warrant was properly executed because the blood was drawn the same day the warrant issued. The trial court also found:

> In regards to the second issue that defense counsel raises about the search warrant [needing to specifically provide for a limit to] the testing of the blood alcohol level, I am going to deny that motion as well. The magistrate or . . . judge can issue the [warrant] as long as there's probable cause that supports the facts for a DWI specifically.

The jury was presented with the results of the blood alcohol analysis. It also heard evidence from Stricker, Bolding, and Deputy Sanchez, and it was presented with the dash camera footage. The jury found Davis guilty of DWI, and the trial court assessed punishment at 180 days in county jail, suspended the sentence, placed Davis on 15 months community supervision, and assessed a $750 fine. This appeal followed.

Motion to Suppress

Davis challenges the trial court's denial of her motion to suppress the blood alcohol analysis.

A. Standard of Review

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *State v. Ruiz*, 577 S.W.3d 543, 545 (Tex. Crim. App. 2019); *State v. Martinez*, 570 S.W.3d 278, 281 (Tex. 2019). Under the bifurcated standard, the trial court is given almost complete deference in its determination of historical facts, especially if based on an assessment of demeanor and credibility, and the same deference is afforded the trial court for its rulings on application of law to questions of fact and to mixed questions of law and fact, if resolution of those questions depends on an evaluation of demeanor and credibility. *Martinez*, 570 S.W.3d at 281. Our review of questions of law is de novo. *Id.* We view the record in the light most favorable to the trial court's ruling and uphold the ruling if it is supported by the record and is correct under any theory of the law applicable to the case. *Ruiz*, 577 S.W.3d at 545.

B. Analysis

In her first issue, Davis argues that, because the plain language of the search warrant authorized only a blood draw, the State violated her Fourth Amendment rights by analyzing the sample. Davis acknowledges that the warrant was "not a general warrant on its face, because it gives very specific instructions about who may be searched, and what may be seized," and she concedes that the blood sample was taken pursuant to a warrant. She asserts, however, that the analysis of

the blood sample is an independent search that was likewise protected by the Fourth Amendment and was not covered by the warrant issued in this case. Thus, we construe Davis's argument as asserting that the State exceeded the scope of the warrant in testing the blood sample.

To comply with the Fourth Amendment, a search warrant must describe the things to be seized with sufficient particularity to avoid the possibility of a general search. *See Groh v. Ramirez*, 540 U.S. 551, 558–61 (2004) (discussing various purposes for particularity requirement); *Thacker v. State*, 889 S.W.2d 380, 389 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd); *see also* U.S. CONST. amend. IV (providing that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"); TEX. CODE CRIM. PROC. art. 18.01(c) (setting out requirements for affidavits supporting search warrants).

"The scope of a search is governed by the terms of the warrant, and the scope includes spatial restrictions as well as the items to be seized." *Drayton v. State*, 559 S.W.3d 722, 726 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd). When the affidavit in support of the search warrant is incorporated into the warrant, the two may be considered together in construing the warrant. *See Long v. State*, 132 S.W.3d 443, 446 n.11 (Tex. Crim. App. 2004) (considering affidavit incorporated by reference into warrant in defining the place to be searched; stating

that "the description in the affidavit controls over the language in the warrant itself"); *see also Strange v. State*, 446 S.W.3d 567, 572–73 (Tex. App.—Texarkana 2014, no pet.) (determining scope of search warrant by examining affidavit incorporated therein).

In determining whether a search and seizure fell within the warrant's scope, we "follow a common sense and practical approach, not a 'Procrustean' or overly technical one." *Long*, 132 S.W.3d at 448 (quoting *Ker v. California*, 374 U.S. 23, 33 (1963)); *see State v. Elrod*, 538 S.W.3d 551, 556 (Tex. Crim. App. 2017) (magistrate may use logic and common sense to make inferences based on facts in affidavit); *Faulkner v. State*, 537 S.W.2d 742, 744 (Tex. Crim. App. 1976) (holding that courts interpreting affidavits and search warrants "must do so in a common sense and realistic fashion and avoid hypertechnical analysis"). The degree of specificity required is flexible and will vary according to the crime being investigated, the item being searched, and the types of items being sought. *United States v. Richards*, 659 F.3d 527, 537 (6th Cir. 2011); *see also Thacker*, 889 S.W.2d at 389 (holding that items to be seized must be described with sufficient particularity such that executing officer is not left with any discretion to decide what items may be seized, but "requirements for the particularity of the description of an item may vary according to the nature of the thing being seized").

The search warrant in this case incorporated by reference the HCSO's incident report, and it authorized law enforcement to collect blood samples in connection with Davis's DWI prosecution. Giving the language of the warrant its common sense and practical meaning, *see Long*, 132 S.W.3d at 448, and considering the crime being investigated, the nature of the search, and the item sought, *see Richards*, 659 F.3d at 537, the warrant authorized collection of blood samples from Davis and testing of those samples to obtain evidence regarding her blood alcohol concentration at the time of the crash. The blood samples themselves were not evidence; rather, the samples contained the evidence sought in the warrant—evidence that could only be obtained by submitting the samples to the lab for analysis.

We conclude that the warrant was specific enough to protect Davis's Fourth Amendment rights, and we conclude that both the collection and the testing of the blood samples were within the scope of the warrant. *See Drayton*, 559 S.W.3d at 726 (holding that scope of search warrant, including items to be seized, is governed by the terms of warrant). The warrant identified the specific offense committed, indicated that a search of Davis's person would yield blood evidence, and it authorized the search of Davis's person to obtain that blood evidence. *See, e.g.*, TEX. CODE CRIM. PROC. art. 18.01(c) (setting out requirements for warrant and supporting affidavit); *Taunton v. State*, 465 S.W.3d 816, 822 (Tex. App.—

Texarkana 2015, pet. ref'd) (holding that search warrant and supporting affidavit contained information required by article 18.01(c) satisfied Fourth Amendment). Contrary to Davis's assertions, the warrant here described the evidence sought with sufficient particularity that the executing officer was not left with any discretion to decide what items may be seized—it only allowed the State to obtain a blood sample as evidence relevant to the DWI prosecution. *See Thacker*, 889 S.W.2d at 389.

Davis relies on *Martinez*, a recent opinion from the Court of Criminal Appeals addressing privacy interests in blood samples, in asserting that the analysis of her blood samples exceeded the scope of the warrant here. *See* 570 S.W.3d at 282–92. This reliance is misplaced. *Martinez* is factually distinguishable from this case, and *Martinez* does not require a second warrant or additional warrant language to test a blood sample, like Davis's, that was collected pursuant to a valid warrant.

In *Martinez*, the defendant was taken to the hospital after a traffic crash, where medical personnel drew his blood for medical purposes. *Id.* at 281–82. Martinez then told medical personnel that he did not want any testing done, and he voluntarily left the hospital. *Id.* at 282. Subsequently, without a warrant and instead relying upon a grand jury subpoena, the hospital released Martinez's blood samples to the State, and the State sent the blood to a crime laboratory for testing.

Id. At his trial for intoxication manslaughter, Martinez moved to suppress the blood-test results, and the trial court granted the motion. *Id.* at 281–82.

In affirming the trial court's suppression of the blood-test results, the Court of Criminal Appeals discussed Fourth Amendment protections specifically relating to the collection and testing of blood samples, providing a review of its precedent in a variety of situations, such as when the State sought blood collected by medical personnel or when the State sought the results of tests that had already been performed. *Id.* at 283–85 (discussing *State v. Huse*, 491 S.W.3d 833 (Tex. Crim. App. 2016), *State v. Hardy*, 963 S.W.2d 516 (Tex. Crim. App. 1997), *State v. Comeaux*, 818 S.W.2d 46 (Tex. Crim. App. 1991) (plurality op.), and *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602 (1989)). The court identified "three different stages regarding [a defendant's] expectation of privacy" in his or her blood-sample evidence: (1) the physical intrusion into the body to draw blood, (2) the exercise of control over and the testing of the blood sample, and (3) the use of the results of the test. *Id.* at 284 (citing *Hardy*, 963 S.W.2d at 526).

The court held that medical staff at the hospital performed a private search, thus frustrating Martinez's privacy interest in the seizure of the blood itself by intruding into the body, and, so, the "government's actions consisted of subjecting [Martinez's] blood to testing at the DPS laboratory." *Id.* at 292. It held that "there is a Fourth Amendment privacy interest in blood that has already been drawn for

medical purposes." *Id.* Because the court determined that Martinez had a subjective expectation of privacy in his blood drawn for medical purposes, and the State's warrantless testing of the blood "was a Fourth Amendment search separate and apart from the seizure of the blood," the State was required to obtain a warrant or establish the existence of an exception to the warrant requirement before testing Martinez's blood. *Id.*

Davis's case is materially different. Davis's blood was not collected for medical purposes and later tested without a warrant; instead, her blood was obtained by the State pursuant to a warrant permitting collection of blood samples as evidence in her DWI prosecution. Thus, the collection and testing in Davis's case were not two separate steps, as they were in *Martinez*. And Davis's testing was not a warrantless search, i.e., a search "conducted outside the judicial process, without prior approval by judge or magistrate." *Katz v. U.S.*, 389 U.S. 347, 357 (1967); *Martinez*, 570 S.W.3d at 292. The warrant authorizing collection of blood evidence relevant to Davis's DWI charge adequately protected her privacy interests in the entire process of collecting the blood, testing it, and obtaining the results of the test. *See Martinez*, 570 S.W.3d at 292.

Several of our sister courts have analyzed arguments like Davis's in light of *Martinez*, and they have all reached conclusions similar to the one we reach here. For example, the Fort Worth Court of Appeals in *Jacobson v. State* rejected the

argument that *Martinez* created "a bright-line rule" mandating that blood testing, no matter how the sample was obtained, must be authorized by a separate warrant. —S.W.3d—, No. 02-19-00307-CR, 2020 WL 1949622, at *3 (Tex. App.—Fort Worth Apr. 23, 2020, no pet. h.). The court in *Jacobson* observed that *Martinez* held that "there is an expectation of privacy in blood that is drawn for medical purposes," but it did not provide that "a defendant would have an expectation of privacy in a sample drawn for the specific purpose of obtaining evidence in a DWI prosecution." *Id.* at *2–3. The *Jacobson* court concluded:

> [A]s we discuss below, our sister courts hold that *Martinez* does not mandate a second warrant to test a sample initially obtained by means of a warrant. And, as we also discuss below, the holdings of our sister courts are not unique; they reach the same result as that reached by appellate courts across the country—that is, that there is no reasonable expectation of privacy in a blood sample drawn pursuant to a search warrant in a DWI case that prompts the need for a second warrant in order for law enforcement to determine the drawn blood's alcohol concentration.

Id. at *3–4 (citing *State v. Staton*, 599 S.W.3d 614, 617–18 (Tex. App.—Dallas 2020, pet. filed); *Hyland v. State*, 595 S.W.3d 256, 257 (Tex. App.—Corpus Christi–Edinburg 2019, no pet.) (op. on remand); *Crider v. State*, No. 04-18-00856-CR, 2019 WL 4178633, at *2 (Tex. App.—San Antonio Sept. 4, 2019, pet. granted) (mem. op., not designated for publication), and cataloging "opinions from other jurisdictions holding that a defendant does not have an expectation of privacy

in the testing of a blood sample taken pursuant to a warrant when the testing involves only the determination of the sample's blood alcohol concentration").

We agree with these courts that *Martinez* deals with a different question—whether "an individual has an expectation of privacy in blood previously drawn for purposes other than police testing"—and, thus, does not create an obligation for an additional warrant or additional warrant language when blood was collected pursuant to a warrant. *Id.* at *4 (citing *Stanton*, 599 S.W.3d at 618–19). And we likewise conclude that "common sense dictates that blood drawn for a specific purpose," such as obtaining evidence in a DWI prosecution, "will be analyzed for that purpose and no other." *Stanton*, 599 S.W.3d at 618.

We overrule Davis's first issue.

In her second issue, Davis argues that even if the warrant contemplated the testing of her blood sample, the warrant had expired before the analysis was performed. The trial court rejected this argument, finding that the warrant was executed when the sample was collected. We agree.

The Texas Code of Criminal Procedure provides deadlines for execution of search warrants, and it sets out the general rule that a search warrant must be executed within three days of the day it was issued, except in other circumstances not applicable here. *See* TEX. CODE CRIM. PROC. art. 18.07(a). The record established that Davis's blood sample was obtained by the HCSO the same day

that the warrant was issued. The State thus took control of the blood sample for purposes of obtaining blood evidence relevant to Davis's DWI charge at that time and, therefore, it was executed within the timeframe allowable under article 18.07. *See id.*; *id.* art. 18.06(b) (describing requirements for execution of warrants). Davis points to no authority, nor could we find any, providing additional deadlines for the testing of blood collected under these circumstances.

We overrule Davis's second issue.

Conclusion

We affirm the judgment of the trial court.

Richard Hightower
Justice

Panel consists of Justices Keyes, Goodman, and Hightower.

Publish. TEX. R. APP. P. 47.2(b).