Opinion issued September 17, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00276-CR

THE STATE OF TEXAS, Appellant

V.

RUBEN SANTILLANA, Appellee

NO. 01-20-00277-CR

THE STATE OF TEXAS, Appellant

V.

RUBEN SANTILLANA, Appellee

NO. 01-20-00338-CR

THE STATE OF TEXAS, Appellant

V.

ARMEESE SHANTELL BLOUNT, Appellee

NO. 01-20-00339-CR

THE STATE OF TEXAS, Appellant

V.

ARMEESE SHANTELL BLOUNT, Appellee

NO. 01-20-00340-CR

THE STATE OF TEXAS, Appellant

V.

DARNELL DEVON KNIGHTEN, Appellee

NO. 01-20-00341-CR

THE STATE OF TEXAS, Appellant

V.

JARED FOLLMER, Appellee

NO. 01-20-00342-CR

THE STATE OF TEXAS, Appellant

V.

JEREMY FRANCOIS RUTHERFORD, Appellee

NO. 01-20-00343-CR

THE STATE OF TEXAS, Appellant

V.

TRINT SANDERS SMITH, Appellee

On Appeal from the County Criminal Court at Law No. 8
Harris County, Texas
Trial Court Case Nos. 2288876, 2288877, 2293064, 2151871, 2294710, 2297162, 2295115, 2295129

O P I N I O N

The Harris County District Attorney has authority to represent the State "in criminal cases pending in the district *and inferior courts* of the county."[1] She unquestionably has the authority to represent the State "in all criminal cases in the district courts of [her] district *and in appeals therefrom*[.]"[2] The issue presented in this case is whether the Harris County District Attorney also has the statutory authority to file a state's appeal from the inferior courts of Harris County, specifically, the county criminal courts at law. Because we hold that she does, we deny the Defendants' requests to dismiss these appeals for want of jurisdiction, we

1 *See* TEX. GOV'T CODE § 43.180(b) (emphasis added).

2 *See* TEX. CODE CRIM. PROC. art. 2.01(emphasis added).

address the appeals on the merits, and we reverse the judgments and remand the cases for further proceedings.

BACKGROUND

The cases all arise from Harris County Criminal Court at Law No. 8, and, in each case, the Defendant was charged by information, supported by a sworn complaint. The Defendants each filed a motion to dismiss in the trial court, arguing that "[t]he complaint in this case does not meet the basic essential requirements provided by Texas statute, the Texas Constitution, or the U.S. Constitution" because the complaints did not allege sufficient facts to establish probable cause.

The trial court held a joint hearing on the Defendants' motions to dismiss, at which the Defendants again argued, consistent with their motions, that the informations should be quashed because the complaints in support of the informations did not recite facts sufficient to establish probable cause. The trial court accepted this argument and ruled that in all of these cases "the motions to set aside the information are granted on the ground they are not based on a valid complaint and so the informations are ordered set aside in those cases." The trial court then signed orders effectuating its ruling.

The Harris County District Attorney, on behalf of the State, filed a notice of appeal in each case[3] pursuant to article 44.01(a)(1) of the Texas Code of Criminal Procedure.[4] In its sole issue on appeal, the State contends that the trial court erred in dismissing the informations, arguing that Texas law does not require a showing of probable cause in a complaint.

In its response briefs, the Public Defender, on behalf of the Defendants, notes that "[t]he district attorney contends a complaint need not include sufficient facts to establish probable cause . . . [t]he district attorney appears to be correct." Thus, the Defendants have conceded error on the only issue raised by the State on appeal and addressed by the trial court at the hearing.

However, the Defendants raise two new issues on appeal. First, they argue that the State's appeals must nonetheless be dismissed (thereby making final the trial court's erroneous ruling in their favor on the probable-cause issue), because the

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[3] As of the date of this opinion, 10 such appeals have been docketed in this Court. Two appeals were previously dismissed on the State's motion. *See State v. Sanchez*, No. 01-20-00274-CR, 2020 WL 4689205 (Tex. App.—Houston [1st Dist.] Aug. 13, 2020, no pet. h.); *State v. Smith*, No. 01-20-00273-CR, 2020 WL 3393421 (Tex. App.—Houston [1st Dist.] June 18, 2020, no pet.). The instant 8 appeals have been docketed together because they raise identical issues, and we dispose of them collectively herein. We also note that 11 cases raising the same issue have been docketed in the Fourteenth Court of Appeals.

[4] *See* TEX. CODE CRIM. PROC. art. 44.01(a)(1) (providing that the State is "entitled to appeal an order of a court in a criminal case if the order dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint").

Harris County District Attorney has no authority to file a notice of appeal on behalf of the State in appeals from the Harris County Criminal Courts at Law. If, as the Defendants contend, the Harris County District Attorney has no authority to file notices of appeal in cases originating in the county criminal courts at law, then the notices of appeal she filed on the State's behalf were insufficient to invoke this Court's jurisdiction. Second, the Defendants, for the first time on appeal, argue on the merits that the complaints were properly dismissed because they did not comply with article 2.04 of the Texas Code of Criminal Procedure. Because the Defendants' first argument concerns this Court's jurisdiction, we address it first.

JURISDICTION

The Defendants argue that "[t]he Harris County District Attorney is not statutorily authorized to represent the State of Texas in criminal appeals from county-level courts." The Defendants further contend that "[o]nly the State Prosecuting Attorney" has the statutory authority to do so, and, because the State Prosecuting Attorney did not file notices of appeal in these cases, we have no jurisdiction to consider the appeals. In reaching this conclusion, the Defendants consider several statutes, which they contend could, but do not, grant the Harris County District Attorney the authority to file a notice of appeal for the State in appeals from a county-level court. We will do likewise.

Laws and Statutes

1. Article V, Section 21 of the Texas Constitution

The only provision of the Texas Constitution to address the issue provides in relevant part as follows:

> A County Attorney, for counties in which there is not a resident Criminal District Attorney, shall be elected by the qualified voters of each county . . . . The County Attorneys shall represent the State in all cases in the *District and inferior courts* in their respective counties; but *if any county shall be included in a district in which there shall be a District Attorney, the respective duties of District Attorneys and County Attorneys shall in such counties be regulated by the Legislature*.

TEX. CONST. art. V, § 21 (emphasis added). This constitutional provision speaks only to representation in the district and inferior courts, not appellate courts, and provides that in districts, like Harris County, that have both a district attorney and a county attorney, the Legislature will determine their "respective duties." *See id.*

2. Texas Code of Criminal Procedure articles 2.01 & 2.02

Two statutes that address those "respective duties," specifically appeals, are articles 2.01 and 2.02 of the Texas Code of Criminal Procedure. Article 2.01, which is applicable to district attorneys, provides in relevant part: "Each district attorney shall represent the State in all criminal cases in the district courts of his district and in appeals therefrom[.]" TEX. CODE CRIM. PROC. art. 2.01. Article 2.02, which is applicable to county attorneys, similarly provides in relevant part: "The county attorney . . . shall represent the State in all criminal cases under examination or

prosecution in said county" and "shall represent the State in cases he has prosecuted which are appealed." TEX. CODE CRIM. PROC. art. 2.02. These statutes give district attorneys appellate authority in cases arising from "the district courts of his district" and county attorneys appellate authority "in cases he has prosecuted which are appealed." However, the statutes do not specifically provide who has authority to file appeals for the State, when, as here, the District Attorney is given statutory authority to prosecute criminal cases on behalf of the State in not only district courts, but also county criminal courts at law. Thus, we must also look at the statutes that give the Harris County District Attorney this power.

3. Texas Government Code section 25.1033

Section 25.1033 of the Government Code, which contains provisions specific to Harris County's statutory criminal courts at law, provides that "[t]he Harris County district attorney serves as prosecutor for the county criminal courts at law as provided by Section 43.180." TEX. GOV'T CODE § 25.1033(k). This statute clearly provides that the Harris County District Attorney is to be the prosecutor in the county criminal courts at law, but, it does not specifically address whether, as prosecutor, the District Attorney has authority to file appeals on behalf of the State in cases arising from those courts. But, it does point us to section 43.180 of the Government Code, which we consider next.

4. Government Code section 43.180

Section 43.180 of the Government Code—the Harris County District Attorney's authorizing statute—provides in relevant part:

> (a) The voters of Harris County elect a district attorney.
>
> (b) The district attorney shall attend each term and session of the district courts of Harris County. *The district attorney shall represent the state in criminal cases pending in the district and inferior courts of the county.* The district attorney has control of any case heard on habeas corpus before any civil district court or criminal court of the county.
>
> (c) The district attorney has *all the powers*, duties, and privileges in Harris County *relating to criminal matters* for and on behalf of the state *that are conferred on district attorneys in various counties and districts*.

TEX. GOV'T CODE § 43.180(a), (b), (c) (emphasis added). While this statute specifically gives the District Attorney power to litigate criminal cases "in the district and inferior courts of the county," and provides the District Attorney with "all the powers" "relating to criminal matters" "that are conferred on district attorneys in various counties and districts," it does not specifically address appeals.

The Parties' Arguments

1. The Defendants' arguments

The Defendants contend that, because none of the statutes referenced above specifically give the Harris County District Attorney the power to file appeals from county criminal courts at law and the only statute that does so—article 2.02 of the

Code of Criminal Procedure—applies to county attorneys, not district attorneys, only the State Prosecuting Attorney had the authority to file the notices of appeal in these cases.[5] The Defendants further contend that, because the State Prosecuting Attorney did not choose to file appeals in these cases, and the District Attorney has no power to do so, the appeals were never perfected and must be dismissed for lack of jurisdiction.

2. The State's arguments

In its reply, the State contends that the District Attorney's authorizing statute—section 43.180 of the Government Code—is ambiguous and that the Defendants' interpretation of it would lead to the absurd result of requiring the State Prosecuting Attorney, a three-person office, to handle all of the appeals from Harris County's statutory county criminal courts at law, as well as those from several other counties in similar situations. In light of its claim that section 43.180 is ambiguous, the State urges the Court to consider extratextual sources such as legislative history to determine whether the District Attorney had the authority to file and prosecute these appeals. While we do not necessarily disagree with the State's argument that the Defendants' interpretation would lead to an absurd result, we find no need to resort to legislative history or other extratextual sources to determine whether the

[5] "The state prosecuting attorney may also represent the state in any stage of a criminal case before a state court of appeals if he considers it necessary for the interest of the state." TEX. GOV'T CODE § 42.001(a)

District Attorney was authorized to file and prosecute the present appeals on behalf of the State. Instead, we look to the statute authorizing state's appeals.

Texas Code of Criminal Procedure Article 44.01

The State has no right of appeal in criminal cases unless it is authorized by statute. *See* TEX. CONST. art. V, § 26 ("The State is entitled to appeal in criminal cases, as authorized by general law"); *see also Todd v State*, 661 S.W.2d 115, 117 (Tex. Crim. App. 1983). The statute giving the State the right of appeal is article 44.01 of the Texas Code of Criminal Procedure. TEX. CODE CRIM. PROC. art. 44.01. Because the State's ability to appeal in a criminal case is statutorily created, the terms of the statute must be followed. *State v. Janssen*, 592 S.W.3d 530, 533 (Tex. App.—Amarillo 2019, pet. ref'd). Article 44.01 provides, among other things, the circumstances under which the State may file an appeal,[6] the time for filing such an appeal,[7] and who may file the appeal on behalf of the State.[8]

Regarding the filing of the appeal, article 44.01 provides:

> *The prosecuting attorney* may not make an appeal under Subsection (a) or (b) of this article later than the 20th day after the date on which the order, ruling, or sentence to be appealed is entered by the court.

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6 TEX. CODE CRIM. PROC. art. 44.01(a), (b), (c).

7 TEX. CODE CRIM. PROC. art. 44.01 (d).

8 TEX. CODE CRIM. PROC. art. 44.01(i).

TEX. CODE CRIM. PROC. art. 44.01(d) (emphasis added). The statute then defines "prosecuting attorney" as follows:

> In this article, "prosecuting attorney" means *the* county attorney, *district attorney*, or criminal district attorney *who has the primary responsibility of prosecuting cases in the court hearing the case* and does not include an assistant prosecuting attorney.

TEX. CODE CRIM. PROC. art. 44.01(i) (emphasis added).

Here, it is undisputed that "[t]he [Harris County] district attorney shall represent the state in criminal cases pending in the district and inferior courts of the county" and "serves as prosecutor for the county criminal courts at law[.]" TEX. GOV'T CODE §§ 43.180(b), 25.1033(k). As such, under article 44.01(i), the "prosecuting attorney" for these appeals is the Harris County District Attorney because she "has the primary responsibility of prosecuting cases" in County Criminal Court at Law No. 8 of Harris County. As the "prosecuting attorney," it is her responsibility to "make an appeal" within 20 days of the date of the trial court's order, which she did. Because the Harris County District Attorney timely filed notices of appeal from the county criminal court at law's judgments in this case, our jurisdiction was properly invoked.

Accordingly, we deny the Defendants' requests that we dismiss these appeals.

VALIDITY OF THE COMPLAINTS

The Defendants argue that, even if we have jurisdiction over the State's appeals, we should nonetheless affirm the trial court's orders setting aside the

informations because the complaints upon which the informations were issued were invalid. Because we have held that we have jurisdiction, we will address this new issue that the Defendants raise.[9] The Defendants contend that the complaints were invalid because they did not comply with article 2.04 of the Texas Code of Criminal Procedure, which provides as follows:

> Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney.

TEX. CODE CRIM. PROC. art. 2.04.

The Defendants argue that this statute "contains an additional requirement for a complaint," and that the District Attorney's admitted compliance with article 15.05 of the Texas Code of Criminal Procedure, entitled "Requisites of a Complaint," is insufficient. *See* TEX. CODE CRIM. PROC. art. 15.05. Specifically, The Defendants argue that the affiant for the complaint is required to be "the same person who originally complained about the alleged offense to the district attorney," and that such person is generally a "law enforcement officer." The Defendants state that the affiant in these cases is "believed to be" an administrative employee of the District Attorney's office, not the law enforcement officer who brought the case to the

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[9] The Defendants have abandoned their argument that the complaints were invalid because they did not show facts establishing probable cause, conceding that "the district attorney appears to be correct" in arguing that a complaint need not show probable cause on its face.

District Attorney. We hold that the Defendants waived their right to make this argument on appeal.

Defects in complaints must be raised before trial. *Ramirez v. State*, 105 S.W.3d 628, 630 (Tex. Crim. App. 2003). If a defendant does not object to a defect, error, or irregularity of form or substance in an information before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity, and he may not raise the objection on appeal. *Id.*; *see* TEX. CODE CRIM. PROC. art. 1.14.

Here, the Defendants did not object before trial that the complaints were defective because they did not comply with article 2.04. "By not so objecting to the information prior to trial, the [defendant] waived any contention that the information was defective because it was based upon a defective underlying complaint." *Id.*

And, even were we to reach the merits of the Defendants' argument, we find it to be without merit. A criminal complaint may be presented to the District Attorney, "by some credible person charging the defendant with an offense." TEX. CODE CRIM. PROC. art. 21.22. A credible person is a person competent to testify. *Halbadier v. State*, 220 S.W. 5, 86 (Tex. Crim. App. 1920). A complaint filed by a secretary for the Harris County District Attorney has been held to be a complaint by a "credible person," even though she did not have first-hand knowledge and based her affirmation on information from a police report and an instrument signed by a

police officer. *Catchings v. State*, 285 S.W.2d 233, 234 (Tex. Crim. App. 1955); *see also Paulsen v. State*, No. 01-99-00271-CR, 2000 WL 1678444, at *2 (Tex. App.—Houston [1st Dist.] Nov. 9, 2000, no pet.) ("An employee or agent [of the District Attorney's office], such as a secretary, is considered to be a credible person authorized to make a valid complaint because they lack the authority to present an information and conduct prosecutions.").

Because the Defendants' argument regarding the sufficiency of the complaint under article 2.04 is both waived and without merit, the trial court could not have properly dismissed the informations on this basis.

CONCLUSION

Having concluded that we have jurisdiction over these appeals and having held that there was no ground to support the trial court's dismissal of the informations based on invalid complaints, we reverse the judgments of the trial court and remand the cases for further proceedings.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Hightower and Adams.

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