Opinion issued May 24, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00739-CR

THE STATE OF TEXAS, Appellant

V.

DAMONTE MCFIELD, Appellee

On Appeal from the County Criminal Court at Law No. 8
Harris County, Texas
Trial Court Case No. 2301111

O P I N I O N

Appellant, the State of Texas, challenges the trial court's order granting the motion of appellee, Damonte McField, to quash and set aside the information,[1]

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[1] *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1).

alleging that he committed the misdemeanor offense of criminal mischief.[2] In its sole issue, the State contends that the trial court erred in granting appellee's motion.[3]

We reverse and remand.

Background

Appellee was charged by information with the misdemeanor offense of criminal mischief,[4] and the State alleged that appellee, on or about February 20, 2020, "did then and there unlawfully, intentionally and knowingly damage tangible property, namely a door, owned by John Buckley III," the complainant, "a person having a greater right to possession of the property than [appellee]," "without the effective consent of the [c]omplainant, namely, without any consent of any kind, and the value of the pecuniary loss so inflicted was at least one hundred dollars and under seven hundred fifty dollars, by striking the complainant's door with a screwdriver." The State also alleged that before the commission of the above-described misdemeanor offense, "on September 22, 2011, in [c]ause [n]o. 1769122, in the County Criminal Court at Law No. 4 of Harris County, Texas,

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2 *See* TEX. PENAL CODE ANN. § 28.03(a)(1), (b)(2).

3 Although the State lists two issues in the "Issues Presented" section of its brief, both relate to the core issue on appeal—whether the trial court erred in granting appellee's motion to quash and set aside the information. For ease, we will refer to this core issue as the State's "sole issue" on appeal, while still addressing the arguments raised in the State's brief.

4 *See id.*

[appellee] was convicted of the misdemeanor offense of [e]vading [a]rrest/[d]etention."

The information was supported by a sworn complaint, which alleged:

> IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:
>
> Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that [s]he has good reason to believe and does believe that in Harris County, Texas, [appellee], . . . on or about February 20, 2020, did then and there unlawfully, intentionally and knowingly damage tangible property, namely a door, owned by [the complainant], a person having a greater right to possession of the property than [appellee] . . . , without the effective consent of the [c]omplainant, namely, without any consent of any kind, and the value of the pecuniary loss so inflicted was at least one hundred dollars and under seven hundred fifty dollars, by striking the complainant's door with a screwdriver.
>
> Before the commission of the offense alleged above, on September 22, 2011, in [c]ause [n]o. 1769122, in the County Criminal Court at Law No. 4 of Harris County, Texas, [appellee] was convicted of the misdemeanor offense of [e]vading [a]rrest/[d]etention.
>
> AGAINST THE PEACE AND DIGNITY OF THE STATE.

The complaint is signed by "G. Cruz" as the affiant and sworn to and subscribed before an assistant district attorney.

Appellee moved to quash and set aside the information, generally asserting that the sworn complaint filed with the information did not "meet the basic essential requirements provided by Texas statute, the Texas Constitution, or the U.S. Constitution." But the motion did not specify precisely how the complaint

was defective. In a supplement to his motion to quash and set aside the information, appellee asserted that a complaint is invalid when there is a "failure to swear in the affiant" and "we must be able to verify that the swearing in process for each complaint [i]s properly done."

At a hearing on appellee's motion to quash and set aside the information, Gaby Cruz testified that she is an administrative assistant and log manager with the Harris County District Attorney's Office in the Intake Division. Cruz stated that she is not a licensed attorney. She is over eighteen years of age, and she has either graduated from high school or "ha[s] an equivalent GED." She has never been declared incompetent by a court.

While viewing the complaint filed in this case, Cruz testified that she recognized the document, it constituted a "[c]harging instrument," and the complaint contained her signature as the affiant.[5] Cruz did not remember whether she was "aware of a complaint being filed against" appellee though, and she could not recall signing the complaint in this case, but she stated that it did contain her signature. Cruz was not the complainant in the case. Cruz did not specifically "remember being sworn in for this case."

Cruz also testified that as part of her job responsibilities she signs "misdemeanor complaints as the affiant." Cruz only signs a complaint as the

[5] The trial court took judicial notice of the complaint as well as the information filed in this case.

affiant if she has "good reason to believe that the defendant has violated the Texas law outlined in the complaint." Cruz would not sign a complaint if she did not have "good reason to believe that the defendant committed the offense as outlined in the complaint." According to Cruz, she bases her "good reason to believe that a crime has been committed" on the sworn statement or the sworn words of a law enforcement officer. Cruz does not have any personal knowledge about a particular case.

Cruz further stated that she only ever signs a complaint in the presence of an assistant district attorney, and she would never sign a complaint if she was not in the presence of an assistant district attorney. Before Cruz signs a complaint, she "swear[s] to an oath." She says the oath orally before signing the complaint. She would never sign a complaint "without swearing to an oath." When asked if she swears to an oath, Cruz responded: "Yes." Cruz stated that she "swear[s] that everything is correct," and she says, "I swear to this document," meaning the complaint, "orally before every signature."

Although Cruz could not recall signing the complaint in this case, she knows that she swore the oath and signed the complaint in front of an assistant district attorney because that is the process that she does "every single time." Cruz "swear[s] the oath in front of an [assistant district attorney] on every single complaint" and she "always sign[s] the complaint in front of an [assistant district

attorney]." The assistant district attorney signs a complaint after Cruz swears the oath and signs the complaint. Cruz stated that if she violated the oath that she had sworn there would be "perjury implications."

After the hearing, the trial court granted appellee's motion to quash and set aside the information.

Standard of Review

We review a trial court's ruling on a motion to quash a charging instrument de novo. *Smith v. State*, 309 S.W.3d 10, 13–14 (Tex. Crim. App. 2010); *State v. Linares*, Nos. 01-20-00598-CR, 01-20-00599-CR, 2022 WL 710098, at *3 (Tex. App.—Houston [1st Dist.] Mar. 10, 2022, no pet.) (mem. op., not designated for publication); *see also State v. Donaldson*, 557 S.W.3d 33, 39–40 (Tex. App.—Austin 2017, pet. ref'd) (addressing whether de-novo or abuse-of-discretion standard of review is appropriate when reviewing trial court's decision on motion to quash indictment); *State v. Balandrano*, No. 13-13-00536-CR, 2015 WL 5136453, at *2 (Tex. App.—Corpus Christi–Edinburg Aug. 31, 2015, no pet.) (mem. op., not designated for publication) (reviewing de novo trial court's ruling on motion to quash information where defendant argued complaint did not meet requirements of Texas Code of Criminal Procedure articles 15.05 and 21.22).

Motion to Quash

In its sole issue, the State argues that the trial court erred in granting appellee's motion to quash and set aside the information because "[t]he evidence presented at the hearing on [a]ppellee's motion to quash did not reveal any impropriety in the procedures that gave rise to the complaint and information filed against [a]ppellee" and "Texas law does not require that the person swearing to a complaint have first-hand knowledge of the allegations contained therein."

To begin a misdemeanor prosecution, the State presents either an indictment or an information as a charging instrument. *See State v. Drummond*, 501 S.W.3d 78, 81 (Tex. Crim. App. 2016); *Tex. Dep't of Pub. Safety v. Marshall*, 570 S.W.3d 315, 318 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *White v. State*, 50 S.W.3d 31, 51 n.23 (Tex. App.—Waco 2001, pet. ref'd); *see also* TEX. CODE CRIM. PROC. ANN. art. 21.20 ("An 'information' is a written statement filed and presented [o]n behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted."). When an information is used, an underlying complaint is also required. *See* TEX. CODE CRIM. PROC. ANN. art. 21.22; *Drummond*, 501 S.W.3d at 81; *Marshall*, 570 S.W.3d at 318; *State v. Caves*, 496 S.W.3d 153, 156 (Tex. App.—San Antonio 2016, pet. ref'd) ("A valid complaint is a prerequisite to a valid information in a misdemeanor case." (internal quotations omitted)).

The Texas Code of Criminal Procedure uses the term "complaint" in three different contexts, including as a prerequisite to an information. *Drummond*, 501 S.W.3d at 81 (internal quotations omitted); *see* TEX. CODE OF CRIM. PROC. ANN. art. 21.22; *see also Huynh v. State*, 901 S.W.2d 480, 481 n.3 (Tex. Crim. App. 1995); *Rodriguez v. State*, 491 S.W.3d 18, 25 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd) ("While a complaint must be filed to justify an information, there are other reasons that complaints are filed, unrelated to the filing of an information."). "A complaint to support an information is a sworn affidavit, duly attested to by the district or county attorney, that is made by some credible person charging the defendant with an offense." *Drummond*, 501 S.W.3d at 81 (internal quotations omitted); *Marshall*, 570 S.W.3d at 318 n.1 (internal quotations omitted); *see* TEX. CODE CRIM. PROC. ANN. art. 21.22. The purpose of the complaint is to inform the defendant of the facts surrounding the charged offense to permit him to prepare a defense to the charge. *Leal v. State*, 533 S.W.3d 444, 445 (Tex. App.—San Antonio 2016, no pet.); *Rose v. State*, 799 S.W.2d 381, 384 (Tex. App.—Dallas 1990, no pet.); *see also Marshall*, 570 S.W.3d at 318.

The complaint's affiant must be a "credible person." TEX. CODE CRIM. PROC. ANN. art. 21.22; *see also Wells v. State*, 516 S.W.2d 663, 664 (Tex. Crim. App. 1974); *State v. Yakushkin*, 625 S.W.3d 552, 561 (Tex. App.—Houston [14th Dist.] 2021, pet. ref'd). A "credible person" is any person who is competent to

testify as a witness. *See Ealy v. State*, 319 S.W.2d 710, 711 (Tex. Crim. App. 1958); *Yakushkin*, 625 S.W.3d at 561. The affiant cannot be an attorney who is part of the prosecution team. *See Wells*, 516 S.W.2d at 664; *Yakushkin*, 625 S.W.3d at 561. This limitation precludes a single individual from being both the accuser and the prosecutor. *Wells*, 516 S.W.2d at 664. Yet, an administrative assistant or an investigator with the district attorney's office is a credible person who may serve as an affiant for a complaint. *See Catchings v. State*, 285 S.W.2d 233, 234 (Tex. Crim. App. 1955); *Linares*, 2022 WL 710098, at *4; *State v. Santillana*, 612 S.W.3d 582, 588 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd) ("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."); *Paulsen v. State*, No. 01-99-000271-CR, 2000 WL 1678444, at *2 (Tex. App.—Houston [1st Dist.] Nov. 9, 2000, no pet.) (not designated for publication) ("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 [she] lack[s] the authority to present an information and conduct prosecutions.").

Further, the complaint's affiant does not have to be the person who originally complained about the alleged offense to the district attorney. *Linares*,

2022 WL 710098, at *4; *Yakushkin*, 625 S.W.3d at 561–62 (Texas Code of Criminal Procedure article 21.22 does not require that affiant, who signs affidavit upon which information is based, "be the person who first notified the district or county attorney of the offense"); *Santillana*, 612 S.W.3d at 587–88; *Rose*, 799 S.W.2d at 384. Nor does the affiant need to have personal or first-hand knowledge of the facts alleged in the complaint. *See Linares*, 2022 WL 710098, at *4; *Yakushkin*, 625 S.W.3d at 561–62 ("[C]ourts have long held that th[e] affiant can be . . . . someone without personal knowledge of the facts supporting the offense."); *Rose*, 799 S.W.2d at 384; *see also Collins v. State*, No. 05-18-00498-CR, 2019 WL 2648168, at *6 (Tex. App.—Dallas June 27, 2019, pet. ref'd) (mem. op., not designated for publication) ("There is no requirement that an affiant have first[-]hand knowledge upon which to base his statements in an affidavit. Rather, the affiant may base the accusations in the complaint on information obtained from a police report.").

Under Texas Code of Criminal Procedure article 15.05, a complaint is sufficient if it: (1) states the name of the defendant, if known, and if not known, gives some reasonably definite description of him; (2) shows that the defendant has committed some offense, either directly or that the affiant has good reason to believe, and does believe, that the defendant has committed the offense; (3) states the time and place of the commission of the offense, as definitely as can be done;

and (4) is signed by the affiant by writing her name or affixing her mark. TEX. CODE CRIM. PROC. ANN. art. 15.05;[6] *Linares*, 2022 WL 710098, at *4; *see also State v. Lang*, 916 S.W.2d 63, 64–65 (Tex. App.—Houston [1st Dist.] 1996, no pet.); *Rose*, 799 S.W.2d at 384 (article 15.05 sets out requirements of complaint). The affiant may base her belief that an offense has been committed on information she read from a police report, without directly speaking to the law enforcement officer who had knowledge of the offense. *Linares*, 2022 WL 710098, at *4; *Rose*, 799 S.W.2d at 384; *cf. Santillana*, 612 S.W.3d at 588; *Collins*, 2019 WL 2648168, at *6. And it is not necessary for a court "to inquire into the nature of the knowledge upon which an affiant bases h[er] factual statements" in the complaint. *Wells*, 516 S.W.2d at 664; *see also Linares*, 2022 WL 710098, at *4; *Balandrano*, 2015 WL 5136453, at * 2 ("No requirement exists that the affiant have first[-]hand

[6] Article 15.05 appears in chapter 15 of the Texas Code of Criminal Procedure, entitled "Arrest Under Warrant." Article 15.05 sets out the requirements of a "complaint" in support of a warrant of arrest. *See* TEX. CODE CRIM. PROC. ANN. art. 15.05; *Jernigan v. State*, 661 S.W.2d 936, 938 n.2 (Tex. Crim. App. 1983); *see also State v. Yakushkin*, 625 S.W.3d 552, 560 n.7 (Tex. App.—Houston [14th Dist.] 2021, pet. ref'd). Yet, the parties agree that article 15.05's requirements applicable to a complaint supporting an arrest warrant also apply to a complaint supporting a misdemeanor information. *Cf. Yakushkin*, 625 S.W.3d at 560 n.7. Texas courts have stated or implied as much. *State v. Linares*, Nos. 01-20-00598-CR, 01-20-00599-CR, 2022 WL 710098, at *3 (Tex. App.—Houston [1st Dist.] Mar. 10, 2022, no pet.) (mem. op., not designated for publication); *see, e.g.*, *Wells v. State*, 516 S.W.2d 663, 664 (Tex. Crim. App. 1983); *Gholson v. State*, 667 S.W.2d 168, 177 (Tex. App.—Houston [14th Dist.] 1983, pet. ref'd); *see also State v. Santillana*, 612 S.W.3d 582, 587 (Tex. App.—Houston [1st Dist.] 2020, pet. ref'd); *Paulsen v. State*, No. 01-99-00271-CR, 2000 WL 1678444, at *1–2 (Tex. App.—Houston [1st Dist.] Nov. 9, 2000, no pet.) (not designated for publication).

knowledge, and the court need not inquire into the nature of the knowledge upon which an affiant bases his factual statement."); *Detamore v. State*, No. 01-94-00062-CR, 1994 WL 389134, at *4 (Tex. App.—Houston [1st Dist.] July 28, 1994) (not designated for publication); *Rose*, 799 S.W.2d at 384.

At the hearing on appellee's motion to quash and set aside the information, appellee argued that the complaint in this case was invalid because Cruz, an administrative assistant and log manager with the Harris County District Attorney's Office, was "not the complainant in th[e] case" and "was not the person who made the complaint to the district attorney"; rather, "[t]hat person was the [law enforcement] officer who arrested" appellee. According to appellee, Texas Code of Criminal Procedure article 2.04 "requires [for a complaint to be valid] that the [complaint] affiant be the complainant in the case." And because Cruz was not the complainant, she could not sign the complaint as the affiant. Appellee based his assertion on the language of Texas Code of Criminal Procedure article 2.04, which provides:

> 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. ANN. art. 2.04.

We have previously addressed and rejected the argument made by appellee. *See Linares*, 2022 WL 710098, at *5–6 (holding "the fact that [the complaint affiant], an administrative assistant with the Harris County District Attorney's Office, signed the complaints as the affiant even though she was not the complainant in [defendant's] cases and lacked first-hand knowledge of the facts of the offenses alleged in the complaints could not be a basis for concluding that the complaints were invalid and could not be a basis for granting [defendant's] motions to quash and set aside two informations"); *Santillana*, 612 S.W.3d at 587–88 (holding defendant's argument, based on Texas Code of Criminal Procedure article 2.04, that "the affiant for the complaint [was] required to be 'the same person who originally complained about the alleged offense to the district attorney,'" such as "a 'law enforcement officer,'" but not "an administrative employee of the [d]istrict [a]ttorney's office," was "without merit"); *see also Yakushkin*, 625 S.W.3d at 559–62 (rejecting defendant's argument, based on Texas Code of Criminal Procedure article 2.04, that "the person signing the affidavit [that accompanies the information must] be the person who first reported the alleged offense to the district attorney" and noting "courts have long held that th[e] affiant can be . . . someone without personal knowledge of the facts supporting the offense"). As we have explained, "[a] complaint [signed] by a[n] [administrative assistant] for the Harris County District Attorney has been held to be a complaint

by a 'credible person,' even though [the administrative assistant] did not have first-hand knowledge and based her affirmation on information from a police report and an instrument signed by a [law enforcement] officer."[7] *Santillana*, 612 S.W.3d at 588; *see also Catchings*, 285 S.W.2d at 234; *Linares*, 2022 WL 710098, at *5–6; *Paulsen*, 2000 WL 1678444, at *2 ("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 [she] lack[s] the authority to present an information and conduct prosecutions."). Because the fact that Cruz signed the complaint as the affiant even though she was not the complainant in the case and lacked first-hand knowledge of the facts of the offense cannot support the conclusion that the complaint was invalid, it is not a proper basis for granting appellee's motion to quash and set aside the information. *See Linares*, 2022 WL 710098, at *5–6.

Appellee's other argument at the hearing on his motion to quash and set aside the information appeared to focus on the oath that Cruz swore before signing the complaint as an affiant. At the hearing, appellee's counsel asserted that, "[W]e have to be able to verify the swearing . . . process and what . . . Cruz testified to on

[7] At oral argument, appellee's counsel stated, "[W]e are not saying that [Cruz] is not credible, [that] she's not competent," and thus appellee's counsel appeared to concede that Cruz was a proper person to sign the complaint as the affiant.

the swearing . . . process was not adequate," thereby rendering the complaint invalid.

Texas Code of Criminal Procedure article 21.22 states:

> No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths.

TEX. CODE OF CRIM. PROC. ANN. art. 21.22.

Initially, we note that at the hearing on appellee's motion to quash and set aside the information, appellee's counsel did not assert that the oath sworn to by Cruz was improper, but rather he asserted that it was not clear that Cruz had "tak[en] that oath for every" time she signed a complaint as the affiant and this rendered the complaint invalid.[8] Appellee's counsel then referred the trial court to a "line of cases" that he asserted showed that a complaint affiant must take an oath "for every" complaint signed, which he asserted had not been done in this case.[9] In contrast, appellee's briefing and argument on appeal assert that the complaint in

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[8] In fact, at the hearing, appellee's counsel agreed that the oath Cruz testified that she swore was "the proper swear, oath."

[9] This is the same argument appellee made in his supplement to his motion to quash and set aside the information, which was filed after the hearing. There, appellee asserted that the complaint in this case was invalid because there was a "failure to swear in the affiant" and "we must be able to verify that the swearing in process for each complaint [i]s properly done." Appellee again referred the trial court to the same "line of cases" purportedly standing for that proposition.

this case is defective, not because the evidence failed to show that Cruz took an oath before signing the complaint as the affiant, but because Cruz did not swear the "right" oath.[10]

At the hearing on appellee's motion to quash and set aside the information, Cruz testified that she only signs a complaint as the affiant in the presence of an assistant district attorney, and she would never sign a complaint if she was not in the presence of an assistant district attorney. Before Cruz signs a complaint, she "swear[s] to an oath." Cruz says the oath orally before she signs the complaint. She would never sign a complaint "without swearing to [the] oath." As to the oath itself, Cruz testified that she "swear[s] that everything is correct" in the complaint and she says, "I swear to this document," meaning the complaint, "orally before every signature." *See* TEX. CODE CRIM. PROC. ANN. art. 21.22; *see also Morey v. State*, 744 S.W.2d 668, 670 (Tex. App.—San Antonio 1988, no pet.) (stating

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[10] The State asserted at oral argument that appellee, by not raising it in the trial court, waived his argument on appeal that the complaint was invalid because Cruz took the "wrong" oath before signing the complaint. We have previously held that a defendant waives his right to make an argument on appeal as to why a complaint is defective if he does not object to the complaint on that basis in the trial court. *See Santillana*, 612 S.W.3d at 587–88 (holding defendants waived their right to make argument on appeal when they "did not object . . . that the complaints were defective because they did not comply with [Texas Code of Criminal Procedure] article 2.04" in trial court); *see also Yakushkin*, 625 S.W.3d at 562 (noting defendant had burden of proof on motion to quash indictment or complaint and it was defendant's "burden to prove to prove that the affidavit[]" filed with information was invalid); *Rodriguez v. State*, 491 S.W.3d 18, 26 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd) (defendant bears burden of proof on motion to quash).

article 21.22 requires "swearing to a complaint"). Cruz stated that if she violated the oath that she had sworn there would be "perjury implications."

In his brief, appellee asserts that a complaint affiant, like Cruz, "must *swear to the document* before a person authorized to administer oaths." (Emphasis added.) And that the affiant must "swear to the truth of the statements in the complaint." But, in appellee's opinion, the testimony at the hearing on appellee's motion to quash and set aside the information only showed that Cruz swore that she had "read the contents of the DIMS"[11] and "the statements [she] typed in the complaint reflect[ed] the allegation contained in the summary paragraph of the DIMS." Appellee misconstrues Cruz's testimony.

Although there was some discussion at the hearing about an oath posted on the wall in the Intake Division of the Harris County District Attorney's Office, which states that the affiant "swear[s] that [she] read the contents of the DIMS and the pleadings accurately reflect the allegation contained in the summary paragraph of the DIMS of each such charge [that she] ha[s] prepared and [that] is now before

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[11] "DIMS" stands for "District Attorney Intake Management System." *See Hughes v. State*, No. 01-01-00698-CR, 2002 WL 2025434, at *1 (Tex. App.—Houston [1st Dist.] Aug. 30, 2002, pet. ref'd) (not designated for publication); *see also ODonnell v. Harris Cty.*, 251 F. Supp. 3d 1052, 1088 (S.D. Tex. 2017) (explaining law enforcement officer "prepares a District Attorney Intake Management System (DIMS) report and electronically forwards it to the [d]istrict [a]ttorney's office, where the formal charge is prepared"); *Jenson v. State*, No. 14-07-00093-CR, 2008 WL 3833806, at *12 n.4 (Tex. App.—Houston [14th Dist.] Aug. 19, 2008, pet. ref'd) (mem. op., not designated for publication) (noting a "DIMS report" was "a summary of the offense report" (internal quotations omitted)).

[her]," Cruz testified that she "swear[s] that everything is correct" in the complaint and she says, "I swear to this document," meaning the complaint, "orally before every signature." *See* TEX. CODE CRIM. PROC. ANN. art. 21.22; *Morey*, 744 S.W.2d at 670 (stating article 21.22 requires "swearing to a complaint"); *see also Yakushkin*, 625 S.W.3d at 562 (defendant has burden of proof on motion to quash indictment or complaint and it is defendant's "burden to prove that the affidavit[]" filed with information was invalid); *Rodriguez v. State*, 491 S.W.3d 18, 26 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd) (defendant bears burden of proof on motion to quash). Appellee's counsel acknowledged at the hearing, after Cruz testified, that "it sounds like they have the proper swear, oath."

We note that our sister appellate court has recently dealt with a similar issue in *State v. Davila*, No. 14-20-00800-CR, 2021 WL 5707453 (Tex. App.—Houston [14th Dist.] Dec. 2, 2021, no pet.) (mem. op., not designated for publication), wherein the complaint affiant took an oath like the one Cruz testified she took in this case. In *Davila*, the appellee—the criminal defendant—was "charged by information with the offense of harassment," and "[t]he information was supported by a complaint signed by an affiant and an assistant district attorney." 2021 WL 5707453, at *1. Later, the appellee filed a motion to quash and set aside the information, asserting that the information "d[id] not meet the basic essential requirements provided by Texas statute, the Texas Constitution, or the U.S.

Constitution." *Id.* (internal quotations omitted). At the hearing on the motion to quash and set aside the information, an executive administrative assistant "in the Criminal Law Division for the Harris County District Attorney's Office" testified that "she typed the complaint using information and documents provided by an assistant district attorney." *Id.* And the assistant district attorney who signed the complaint testified that the person who signed the complaint as the affiant would have "sw[orn] to [the] complaint in front of her," saying "words to the effect that [she] swear[s] that everything in th[e] complaint is true and correct as [she has] typed [it]." *Id.* (fifth alteration in original) (internal quotations omitted). After the trial court granted the appellee's motion to quash and set aside the information, the State appealed. *Id.*

In addressing the merits of the trial court's decision to grant the appellee's motion to quash and set aside the information, our sister appellate court noted that it "discern[ed] no support in the evidence [presented at the hearing] for the trial court's ruling." *Id.* at *2. Instead, the court explained that Texas Code of Criminal Procedure article 21.22 requires that an information be supported by an affidavit made by some credible person charging the defendant with an offense, which may be sworn before the district attorney who, for that purpose shall have the power to administer the oath. *Id.*; *see* TEX. CODE CRIM. PROC. ANN. art. 21.22. And the testimony from the hearing on the appellee's motion to quash and set aside the

information—including the testimony about the oath taken by complaint affiant—"indicated that the information and complaint complied with Texas law." *Davila*, 2021 WL 5707453, at *2. Thus, nothing justified the granting of the appellee's motion to quash and set aside the information, and the court reversed the trial court's order and remanded the case to the trial court for further proceedings. *Id.*

We cannot discern any difference between the testimony about the oath taken by Cruz in this case and the testimony about the oath taken by the complaint affiant in *Davila*. And even appellee's counsel, at the conclusion of the hearing on appellee's motion to quash and set aside the information, agreed that Cruz "ha[d] the proper swear, oath." As such, appellee's argument that Cruz did not swear the "right" oath before signing the complaint as the affiant, cannot support the conclusion that the complaint was invalid or serve as a basis for granting appellee's motion to quash and set aside the information.

Here, the information and complaint in this case complied with Texas law. Thus, we hold that the trial court erred in granting appellee's motion to quash and set aside the information.

We sustain the State's sole issue.

Conclusion

We reverse the trial court's order granting appellee's motion to quash and set aside the information. We remand the case to the trial court for further proceedings consistent with this opinion.

Julie Countiss
Justice

Panel consists of Chief Justice Radack and Justices Landau and Countiss.

Landau, J., dissenting. Dissenting opinion to follow.

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