Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00294-CR

Shauna Denay **RIPLEY**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 437th Judicial District Court, Bexar County, Texas
Trial Court No. 2013CR0670
Honorable Lori I. Valenzuela, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: October 12, 2016

AFFIRMED

Shauna Denay Ripley appeals the trial court's denial of her pretrial motion to suppress blood test. We affirm.

In the early morning hours of October 26, 2012, Ripley was driving the wrong way on a highway in San Antonio when she hit another vehicle. Ripley was trapped in the driver's seat of her vehicle with life-threatening injuries. The driver of the second vehicle died at the scene of the incident. Detective Foulke, who was investigating the incident, arrested Ripley at the scene for intoxication manslaughter and then had her airlifted to University Hospital for treatment. At the

hospital, Ripley's blood was taken by medical staff for the purpose of treating her injuries. According to Detective Johnson, the police were not able to obtain a separate blood test for legal purposes because Ripley was taken into surgery. Because Ripley was not expected to survive her injuries, she was, according to Detective Johnson, "unarrested" so that the doctors could more easily treat her. Ripley was later released from the hospital and arrested again pursuant to a warrant. Detective Johnson also later secured a warrant to obtain the results of the blood test performed by the hospital.

Ripley was charged with intoxication manslaughter and filed a motion to suppress the results of the hospital blood test. She also filed a motion for discovery relating to the taking of her blood by the hospital. At a pretrial hearing, the trial court denied her motion to suppress. However, the trial court granted her motion for discovery ordering the "State and Defense to attempt to locate information requested from University Hospital." Ripley subsequently pled guilty and was sentenced to eight years' imprisonment and a fine of $1,500 in accordance with a plea-bargain agreement.

On appeal, Ripley argues the trial court erred in denying her motion to suppress because "the blood test results are inadmissible expert testimony which failed to comply with the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny." However, in this case, the trial court did not hold a hearing to determine the reliability of the hospital blood test pursuant to Texas Rule of Evidence 702, *Daubert*, and its progeny *Kelly v. State*, 824 S.W.2d 568 (Tex. Crim. App. 1992). Nor was the trial court required to hold a Rule 702 *Daubert/Kelly* gatekeeping hearing. *Hall v. State*, 297 S.W.3d 294, 298 (Tex. Crim. App. 2009). Instead, the discussions at the pretrial hearing about the identity of the hospital technician who took Ripley's blood related to Ripley's motion for discovery to obtain information from University Hospital. Ripley maintains on appeal that the State could not establish at the

suppression hearing who drew Ripley's blood at the hospital and whether the technique was valid and reliable. However, the State did not need to meet this burden at the suppression hearing. In reversing a court of appeals for applying Texas Rule of Evidence 702 at a suppression hearing, the Texas Court of Criminal Appeals explained that Texas Rule of Evidence 101 "specifically provides that the Rules of Evidence, with the exception of those that concern privileges, do not apply to suppression hearings." *Hall*, 297 S.W.3d at 297. "Thus, evidence that is otherwise inadmissible at trial under the Rules of Evidence may well be admissible at a suppression hearing." *Id.* "[B]ecause Rule 702's requirements, as set out in *Kelly*, do not apply to suppression hearings, there is no threshold admissibility determination under the Rules of Evidence." *Id.* Therefore, the court of criminal appeals held "that the court of appeals erred to conclude that the trial judge, in ruling on the admissibility of the LIDAR technology, as utilized in this case, was required to hold a Rule 702 *Kelly* gatekeeping hearing to determine the reliability of that technology." *Id.* Ripley's argument therefore has no merit.

Ripley next argues that "the blood test results are inadmissible because she was denied her constitutional right to confront and cross examine the expert witness sponsoring those results under *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny." Ripley, however, agreed at the suppression hearing that the blood test results could be considered for purposes of the suppression hearing. At the suppression hearing, the State questioned Detective Johnson about whether he had obtained any medical information about Ripley. Ripley's counsel, anticipating that the State might be attempting to introduce the results of Ripley's blood test taken by the hospital, objected on confrontation clause grounds. After a lengthy discussion, Ripley's counsel explained that she "just didn't want to waive at trial the right to assert [Ripley's] Sixth Amendment rights when it comes to how – like if he testifies to what the lab result at the hospital says her blood level was." Ripley's counsel stated that she did not "want to waive anything pertaining to [her] objection to the

hospital's lab result when it comes to [the] trial with twelve jurors in the box." The parties then agreed that the hospital blood test results would be admissible for "purposes of this hearing only" and Ripley would not waive any objections to the evidence at trial. Therefore, the consideration of the blood test results by the trial court at the suppression hearing was agreed to by Ripley, and any objection to those results being considered by the trial court at the suppression hearing on confrontation clause grounds was waived by Ripley.

Because Ripley has not shown the trial court erred in denying her motion to suppress, we affirm the judgment of the trial court.

Karen Angelini, Justice

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