



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00030-CR

ROBERT MICHAEL ALFORD

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM COUNTY CRIMINAL COURT NO. 2 OF DENTON COUNTY
TRIAL COURT NO. CR-2014-06845-B

MEMORANDUM OPINION¹

Appellant Robert Michael Alford appeals his conviction for driving while intoxicated (DWI). In a single issue, he argues that his Sixth Amendment confrontation rights were violated because the phlebotomist who drew his blood did not testify at trial. Binding and persuasive authority holds otherwise. We will affirm.

¹See Tex. R. App. P. 47.4.

Corinth police officers were responding to a suspicious-person call one night when they observed Alford driving without his headlights on. They initiated a stop and noticed that Alford, who admitted to consuming alcohol, had bloodshot eyes, smelled of alcohol, and slurred his words. Officers arrested Alford for DWI and gave him a written statutory warning before requesting a specimen of his blood. Alford consented to the request, and Tanaka Powell, a phlebotomist at Denton Regional Medical Center, performed the draw. Nirav Kumar, a forensic scientist at the Garland Department of Public Safety Laboratory, tested the blood—which had .17 grams of alcohol per hundred milliliters of blood—and documented the results in a written report. At trial, Kumar testified, but Powell did not.² Rather, Powell’s supervisor, Timothy Henderson, testified that Powell is a trained phlebotomist who has the knowledge and ability to properly collect blood samples, but he acknowledged that he could only assume that she followed the proper procedures in drawing Alford’s blood because he was not present when she did so. A jury convicted Alford of DWI, and the trial court sentenced him to 250 days in jail and a \$700 fine but suspended imposition of the jail sentence and placed Alford on community supervision for twenty months.

Alford suffered no confrontation violation when Henderson testified instead of Powell because, for Sixth Amendment purposes, neither Henderson’s nor

²Powell was on medical leave from work.

Powell's testimony was necessary. This court and several others have held that while blood test results are testimonial, if the person who drew the defendant's blood neither played any part in its analysis nor contributed to the report documenting the results, the Confrontation Clause does not require that person to testify before the results may be admitted into evidence. See *Hall v. State*, No. 02-13-00597-CR, 2015 WL 4380765, at *1–3 (Tex. App.—Fort Worth July 16, 2015, no pet.) (mem. op, not designated for publication); *State v. Guzman*, 439 S.W.3d 482, 488 (Tex. App.—San Antonio 2014, no pet.); *Adkins v. State*, 418 S.W.3d 856, 861–62 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). Here, Powell drew Alford's blood but made no contribution to its analysis or the report documenting the results. Instead, Kumar analyzed Alford's blood and was solely responsible for the contents of his lab report. He testified and was subject to cross-examination. The Confrontation Clause requires nothing more. See *Hall*, 2015 WL 4380765, at *3, *Adkins*, 418 S.W.3d at 862; see also *Bullcoming v. New Mexico*, 564 U.S. 647, 651–52, 131 S. Ct. 2705, 2709–10 (2011) (holding that defendant's confrontation rights were violated when the prosecution called a substitute analyst to testify about a forensic lab report showing that the defendant was intoxicated, instead of the analyst who certified the report); *Burch v. State*, 401 S.W.3d 634, 637 (Tex. Crim. App. 2013) (holding that defendant's confrontation rights were violated when the State called the person who reviewed a lab report certifying that certain evidence contained cocaine, instead of the analyst who certified the report); see also *Melendez-Diaz v. Massachusetts*, 557

U.S. 305, 309, 311 n.1, 129 S. Ct. 2527, 2531–32 (2009) (declining to construe Confrontation Clause as requiring “that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution’s case”).

Accordingly, we overrule Alford’s sole issue and affirm the trial court’s judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: January 26, 2017