# In The
# Court of Appeals
# Seventh District of Texas at Amarillo

No. 07-15-00282-CR
No. 07-15-00283-CR

JEENA ROBERTS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 140th District Court
Lubbock County, Texas
Trial Court Nos. 2010-429,389 and 2010-429,390, Honorable Jim Bob Darnell, Presiding

June 28, 2017

## MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

We here resolve the out-of-time appeals granted appellant Jeena Roberts[1] from her convictions of the offenses of intoxication assault and intoxication manslaughter.[2]

[1] On appellant's petition for writ of habeas corpus, and on the recommendation of the trial court, the Texas Court of Criminal Appeals granted appellant the opportunity to file an out-of-time appeal. *See Ex parte Roberts,* Nos. WR-81,806-03, 81,806-04, 2015 Tex. Crim. App. Unpub. LEXIS 405 (Tex. Crim. App. 2015).

[2] TEX. PENAL CODE ANN. §§ 49.07(a)(1); 49.08 (West 2016).

Appellant pleaded guilty in November 2012 after the trial court denied her pretrial motions to suppress evidence. Consistent with the State's recommendation, she received concurrent sentences of eight years and fifteen years of imprisonment. On appeal, she presents three issues, two challenging the trial court's denial of her motions to suppress, and the third contending the court erred by denying her a new trial. We will overrule the issues and affirm the trial court's judgments.

## Background

Both of appellant's charges arose from an October 2010 vehicle collision. Appellant filed a motion to suppress in each case, seeking an order requiring the exclusion from evidence of blood-alcohol test results and of statements she made to police officers. The trial court held a hearing in July 2012, after which it denied appellant's motions. Thereafter, as noted, appellant pleaded guilty before the court in each cause.

According to what appellant told officers, on the day of the wreck, appellant went on a field trip with her Texas Tech University classmates. The record shows the students travelled by bus and appellant consumed alcohol while on the bus. When they arrived back in Lubbock, appellant got into her car to drive home. On the way, she collided with another vehicle, causing a passenger in that vehicle to be ejected. The passenger died at the scene.[3]

Lubbock police officer Nicholas Knowlton was the only witness called to testify at the hearing on appellant's motion to suppress. A recording from the camera in his

---

[3] Another person suffered serious bodily injury, forming the basis of the intoxication assault charge.

patrol car also was admitted into evidence. Three ambulances and several other emergency and law enforcement vehicles are visible in the video and most have their emergency lights blinking.

Knowlton testified his first impression of the scene was of an "unknown female lying on the street." He concluded that because the emergency personnel were not attending to the female, she was "already deceased." Knowlton told the court he saw "one vehicle that was flipped over and sitting on its roof. Behind that vehicle was a black Chrysler 300." Knowlton told the court he made contact with appellant as she sat in the driver's seat of the Chrysler. As Knowlton asked appellant some questions, he noted a strong odor of alcohol on her breath and noted she responded slowly to his questions. He asked her several times for her driver's license, eventually finding it on the floorboard. Knowlton noted appellant's speech was not natural and opined it was "slurred."

After several minutes, Knowlton decided he need to "continue [his] investigation" so he escorted appellant to his patrol car, parked nearby. He told the court appellant was "unsteady" and "combative. She tried to pull away from me and walk in another direction." He also testified appellant had been combative and uncooperative with emergency personnel who were trying to assess her. She did not allow them to place a neck brace. When they reached the car, Knowlton attempted to place appellant in the back of the car "[j]ust to secure her in a position where [he could] continue his investigation." Appellant continued to be belligerent and tried to pull away. He handcuffed her. He said he placed handcuffs on appellant to "secure her" and so "she's not flailing her arms around." These actions are not visible on the patrol car video but the interaction between appellant and Knowlton can be heard via the audio recording.

After being handcuffed, appellant told Knowlton she had been on a field trip and admitted to drinking alcohol, to speeding, and to being "out of control" when the collision occurred. Appellant is not visible on the patrol car video at the time she makes these statements but her conversation with Knowlton is audible.

Knowlton testified he then drove to a nearby parking lot "to get her further away from the scene, possibly do standardized field sobriety tests." He continued, "[w]e wanted to get her away from the scene, away from all the lights and to a flat surface where we could continue our investigation."[4] Before asking appellant for a specimen of her blood, the officer read appellant the warnings required by the Texas Transportation Code.[5] Appellant refused to provide the specimen. Knowlton also read appellant her *Miranda* and article 38.22[6] warnings and she orally waived her right to remain silent. Based on his observations and appellant's admissions, Knowlton arrested appellant for intoxication manslaughter.

Knowlton testified he took appellant to the hospital. She continued to exhibit aggressive and uncooperative behavior while her blood was being drawn. During her evaluation, she told medical personnel she drank "five Budweiser Select beers and a shot of Bacardi" on the bus and then attempted to drive home. Appellant was later transported to the city jail.

[4] Knowlton did not perform the field sobriety tests because, at the parking lot, appellant complained her head hurt.

[5] TEX. TRANSP. CODE ANN. § 724.012 (West 2017).

[6] *Miranda v. Arizona,* 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (U.S. 1966); TEX. CODE CRIM. PROC. ANN. art. 38.22, § 2 (West 2017).

## Analysis

### Motions to Suppress

#### Standard of Review

We review a ruling on a motion to suppress evidence for abuse of discretion. *Shepherd v. State,* 273 S.W.3d 681, 684 (Tex. Crim. App. 2008) (citation omitted). In so doing, we view the facts in the light most favorable to the trial court's decision. *Id.* (citation omitted). We give almost total deference to a trial court's express or implied determination of historical facts and review *de novo* the court's application of the law of search and seizure to those facts. *Id.* (citation omitted).

The trial court is the "sole trier of fact and judge of credibility of the witnesses and the weight to be given to their testimony." *Fears v. State,* 491 S.W.3d 884, 887 (Tex. App. Houston [1st Dist.] 2016, pet. ref'd) (citing *St. George v. State,* 237 S.W.3d 720, 725 (Tex. Crim. App. 2007)). The trial court may choose to believe or disbelieve any part or all of a witness's testimony. *Id.* (citation omitted). We sustain the trial court's ruling if it is reasonably supported by the record and correct on any theory of law applicable to the case. *Id.* (citing *Laney v. State*, 117 S.W.3d 854, 857 (Tex. Crim. App. 2003)).

#### Motion to Suppress Evidence of Blood Draw

In her first issue, appellant contends the trial court erred in denying her motion to suppress the evidence of the results of the blood draw conducted at the hospital. She argues the trial court should have suppressed the evidence because the State failed to

obtain a warrant for the blood draw and did not meet its burden of showing exigent circumstances existed to justify taking her blood over her objection without a warrant.

The State argues appellant's first issue is not preserved for appellate review because it is not the same contention she presented to the trial court. In order to preserve an issue for appeal, a timely objection must be made that states the specific ground of objection, if the specific ground was not apparent from the context. *Douds v. State,* 472 S.W.3d 670, 674 (Tex. Crim. App. 2015). Rule of Appellate Procedure 33.1(a) provides that, "[a]s a prerequisite to presenting a complaint for appellate review, the record must show that . . . the complaint was made to the trial court by a timely request, objection, or motion" stating the grounds for the ruling sought "with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context." *Id.,* quoting TEX. R. APP. P. 33.1(a)(1)(A). There are two reasons the law requires a timely, specific objection. First, it informs the court of the basis of the objection and affords the judge an opportunity to rule on it. *Id.* Second, it affords opposing counsel an opportunity to respond to the complaint. *Id.* A timely objection will enable the trial court to hear the complaint when the court is in a proper position to do something about it. *See Resendez v. State*, 306 S.W.3d 308, 313 (Tex. Crim. App. 2009). Issues on appeal must correspond or comport with objections and arguments made at trial. *Wright v. State,* 154 S.W.3d 235, 241 (Tex. App.—Texarkana 2005, pet. ref'd) (citing *Dixon v. State,* 2 S.W.3d 263, 273 (Tex. Crim. App. 1998)).

On appeal, appellant relies on the United States Supreme Court's 2013 opinion in *Missouri v. McNeely*,[7] addressing the requirements under the Fourth Amendment for

[7] 569 U.S. __, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013). The Court rejected the proposition that the natural dissipation of alcohol from the bloodstream *per se*

warrantless blood draws. She cites also our 2014 opinion in *Sutherland v. State,* 436 S.W.3d 28 (Tex. App.—Amarillo 2014, pet. ref'd), and the Texas Court of Criminal Appeals' opinion in *State v. Villarreal,* 475 S.W.3d 784 (Tex. Crim. App. 2015), both also concerning the circumstances under which a nonconsensual blood draw may be taken without a warrant. None of those opinions, of course, were available to counsel or the trial court at the time of the July 2012 hearing on appellant's motion.

In *Douds*, the Court of Criminal Appeals took note that the motion-to-suppress hearing in that case also took place well before the *McNeely* opinion was issued, and that the parties therefore would not have been aware of its holding or its implications for the constitutionality of mandatory blood draws conducted under the Texas Transportation Code. 472 S.W.3d at 672 n.7. The court went on to hold that "isolated statements globally asserting that a blood draw was conducted without a warrant" were not, in the context of the entire record in that case, sufficient to apprise the trial court that it must consider whether there were exigent circumstances authorizing the warrantless blood draw. *Id*. at 674. Instead, it held, Douds' arguments in that case fairly presented "a challenge to the admissibility of the blood evidence only on the basis of [the officer's] application of the mandatory-blood-draw statute to appellant's

---

demonstrates an exigent circumstance authorizing warrantless blood draws in DWI cases. Under *McNeely,* to determine whether an officer faced an emergency or whether exigent circumstances existed to justify a warrantless seizure in a DWI investigation, courts must consider the totality of the circumstances and analyze the facts on a case-by-case basis. 569 U.S. __, 133 S. Ct. at 1558-59. *McNeely* requires an officer to identify factors that suggest he faced an emergency or unusual delay in obtaining a warrant. 569 U.S. __, 133 S. Ct. at 1567. The Court further explained that "[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *Id.* at 1561. *See also Evans v. State*, No. 14-13-00642-CR, 2015 Tex. App. LEXIS 1237, at *11-13 (Tex. App.—Houston [14th Dist.] Feb. 10, 2015, pet. ref'd) (mem. op., not designated for publication).

case . . . nothing about appellant's counsel's arguments indicated that appellant was further challenging the constitutionality of the search based on the fact that it had been conducted without a warrant." *Id.* at 676. The State contends we have the same situation before us, and we agree.

Appellant's motion to suppress the blood test evidence contained the contention that the evidence "was the result of a search without a valid search or arrest warrant . . . ." The fact-specific paragraph of the motion, however, cited Transportation Code section 724.012(a)[8] and asserted that appellant was not "validly arrested" because officers "lacked sufficient probable cause," "observed insufficient driving facts," and "did not observe [appellant] drive or operate a motor vehicle," and because "the totality of the circumstances do not amount to probable cause for an arrest or blood draw."

At the hearing on the motions, almost all the attention was on the motion to suppress appellant's statements; the blood-evidence suppression was directly addressed only in a single sentence in counsel's introduction, stating, "[t]he [m]otion to [s]uppress covers the blood draw, which we are contending was not supported by probable cause." Counsel then moved immediately on to address the suppression of appellant's statements.

At no time did appellant, or the State, mention exigent circumstances to the trial court. No argument or evidence told the trial court anything about the availability of a warrant, nor did either party make argument concerning any of the factors by which exigent circumstances justifying warrantless blood draws have been evaluated. *See,*

[8] TEX. TRANSP. CODE ANN. § 724.012 (West 2017).

*e.g., Sutherland*, 436 S.W.3d at 40-41 (assessing evidence of availability of warrant for blood draw in Travis County). We see no reason why the trial court would have understood appellant's contention to extend beyond the officers' compliance with the requirements of the Transportation Code. We thus agree with the State that appellant's argument the blood draw violated the Fourth Amendment because no warrant was obtained and no exigent circumstances were shown presents nothing for our review. *Douds,* 472 S.W.3d at 677. We overrule appellant's first issue.

Motion to Suppress Appellant's Statements

By her second issue, appellant presents the contention the trial court erred by not suppressing statements she made to officer Knowlton before he gave her the warnings required by *Miranda* and article 38.22.

Appellant's argument focuses on statements she made in response to questions Knowlton asked during an approximate two-minute period immediately after Knowlton handcuffed her and placed her in the car. Appellant's brief quotes Knowlton's questions, and her responses, as taken from the recording. Our understanding of the questions and responses, resulting from our review of the recording, differs only in minor respects from appellant's quotations. As we hear the recording,[9] Knowlton asked, "Are you aware what happened today? You tell me what happened. What happened?" Appellant responded, "I was driving and I was out of control." Knowlton asked, "Driving out of control?" She replied, "Well, I was speeding." Knowlton asked

[9] At a point, Knowlton turned the patrol car's camera around so appellant is visible in the back seat. At the time Knowlton was asking the questions we quote, the camera still was facing forward and appellant is not visible.

how fast she was speeding and she responded, “fast enough to make an accident.” He then asked, “Have you been drinking today?” She answered, “kind of.”

The trial court held that appellant was not in custody at the time she made those statements, and the warnings were therefore not yet required. At the hearing on her motion to suppress, it was appellant’s burden to prove the challenged statements were the product of custodial interrogation. *Herrera v. State*, 241 S.W.3d 520, 526 (Tex. Crim. App. 2007) (“the State has no burden at all unless ‘the record as a whole clearly establishe[s]’ that the defendant’s statement was the product of custodial interrogation by an agent for law enforcement”) (citations omitted).

A trial judge’s ultimate “custody” determination presents a mixed question of law and fact. *Herrera*, 241 S.W.3d at 526. In our review, we must give almost total deference to a trial judge’s “custody” determination when the questions of historical fact turn on credibility and demeanor, but when they do not, we review the determination *de novo*. When a trial judge denies a motion to suppress and, as occurred in this case, does not enter findings of fact,[10] we view the evidence in the light most favorable to the trial court’s ruling and we assume that the court made implicit findings of fact that support its ruling as long as those findings are supported by the record. *Id.* at 526-27 (internal quotations and citations omitted).

[10] The trial court’s order denying appellant’s motion to suppress the statements contains some statements that might be considered findings of fact. The order states that appellant “was hand-cuffed when she was placed in the patrol vehicle at approximately 7:18 pm,” and refers to statements she made “in response to questions by Officer Knowlton.” The State disputes neither that appellant was handcuffed when she was placed in the patrol car, nor that she made some statements in response to the officer’s questions. Otherwise, however, the record contains no findings of fact.

"A person is in 'custody' only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest." *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996) (citing *Stansbury v. California,* 511 U.S. 318, 322, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994)). "The 'reasonable person' standard presupposes an *innocent* person." *Id*. (citing *Florida v. Bostick*, 501 U.S. 429, 438, 115 L. Ed. 2d 389, 111 S. Ct. 2382 (1991) (emphasis in original). We apply the standard on an *ad hoc*, case-by-case basis, looking only at the objective factors surrounding the person's detention. *State v. Ortiz,* 382 S.W.3d 367, 372 (Tex. Crim. App. 2012). A person's noncustodial encounter with police may be escalated into custodial interrogation by subsequent events. *State v. Stevenson*, 958 S.W.2d 824, 828 (Tex. Crim. App. 1997); *see Dowthitt*, 931 S.W.2d at 257 (concluding defendant interrogated over several-hour period was in custody from the point he made a critical admission).

Appellant contends her answers to Knowlton's questions were incriminating[11] and were made in response to interrogation. With respect to her custodial status, appellant's argument implicates two of the situations the court described in *Dowthitt* that may constitute custody of a detainee. *See Dowthitt*, 931 S.W.2d at 255; *Ortiz*, 382 S.W.3d at 376 (discussing *Dowthitt* categories).

*Dowthitt*'s fourth situation describes circumstances in which there is probable cause to arrest a suspect and law enforcement officers do not tell the suspect that she

[11] The State argues that the court's denial of appellant's motion to suppress the challenged statements was harmless beyond reasonable doubt because she admitted the same facts after the *Miranda* warnings were given her and because her intoxicated state and other facts were clearly demonstrated. Because we conclude the trial court did not err, we need not address the subject of harm. *See, e.g., Paulea v. State*, 278 S.W.3d 861, 867 (Tex. App.—Houston [14th Dist.] 2009, pet. ref'd) (harm analysis of erroneous denial of motion to suppress followed by guilty plea).

is free to leave. 931 S.W.2d at 255. The officers' knowledge of probable cause must be manifested to the suspect, which may occur if information substantiating probable cause is related by the officers to the suspect or by the suspect to the officers. Custody is established if the manifestation of probable cause, combined with other circumstances, would lead a reasonable person to believe that she is under restraint to the degree associated with an arrest. *Id*.

From her slurred speech, odor of alcohol, confused responses and difficulty walking, Knowlton formed the opinion she lacked the normal use of her faculties. He likely had probable cause to believe she was guilty of driving while intoxicated. *See Lewis v. State*, 72 S.W.3d 704, 712 (Tex. App.—Fort Worth 2002, pet. ref'd) (finding officer had probable cause to arrest defendant for DWI when he acknowledged he was car's driver and officer observed he stumbled, had wet spot on pants and had the odor of alcohol). And he did not tell her she was free to leave. But we can see nothing in the communication between appellant and Knowlton that would have manifested the existence of probable cause to appellant. Not until the end of the challenged statements did either of them make mention of alcohol.

In her analysis of the circumstances, appellant refers to her exchanges with Knowlton during which he told her a person had died in the accident. He also responded affirmatively to her questions asking whether she had "killed someone," and whether "[i]t was completely my fault." In response to another inquiry, Knowlton responded, "You told me you were speeding, and that you were out of control and that you caused the accident." Her brief concludes, "Knowlton believed that [a]ppellant was intoxicated, that she caused the accident, and that someone had died as a result of the accident; and Knowlton made his beliefs known to [a]ppellant while she was handcuffed

in the back of his patrol car." These exchanges, however, occurred while Knowlton was driving with appellant in the back seat, after she made the statements she contends should have been suppressed.[12]

Appellant's issue also implicates the first situation described in *Dowthitt*. 931 S.W.2d at 255. Appellant contends she was in custody when Knowlton placed her in handcuffs in the back of his patrol car. She argues, and we agree, that the record shows she objected both to being handcuffed and to entering the car's back seat. Her confinement to the closed back seat, handcuffed, she contends, physically deprived her of her freedom of action in a significant way, to the degree associated with an arrest. *Id*. The State argues that Knowlton's placing appellant in handcuffs, and in the back of the patrol car, in these circumstances did not place her in custody.

Texas courts have long held that a suspect's placement into the back seat of a police car does not, *per se*, equate to custody under *Miranda*. *See Keaton v. State,* 755 S.W.2d 209, 210 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd). *See also State v. Saenz*, 411 S.W.3d 488, 498 (Tex. Crim. App. 2013) (stating in analysis of fourth situation of *Dowthitt*, "an officer does not necessarily manifest to a suspect that there is probable cause to arrest him merely by silently placing him in the back of a patrol car when there is probable cause to arrest"). Likewise, in Texas handcuffing is not a conclusive indicator of custody for Fifth Amendment purposes, but only a relevant factor in the determination. *Ortiz,* 382 S.W.3d at 374; *Raymundo v. State,* No. 07-14-00439-CR, 2015 Tex. App. LEXIS 8827 (Tex. App.—Amarillo August 21, 2015, no pet.) (mem. op., not designated for publication).

[12] And, the statements made during this exchange were not themselves the product of interrogation. Appellant volunteered the questions she posed to Knowlton.

Appellant argues the nature of her detention was coercive. We disagree. A reasonable person in appellant's situation would understand she could not remain seated in her wrecked vehicle. The video depicts a busy accident scene. In the aftermath of a fatal accident, a driver involved in the collision certainly may have a "sense of vulnerability,"[13] but that sense is more likely brought about by the accident itself than by contact with police or other emergency personnel who respond to the scene. The atmosphere is more like that of a traffic stop described in *Berkemer,* 468 U.S. at 438-39 than a coercive police-dominated interrogation. As the presence of emergency medical personnel demonstrates in this case, police contact with suspects at an accident scene like this one is public.

In such circumstances, we see little significance to an officer's movement of a driver who refuses medical care to the officer's patrol car parked at the accident scene. Even after her placement in the patrol car, Knowlton immediately called an emergency medical technician over to examine appellant when she again complained of head pain. Nor will we say that Knowlton's handcuffing of appellant would have placed a reasonable person in her position under the belief she was in custody. Appellant was uncooperative and resistant to assistance. The court in *Bates v. State*, 494 S.W.3d 256, 271 (Tex. App.—Texarkana 2015, pet. ref'd), found the defendant "surely was in custody at the time police officers handcuffed him, if not before." In its discussion of a Confrontation Clause issue, the court noted that Bates "quickly acquiesced to law enforcement's authority, and he posed no danger to those around him." *Id*. at 266. Appellant's conduct here was much different. In these post-accident circumstances, we

[13] *See Berkemer v. McCarty*, 468 U.S. 420, 438, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984).

find a reasonable innocent person would not, merely because an officer restrained her flailing arms in handcuffs, believe they were in custody as though arrested.[14] We agree with the State that Knowlton's actions were instead typical of an investigative detention. *See Koch v. State*, 484 S.W.3d 482, 491 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (concluding, on facts presented, that trial court did not abuse its discretion by finding defendant's encounter with officers remained an investigatory detention and was not converted to arrest on being placed in handcuffs in back of patrol car); *cf*. *Balentine v. State,* 71 S.W.3d 763, 771 (Tex. Crim. App. 2002) (investigative detention did not evolve into an arrest simply because appellant was escorted to the patrol car and handcuffed). For the reasons described, we find appellant failed to demonstrate that the record as a whole clearly established the challenged statements were the product of custodial interrogation.

We find the record supports the conclusion Knowlton's seizure of appellant was an investigative detention and none of appellant's statements were the result of custodial interrogation. Accordingly, the trial court did not abuse its discretion in overruling appellant's motion to suppress her statements. We resolve her second issue against her.

Motion for New Trial

After the Court of Criminal Appeals issued its mandate in July 2015, granting her habeas corpus relief, appellant filed in the trial court a motion for new trial. The motion

[14] For the same reason, we are not persuaded that *Alford v. State,* 22 S.W.3d 669 (Tex. App.—Fort Worth 2000, pet. ref'd) supports a conclusion appellant was in custody when handcuffed.

asserted that her guilty plea was not made knowingly and voluntarily. The motion was overruled by operation of law.

In her third issue on appeal, appellant contends the trial court erred in denying her motion for new trial. As in her motion, she asserts her guilty pleas were not voluntarily entered because they were based on the false belief that the rulings on her pretrial suppression motions were preserved for appeal. She argues she was told during the plea hearing that she would be permitted to appeal. This belief, she contends, led her to decide to plead guilty. However, when she received the trial court's certification, it indicated she could not appeal. The State asserts the trial court properly denied appellant's motion for new trial because she failed to satisfy her burden to show her pleas of guilty were involuntary. We agree.

In support of her contention, appellant analogizes to cases like *Broddus v. State*, 693 S.W.2d 459 (Tex. Crim. App. 1985). There, under law in effect at the time, the defendant was deprived of the opportunity to appeal the denial of his motion to suppress even though he, his counsel, the prosecutor and the trial judge were operating under a false assumption he could do so after his plea of guilty. *Id*. at 460. The opinion makes clear that, despite his understanding otherwise, the defendant was not entitled to appeal the denial of his motion to suppress. *Id*. at 461. The court held his plea was not entered voluntarily or knowingly, and reversed his conviction for a new trial.

Here, before accepting her plea of guilty, the trial court properly admonished appellant of her rights.[15] The trial court explicitly told her in open court that she had the right to appeal "any matters that have been raised by written motion prior to trial today

[15] TEX. CODE CRIM. PROC. ANN. art. 26.13 (West 2015).

that have been heard by the Court . . . ." The same admonition appears in the written admonishments signed by appellant.

The difficulty over her original appeal appears to stem from the trial court's certification of her right to appeal under rule of appellate procedure 25.2(d), which stated the case "is a plea-bargain case and the Defendant has NO right of appeal." *See* TEX. R. APP. P. 25.2(d). As the trial court stated in its findings of fact in her habeas corpus proceeding, that certification was erroneous. For reasons unclear, and so far as the record shows, no attempt was made to obtain a corrected certification. *See* TEX. R. APP. P. 25.2(f), 37.1.

Appellant filed notice of appeal of her January 2013 convictions in July 2013. We dismissed the appeals for lack of jurisdiction because the notice of appeal was late. *See Roberts v. State,* Nos. 07-13-00214-CR, 07-13-00215-CR, 2013 Tex. App. LEXIS 9050 (Tex. App.—Amarillo July 23, 2013).

Our opinion dismissing her appeal pointed out to appellant the possibility of obtaining an out-of-time appeal, and appellant proceeded to do just that. *See Ex Parte Roberts,* Nos. WR-81,806-03, WR-81,806-04, 2015 Tex. Crim. App. Unpub. LEXIS 405 (Tex. Crim. App. 2015) (granting appellant's out-of-time appeal). She now has received the appellate review of denial of her motions to suppress. We agree with the State that the holding of *Broddus*, 693 S.W.2d at 461, and similar cases based on former law, are inapplicable to appellant, and cannot support her third appellate issue. The issue is overruled.

## Conclusion

Having resolved each of appellant's issues against her, we affirm the judgments of the trial court.

James T. Campbell
Justice

Do not publish.