In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00183-CR

ANGEL MUNGIA, APPELLANT

V.

THE STATE OF TEXAS

On Appeal from the 251st District Court
Potter County, Texas,
Trial Court No. 074738-C-CR, Honorable Ana Estevez, Presiding

April 22, 2022

MEMORANDUM OPINION

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

We have before us the appeal of Angel Mungia's felony conviction for thrice driving while intoxicated. He pled guilty to the offense after the trial court denied his motion to quash the indictment. Via the latter, the State charged him with the aforementioned offense. He moved to quash it, believing himself entitled to dismissal because limitations expired.[1] The trial court denied the motion. That resulted in he and the State agreeing

[1] Chapter 12 of the Texas Code of Criminal Procedure lists the relevant statutes of limitations for various felonies. The specific crime with which the State charged appellant lacked

to a plea bargain. The trial court accepted his guilty plea, convicted him of the crime, and levied sentence commensurate with the bargain. It also permitted him to appeal the denial of his motion to quash. Here, appellant again raises the issue of limitations and asks us to quash the indictment. We affirm.

Background

On August 10, 2017, peace officers stopped appellant on suspicion of driving while intoxicated. That resulted in securing a search warrant to test the alcohol content of his blood, which test revealed a level of .218. With that information, a police officer subsequently executed a "Complaint" on November 1, 2017, through which the officer accused appellant of driving while intoxicated after previously being convicted twice for the same offense. The "Complaint" bears a November 1, 2017 file stamp of the Potter County District Clerk. Though issuance of an arrest warrant followed, appellant's actual arrest occurred about three years later, that is, on September 9, 2020. One more month lapsed before a grand jury presented an indictment on October 9, 2020, encompassing the very offense alleged in the earlier "Complaint."

No one denies that more than three years lapsed between appellant's commission of the underlying offense and the State's presentment of the indictment. Dispute arose concerning whether the initial "Complaint" tolled limitations and thereby insulated the accusation from dismissal due to the alleged untimely nature of the indictment. Appellant argues that it did not. The State says otherwise, relying on article 12.05(b) of the Texas

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an expressed limitations period. So, no one disputes that the applicable period was three years from the date of the offense. TEX. CODE CRIM. PROC. ANN. art. 12.01(8) (stating that for "all other felonies" to which a specific limitations period is not assigned, the period is three years).

Code of Criminal Procedure. It provides that "[t]he time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation." TEX. CODE CRIM. PROC. ANN. art. 12.05(b). Allegedly, the "Complaint" served to toll the limitations period applicable to the felony with which the State ultimately charged appellant. We side with the State but not for the reasons it proffers.

Two instruments vest a district court with jurisdiction over a felony. They are an information or indictment. TEX. CONST. art. V, § 12(b) (stating "[t]he presentment of an indictment or information to a court invests the court with jurisdiction of the cause"). A complaint is neither. *See Ex parte Ulloa*, 514 S.W.3d 756, 760 (Tex. Crim. App. 2017) (noting that a complaint is not one of the two documents listed in Article V, § 12 that vest a trial court with jurisdiction over a felony upon presentment). Nevertheless, our Court of Criminal Appeals has held that a complaint may be the equivalent of an information for purposes of tolling limitations applicable to a felony.

In *State v. Drummond*, the court said that "a single document can serve as an information and the complaint supporting that information so long as the statutory requirements for both are met, and the accuser is not the same person as the prosecutor who brought the charges." 501 S.W.3d 78, 83 (Tex. Crim. App. 2016). In other words, a complaint can be considered an information if the former has the requisites of the latter. Because the complaint did in *Drummond,* "the filing of the information-complaint . . . tolled the statute of limitations." *Id.* at 84.

As itemized in *Drummond*, the requisites of an information are that (1) the instrument commence with "In the name and by authority of the State of Texas"; (2) it appears to have been presented in a court having jurisdiction of the offense set forth; (3)

it appears to have been presented by the proper officer; (4) it contains the name of the accused, or state that his name is unknown and give a reasonably accurate description of him; (5) it appears that the location of the offense is within the jurisdiction of the court where the information is filed; (6) the time of the offense mentioned in the instrument is some date before the filing of the information; (7) the offense mentioned does not appear to be barred by limitations; (8) the instrument sets forth the offense in plain and intelligible words; (9) it concludes with, "Against the peace and dignity of the State"; and (10) it is signed by the district or county attorney, officially. TEX. CODE CRIM. PROC. ANN. art. 21.21. Most, but not all, of those elements appear within the "Complaint" at bar. It (1) began with the phrase "In the name and by the authority of the State of Texas"; (2) was filed with the district clerk; (3) contains the name of the accused; (4) mentions Potter County as the situs of the offense; (5) avers that the offense was committed prior to the filing of the complaint; (6) uses plain and intelligible words to describe the offense; and (7) concludes with "Against the peace and dignity of the State."

Yet, while the document carried a signature of an assistant district attorney, the latter did not sign it as the person charging appellant with the crime described therein. Eric Vaughn signed it in that capacity. Rather, the assistant district attorney acted akin to a notary. That is, he witnessed Vaughn's act of swearing to the veracity of the allegations within the complaint. There is a difference between signing as one levying a charge against another and signing as an officer on a jurat. The former is elemental to the presentment requirement. *Ex parte Thomas*, 234 S.W.3d 656, 663 (Tex. App.—Beaumont 2007, no pet.) (wherein the county attorney signed the purported information as a witness to the signature of another and stating that "[a]lthough the county attorney

signed the instruments, the distinction between a county attorney's signature as a charging official and an officer on a jurat is implicit in the presentment requirement"). A prosecutor affixing his signature to a charging document for purposes of illustrating he witnessed another levy the charge (i.e., as an officer on a jurat) is not the equivalent of signing the complaint "officially." TEX. CODE CRIM. PROC. ANN. art. 21.21(9) (requiring that the information be "signed by the district or county attorney, officially"). Again, in that circumstance, one can argue that the prosecutor is not presenting the charge to the appropriate judicial body but rather is acting as a mere witness to someone's signature.[2]

Nevertheless, we have been told that the lack of a signature from a charging instrument does not render the instrument invalid. *See Riney v. State*, 28 S.W.3d 561, 566 (Tex. Crim. App. 2000) (holding that the absence of the grand jury foreperson's signature was of no consequence and unessential to the validity of the indictment); *Ex parte Thomas*, 234 S.W.3d at 663 (holding that a complaint containing the requisites of an information except for a second signature by the county attorney as a charging official remained susceptible to consideration as an information); *Falana v. State*, No. 02-07-00065-CR, 2007 Tex. App. LEXIS 9608, at *7–9 (Tex. App.—Fort Worth Dec. 6, 2007, no pet.) (not designated for publication) (stating that "[t]he lack of a required signature under an indictment or information is not fatal"). Though defective and subject to objection, it nonetheless vests the appropriate court with jurisdiction if two other circumstances occur.

[2] Whether the same omission appeared in the complaint before the *Drummond* court is unclear. The court did not mention it when observing that the complaint had the elements of an information. Yet, if the document were truly a complaint issued to support an information, then it most likely mirrored the format of the "Complaint" before us. That is, it was just "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 (so describing a complaint used to support an information).

First, it must identify the accused and provide adequate notice of the charge against him. *Jenkins v. State*, 592 S.W.3d 894, 901–02 (Tex. Crim. App. 2018). The November 1, 2017 "Complaint" did that, and no one at bar argued otherwise. Second, the instrument must be properly presented to the court. *Helsley v. State*, No. 07-15-00350-CR, 2017 Tex. App. LEXIS 1986, at *1–2 (Tex. App.—Amarillo Mar. 8, 2017, pet. ref'd) (mem. op., not designated for publication) (stating that the presentment of an indictment or information to a court invests it with jurisdiction of the case). Filing it with either the judge or clerk of the court satisfies that requirement. *State v. Dotson*, 224 S.W.3d 199, 204 (Tex. Crim. App. 2007) (involving an indictment); *Helsley*, 2017 Tex. App. LEXIS 1986, at *1–2 (involving an indictment); *accord Williamson v. State,* No. 09-14-00302-CR, 2016 Tex. App. LEXIS 509, at *5–6 (Tex. App.—Beaumont Jan. 20, 2016, no pet.) (mem. op., not designated for publication) (involving an information). Moreover, a clerk's original file stamp on the instrument evinces such a filing. *Mayes v. State*, 536 S.W.3d 102, 107 (Tex. App.—Amarillo 2017, pet. ref'd). Here, the "Complaint" carries the file stamp of the Potter County District Clerk, which stamp mentions the filing date of November 1, 2017. And, while the face of the instrument may omit reference to the cause being assigned to a particular court, that matters not. When there is more than one district court in the county, such as Potter County, the charging instrument need not show on its face in which district court it was presented. *Roberts v. State*, 489 S.W.2d 113, 114–15 (Tex. Crim. App. 1972); *Queen v. State*, 701 S.W.2d 314, 316 (Tex. App.—Austin 1985, pet. ref'd) (per curiam).

Simply put, we follow the lead of *Drummond*. The "Complaint" can be read as having the characteristics of an information. And though defective if considered an

information, the defects do not deprive the district court of jurisdiction over the felony alleged within the instrument. Moreover, the district clerk received the document and filed it long before the three-year limitations period expired. Thus, it tolled limitations until the State presented the ensuing indictment.[3]

We find no error with the trial court's decision, overrule appellant's sole issue, and affirm the final judgment.

Brian Quinn
Chief Justice

Pirtle, J., concurring.

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[3] Reluctance permeates our conclusion. We cannot but think that the State considered the "Complaint" here to be anything other than a mere complaint. And, we know that such does not vest a district court with jurisdiction over a felony. A literal application of that truism to the circumstances before us logically could lead to the conclusion that the complaint does not toll limitations, given language in article 12.05(c) of the Code of Criminal Procedure. Again, limitations is tolled "during the pendency" of a charging instrument. But, "during the pendency" means the "period of time beginning with the day the indictment, information, or complaint is filed ***in a court of competent jurisdiction***, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason." TEX. CODE CRIM. PROC. ANN. art. 12.05(c) (emphasis supplied). The particular charging instrument alluded to in article 12.05(c) would seem to be the instrument that vests the court with jurisdiction over the crime averred within it. Yet, *Drummond* has opened the door to a liberal interpretation of charging instruments, at least when calculating a limitations period. And, being from the highest criminal court of last resort in Texas, we must follow its lead, irrespective of whether we agree with its direction.