

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00532-CR

The State of Texas, Appellant

v.

Sarah Christine Padon, Appellee

**FROM THE DISTRICT COURT OF COMAL COUNTY, 207TH JUDICIAL DISTRICT
NOS. CR2013-268, CR2013-269 & CR2013-270
HONORABLE JACK H. ROBISON, JUDGE PRESIDING**

MEMORANDUM OPINION AND ORDER

PER CURIAM

The State of Texas appeals the trial court's order granting Sarah Christine Padon's motion to suppress evidence in the underlying felony DWI prosecution. As a preliminary matter, the State has filed a motion to abate this appeal for additional findings of fact from the trial court, contending that the trial court's findings are inadequate for our review of the court's application of the law to the facts in determining whether exigent circumstances existed justifying Padon's warrantless blood draw. In her motion for reconsideration of the trial court's initial order denying her motion to suppress, Padon contended that there were no exigent circumstances. The only witnesses at the hearing¹ on Padon's motion to suppress were two Texas Department of Public Safety Troopers, Lawrence Escamilla and Rodney Zarate.

¹ The initial hearing was continued and resumed several months later.

Whether law enforcement faced an emergency that justified acting without a warrant calls for a case-by-case determination based on the totality of circumstances. *Cole v. State*, 490 S.W.3d 918, 923 (Tex. Crim. App. 2016). An exigent circumstances analysis requires an objective evaluation of the facts reasonably available to the officer at the time of the search. *Id.* The trial court is required to make “essential findings,” meaning, “findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court’s application of the law to the facts.” *State v. Saenz*, 411 S.W.3d 488, 495 (Tex. Crim. App. 2013). We must abate for additional findings of fact when a party has requested findings and the findings that are made by the trial court are so incomplete that we are unable to make a legal determination. *Id.*

Here, the trial court’s findings are inadequate regarding the facts we may consider when making the ultimate legal determination of whether exigent circumstances existed. *See id.* at 495-96. The trial court’s findings do not address the amount of time it took for Trooper Escamilla to investigate the accident scene. *See Cole*, 490 S.W.3d at 925 (concluding that amount of time it took officer to investigate fatality-accident scene “was the most significant obstacle law enforcement faced in obtaining a warrant”). Further, the trial court’s findings do not address the extent of intervention by emergency medical personnel, whether Trooper Escamilla was able to tell if the smell of alcohol was coming from Padon, whether Trooper Escamilla was the only officer at the scene investigating the accident, the extent of other officers’ participation in the investigation at the scene, the extent to which Trooper Escamilla had to complete his investigation to determine the cause of the accident or who was at fault, whether Trooper Escamilla knew there was a magistrate on duty, whether Trooper Escamilla could stop his investigation to get a search warrant, whether

Trooper Zarate entrusted the investigating officer on the scene to request a warrant, and in essence, in light of the relevant circumstances in *Cole*, whether the trial court found either Trooper Escamilla or Trooper Zarate credible—all of which are relevant to our totality-of-the-circumstances review and determination of the exigent-circumstances issue. *See, e.g., Cole*, 490 S.W.3d at 924-25 (considering similar facts in making exigent-circumstances determination); *State v. Mendoza*, 365 S.W.3d 666, 673 (Tex. Crim. App. 2012) (remanding for trial court’s additional fact findings as to testifying officer’s credibility).

Accordingly, we grant the State’s motion, abate this appeal, and remand this cause to the trial court for entry of the essential findings that were omitted. A supplemental clerk’s record containing the additional findings of fact shall be filed with this Court by March 13, 2017. This appeal will be reinstated after the supplemental clerk’s record is filed.

It is ordered this 9th day of February, 2017.

Before Chief Justice Rose, Justices Field and Bourland

Filed: February 9, 2017

Abated and Remanded

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