TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00727-CR

The State of Texas, Appellant

v.

John Phillip Couch, II, Appellee

FROM THE DISTRICT COURT OF COMAL COUNTY, 207TH JUDICIAL DISTRICT
NO. CR2013-444, HONORABLE R. BRUCE BOYER, JUDGE PRESIDING

ORDER AND MEMORANDUM OPINION

PER CURIAM

The State of Texas appeals from an order of the district court granting a motion to suppress filed by appellee John Phillip Couch, II, whose blood was drawn without a warrant following his involvement in an automobile accident.[1] The district court had concluded that the warrantless blood draw was not supported by exigent circumstances and granted the motion to suppress on that ground.[2] On the State's request, the district court later made written findings of fact and conclusions of law. For the reasons that follow, we will abate the appeal and remand the cause to the district court for additional findings.

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[1] *See* Tex. Transp. Code § 724.012(b) (authorizing warrantless blood draws in certain circumstances). During the accident investigation, Couch was arrested for driving while intoxicated and was later charged with the offenses of intoxication assault and aggravated assault with a deadly weapon.

[2] *See Missouri v. McNeely*, 569 U.S. 141, 148–51 (2013).

"'[U]pon the request of the losing party on a motion to suppress evidence, the trial court shall state its essential findings.'"[3] "'[E]ssential findings' mean '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.'"[4] An appellate court may not "presume factual findings that may be dispositive in a case when a trial court's findings are an inadequate basis upon which to make a legal conclusion and when those findings have been properly requested by a losing party."[5] Instead, as we have been instructed by the Court of Criminal Appeals, "an appellate court must abate for additional findings of fact when a party has requested findings of fact and the findings that are made by a trial court are so incomplete that an appellate court is unable to make a legal determination."[6] "This requirement assures that appellate resolution of the suppression issue 'is based on the reality of what happened [at the trial court level] rather than on [appellate] assumptions that may be entirely fictitious.'"[7]

In this case, the district court concluded that the "overall circumstances of the incident do not demonstrate exigent circumstances so compelling that a warrantless, non-consensual blood draw was objectively reasonable." In reaching that conclusion, the district court placed significance

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[3] *State v. Saenz*, 411 S.W.3d 488, 495 (Tex. Crim. App. 2013) (quoting *State v. Elias*, 339 S.W.3d 667, 674 (Tex. Crim. App. 2011)).

[4] *Id*.

[5] *Id*. (citing *Elias*, 339 S.W.3d at 674; *State v. Mendoza*, 365 S.W.3d 666, 673 (Tex. Crim. App. 2012); *State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006)).

[6] *Id*. (citing *Elias*, 339 S.W.3d at 674; *Mendoza*, 365 S.W.3d at 673; *Cullen*, 195 S.W.3d at 699).

[7] *Elias*, 339 S.W.3d at 674 (quoting *Cullen*, 195 S.W.3d at 699).

on testimony by the arresting officer that he had failed to mention any exigent circumstances in his offense report and had instead relied on the authority of the mandatory-blood-draw statute in deciding to forego a warrant for Couch's blood.[8] However, "[a]n action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify [the] action.' The officer's subjective motivation is irrelevant."[9]

Therefore, we must determine whether all the circumstances here, viewed objectively, support the district court's conclusion that the warrantless blood draw was not justified by exigent circumstances.[10] "Whether law enforcement faced an emergency that justifies acting without a warrant calls for a case-by-case determination based on the totality of circumstances."[11] "An exigent circumstances analysis requires an objective evaluation of the facts reasonably available to the

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[8] Specifically, the officer testified as follows:

> Q. So, specifically, what you're talking about is you realized you had—there's a statute, and you thought you had statutory authority to get it without a warrant, correct?
>
> A. Right. I knew I had statutory authority, yes, sir.
>
> Q. You never mentioned any kind of—there being any kind of exigency in your offense report, did you?
>
> A. No, sir, not any exigency. But the facts alone would lend themselves to . . . .

[9] *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006); *see O'Hara v. State*, 27 S.W.3d 548, 551 (Tex. Crim. App. 2000).

[10] *See McNeely*, 569 U.S. at163–65; *Weems v. State*, 493 S.W.3d 574, 582 (Tex. Crim. App. 2016); *Cole v. State*, 490 S.W.3d 918, 927 (Tex. Crim. App. 2016).

[11] *Cole*, 490 S.W.3d at 923.

officer at the time of the search."[12] These facts include but are not limited to "the body's metabolization" of alcohol and other substances, "the procedures in place for obtaining a warrant," "the availability of a magistrate judge," and "the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence."[13] Moreover, when the circumstances include an automobile accident, as they do here, additional considerations include "the time required to complete the accident investigation," "the lack of available law enforcement personnel" to assist in the investigation, "[t]he accident's severity," and the "potential medical intervention," if any, that the circumstances require.[14]

At the suppression hearing, the arresting officer, Trooper David Kral of the Department of Public Safety, provided extensive testimony describing the circumstances surrounding the accident investigation, Couch's arrest, and the events leading to Kral's decision to forego obtaining a warrant for Couch's blood. Also admitted into evidence was a video recording of Couch's arrest and subsequent transportation to the hospital where his blood was drawn, taken from Kral's patrol-car dash camera, that provided additional information relevant to the exigent-circumstances inquiry. However, the district court's findings do not address several of the circumstances that were either discussed by Kral in his testimony or shown on the video recording, including: the extent of Kral's knowledge of the rate at which the body metabolizes alcohol and other

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[12] *Id.*

[13] *Id.* at 924.

[14] *Id.* at 925–27.

substances[15]; the procedures then in place in Comal County for obtaining a warrant after hours, including the availability of a magistrate judge; whether other officers who were present at the accident scene or the hospital where Couch's blood was drawn might have been able to assist Kral in obtaining a warrant; and the approximate amount of time it would have taken Kral to obtain a warrant in light of all of the relevant circumstances summarized above. These omitted findings are essential to a determination of whether the warrantless blood draw was justified by exigent circumstances.[16] Additionally, although the district court found Kral "to be a truthful and credible witness," it appears that certain portions of Kral's testimony might support a finding of exigent circumstances while other portions of his testimony might not. Therefore, the district court needs to make more specific findings as to which portions of Kral's testimony it found credible.[17]

Accordingly, we abate this appeal and remand the cause to the district court to make additional fact findings consistent with this order. A supplemental clerk's record containing the additional findings shall be filed with this Court by July 5, 2018. This appeal will be reinstated after the supplemental clerk's record is filed.

It is ordered June 5, 2018.

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[15] There was some evidence in the record that Couch might have consumed both alcohol and marihuana prior to the accident.

[16] *See Weems*, 493 S.W.3d at 580–82; *Cole*, 490 S.W.3d at 923–27.

[17] *See Mendoza*, 365 S.W.3d at 673 (abating case to trial court for "explicit credibility determination[s]" as to which of officer's beliefs and conclusions trial court found to be "objectively reasonable, based on the historical facts"); *see also State v. Padon*, No. 03-16-00532-CR, 2017 Tex. App. LEXIS 1099, at *2–3 (Tex. App.—Austin Feb. 9, 2017) (per curiam order) (abating similar appeal out of Comal County for more detailed fact findings as to exigent circumstances).

Before Justices Puryear, Pemberton, and Goodwin

Abated and Remanded

Filed: June 5, 2018

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