



NUMBER 13-17-00268-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

THE STATE OF TEXAS,

Appellant,

v.

CESAR RAMIRO ARELLANO,

Appellee.

**On appeal from the County Court at Law No. 2
of Victoria County, Texas.**

MEMORANDUM OPINION ON REMAND

**Before Justices Benavides, Longoria, and Hinojosa
Memorandum Opinion by Justice Longoria**

Appellee Cesar Ramiro Arellano was charged with driving while intoxicated (DWI). See TEX. PENAL CODE ANN. § 49.09. The trial court granted Arellano's motion to suppress evidence stemming from a blood draw. On direct appeal, we affirmed the trial court's ruling on the basis that the arresting officer's warrant was facially invalid because it did

not contain the magistrate’s name in clearly legible handwriting or in typewritten form in violation of the newly-enacted article 18.04(5) of the Code of Criminal Procedure.¹ *State v. Arellano*, 571 S.W.3d 422 (Tex. App.—Corpus Christi—Edinburg 2019), *rev’d*, 600 S.W.3d 53 (Tex. Crim. App. 2020); *see also* TEX. CODE CRIM. PROC. ANN. art. 18.04(5) (providing that a search warrant “shall be sufficient” if it contains, among other “requisites,” “the magistrate’s name [] in clearly legible handwriting or in typewritten form with the magistrate’s signature”).

The State then filed a petition for discretionary review.² On May 6, 2020, the Texas Court of Criminal Appeals granted the State’s petition, vacated our judgment, and remanded the matter so that we could address the State’s remaining issues while applying the good-faith exception. *Id.* We reverse and remand.

I. BACKGROUND³

After Arellano was arrested for DWI, the arresting officer, Phillip Garcia, prepared a probable cause affidavit to support a search warrant for a blood draw and submitted it to the on-duty magistrate. Aside from the cursive signature, the magistrate’s name was

¹ Pursuant to reports of local law enforcement agencies illegally seizing money, drugs, jewelry, and other valuable items by signing illegible signatures on search warrants, Representative Terry Canales filed House Bill 644 during the 84th Legislative Session, seeking to prevent such abuses in the future. *See* HOUSE COMM. ON CRIMINAL JURISPRUDENCE, Bill Analysis, Tex. H.B. 644, 84th Leg. R.S. (2015).

² By four grounds, the State argued: (1) the good-faith exception applies to warrants that do not have a legible magistrate’s signature; (2) in a motion to suppress hearing, the defendant bears the burden of negating the good-faith exception; (3) the trial court abused its discretion by ignoring the documentary evidence submitted by the State with its post-suppression-hearing brief; and (4) this Court should abate and remand the case to the trial court because the trial court’s findings of fact and conclusions of law were inadequate. *See State v. Arellano*, 600 S.W.3d 53, 57 (Tex. Crim. App. 2020).

³ Portions of the background section have been taken verbatim from this Court’s and the Court of Criminal Appeals’ prior opinions in this case. *See State v. Arellano*, 600 S.W.3d 53, 57 (Tex. Crim. App. 2020); *State v. Arellano*, 571 S.W.3d 422 (Tex. App.—Corpus Christi—Edinburg 2019), *rev’d*, 600 S.W.3d 53 (Tex. Crim. App. 2020).

not typed or handwritten anywhere on the warrant. Thereafter, Arellano was charged with DWI. See TEX. PENAL CODE ANN. § 49.09.

Arellano filed a motion to suppress all evidence stemming from the blood draw, arguing that the search warrant to obtain his blood specimen was facially invalid because the magistrate's signature was illegible in violation of Article 18.04(5) of the code of criminal procedure. TEX. CODE CRIM. PROC. ANN. art. 18.04(5). The trial court held a hearing and admitted the signed search warrant, which incorporated Officer Garcia's affidavit by reference.

The State rested without offering any evidence. Instead, the State argued that Officer Garcia acted in good-faith reliance on a warrant issued by a neutral magistrate based on probable cause, and therefore, the blood evidence should be exempted from suppression under code of criminal procedure Article 38.23(b). *Id.* art. 38.23(b) ("It is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good-faith reliance upon a warrant issued by a neutral magistrate based on probable cause."). The State contended that an illegible magistrate's signature, much like a typographical error or other technical defect, does not invalidate an otherwise valid warrant.

The trial court expressed concern about the unknown identity of the magistrate. The State conceded that it could not tell from the face of the warrant whose name was on the warrant but offered to call the county clerk's office to "find out which magistrate signed it."⁴ Instead, the trial court requested additional briefing on the matter. Attached to its brief, the State submitted an affidavit prepared by Officer Garcia wherein he attested to the

⁴ The identity of the magistrate remained unknown for the remainder of the suppression hearing.

identity of the magistrate who had signed the warrant and asserted that he acted in good-faith reliance upon the legality and validity of the warrant.

The trial court granted Arellano's motion to suppress. In its written findings of fact and conclusions of law, the trial court determined that the magistrate's signature "was not in legible handwriting, nor was it accompanied by any name identifying the magistrate in either clearly legible handwriting or in typewritten form" and was therefore facially invalid. It concluded that the statutory good-faith exception could not apply because "in order to rely on the 'good faith exception' to the exclusionary rule . . . an officer must rely on a facially valid warrant." Regarding Officer Garcia's affidavit attached to the State's post-hearing brief, the trial court indicated that it had discretion to ignore that evidence but at the same time stated that it believed the affidavit was inadequate to establish Officer Garcia's good faith.⁵

II. ANALYSIS

We determine whether Arellano's blood evidence should be suppressed after applying the statutory good-faith exception to the facts of this case.

A. Standard of Review

"We review a trial court's ruling on a motion to suppress under a bifurcated standard." *Arellano*, 600 S.W.3d at 57. "We afford almost total deference to a trial court's findings of historical fact and determinations of mixed questions of law and fact that turn

⁵ Specifically, the trial court recited:

Officer Garcia did not testify during the hearing, and thus presented no evidence to show whether he relied in "good faith" upon the warrant in this case.

Even if the Trial Court wished to consider the [post-hearing] affidavit, as within its discretion, the statements in the affidavit provide a recitation of the statutory requirements for the 'good[-]faith exception' with respect to a warrant.

on credibility and demeanor if they are reasonably supported by the record.” *Id.*; *Sims v. State*, 569 S.W.3d 634, 640 (Tex. Crim. App. 2019). “We review de novo a trial court’s determination of legal questions and its application of the law to facts that do not turn upon a determination of witness credibility and demeanor.” *Arellano*, 600 S.W.3d at 57. We will uphold the trial court’s ruling “if it is correct on any applicable theory of law and the record reasonably supports it.” *Id.*; *State v. Ruiz*, 581 S.W.3d 782, 785 (Tex. Crim. App. 2019).

B. Applicable Law

The statutory exclusionary rule provides that no evidence obtained by an officer in violation of the Constitution or laws of the state shall be used as evidence against the accused. See TEX. CODE CRIM. PROC. ANN. art. 38.23(a). Article 38.23’s good-faith exception to the exclusionary rule provision states: “[i]t is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good-faith reliance upon a warrant issued by a neutral magistrate based on probable cause.” *Id.* art. 38.23(b). The Texas Court of Criminal Appeals held that, “a search warrant lacking a legible magistrate’s signature is defective,” but concluded “that even with such a defect, a warrant is still a warrant for purposes of Article 38.23(b).” *Arellano*, 600 S.W.3d at 57. The “good-faith exception will nevertheless apply when the record establishes that the officer was acting in objective good-faith reliance upon a warrant based upon a neutral magistrate’s determination of probable cause.” *Id.* Thus, *Arellano*’s blood alcohol evidence is admissible notwithstanding the illegible magistrate’s signature if (1) the warrant was based on probable cause and issued by a neutral magistrate, and (2) Officer Garcia acted in objective good-faith reliance on it.

See *id.*; *Flores v. State*, 367 S.W.3d 697, 703 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd).

C. Discussion

1. Probable Cause and Neutrality

“Under the unambiguous language of the good-faith exception, we must first determine whether the warrant was issued on probable cause,” and then we assess the objective good faith of the officer executing the warrant. *Flores*, 367 S.W.3d at 703. At the motion to suppress hearing and on appeal, Arellano did not dispute that this warrant was based on probable cause. He stated, “[Article] 38.23(b) examines the probable cause, and that’s not the issue here.” Therefore, we need not address probable cause because neither party disputes it exists. See TEX. R. APP. P. 33.1.

Next, “we presume the magistrate was neutral, and there is no evidence in the record rebutting this presumption” as Arellano did not present any evidence calling into question the magistrate’s presumed neutrality. *Id.*; *Roman v. State*, 145 S.W.3d 316, 319 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d) (“In the absence of a clear showing to the contrary, this court will presume that the trial court was neutral and detached.”). “Thus, we must determine whether the evidence supports a finding that Officer [Garcia] acted in objective good-faith reliance upon the warrant” when he executed it. *Flores*, 367 S.W.3d at 703 (assessing probable cause and neutrality before assessing objective good faith).

2. Good Faith

Officer Garcia prepared a comprehensive affidavit in which he asserted numerous facts he observed pertaining to Arellano’s intoxication. At the suppression hearing, this affidavit was presented as evidence along with the search warrant itself. On its face, the

search warrant contained language showing that the magistrate authorized the seizure of Arellano's blood after "a peace officer . . . swore to [an] affidavit before [him] . . . and whereas [he] finds the affidavit to be credible and reliable . . . and thereby find[s] sufficient probable cause . . . of proper grounds for the issuance of this Warrant." This language established the legality and validity of the warrant: the magistrate found probable cause to issue the warrant and signed the warrant, albeit illegibly, in Officer Garcia's presence. See *id.* The warrant also contained language indicating the complaint was made under oath. *Id.* (concluding that the officer acted in good faith when he testified that he followed standard procedure in attesting to his complaint and obtaining warrant, and when the warrant contained language indicating that complaint was made under oath). The fact that the signature was illegible or not provided in typewritten form "appears to be exactly the type of situation intended to be covered by article 38.23(b)." *Dunn*, 951 S.W.2d at 479 (holding that the officer was acting in good faith when the magistrate found probable cause to issue the warrant, signed accompanying warrants, and intended to but inadvertently failed to sign appellant's warrant); see also *Longoria v. State*, No. 03-16-00804-CR, 2018 WL 5289537, at *6 (Tex. App.—Austin Oct. 25, 2018, no pet.) (mem. op., not designated for publication) ("On its face, the search warrant issued by the magistrate contained language that it authorized the seizure of appellant's blood after reviewing 'an affidavit in writing, under oath, hav[ing] been made before [him] . . . ' which objectively indicates that it was based on a sworn affidavit.").

Arellano argued that the State could not show that Officer Garcia relied on the warrant in good faith because the State failed to call him as a witness and elicit testimony from him. Arellano further stated that "whether or not there was some good-faith reliance

is premature in [Officer Garcia's] absence.” The trial court concluded that Officer Garcia presented “no evidence” that he relied in good faith because he failed to testify. The trial court determined that his affidavit was inadequate to establish that he relied in good faith on the warrant. However, in determining good faith, we “assess the objective—not subjective—good faith of the officer executing the warrant.” *Flores*, 367 S.W.3d at 703; *Dunn v. State*, 951 S.W.2d 478, 479 (Tex. Crim. App. 1997). Therefore, Officer Garcia’s subjective testimony is not required to determine whether the evidence supports a finding that he acted in objective good-faith reliance upon the warrant when he obtained a sample of Arellano’s blood.⁶ See TEX. CODE CRIM. PROC. ANN. art. 38.23(b); *Flores*, 367 S.W.3d at 703; see also *Castro v. State*, 227 S.W.3d 737, 743 (Tex. Crim. App. 2007) (finding that in cases of offenses requiring only an objective determination, the court does not need to know the subjective details from the officer’s standpoint).

We conclude that it was objectively reasonable for Officer Garcia to rely on the search warrant—issued by a neutral magistrate based on probable cause. See generally *McClintock v. State*, 541 S.W.3d 63, 73 (Tex. Crim. App. 2017) (noting that “the language of Article 38.23(b) . . . thus render[s] an officer’s reliance on a neutral magistrate’s assessment of probable cause objectively reasonable”). In other words, “an objectively reasonable officer executing this warrant would believe that this warrant was valid and that the information supporting the warrant was not tainted by unconstitutional conduct,” and there was no evidence presented that Officer Garcia did not act in good faith. See *id.*

3. Summary

⁶ Nonetheless, pursuant to the trial court’s request for additional briefing, the State submitted an additional affidavit prepared by Officer Garcia wherein he attested to the identity of the magistrate who had signed the warrant and asserted that he acted in good-faith reliance upon the legality and validity of the warrant.

We conclude the facts presented in the record before us support the following findings: (1) the warrant was based on probable cause, and (2) was issued by a neutral magistrate, and (3) Officer Garcia acted in objective good-faith reliance of the warrant when he obtained a sample of Arellano's blood. See *Flores*, 367 S.W.3d at 703. Thus, the requirements of article 38.23(b) were met in this case. See *Dunn*, 951 S.W.2d at 479 (“Evidence obtained by a police officer acting in good-faith reliance upon a warrant based upon a magistrate’s determination of probable cause should not be rendered inadmissible due to a defect found in the warrant subsequent to its execution.”). As a result, the trial court erred by granting Arellano’s motion to suppress, and we sustain the State’s first issue.⁷

III. CONCLUSION

We reverse the trial court’s granting of Arellano’s motion to suppress, and we remand the case to the trial court for further proceedings consistent with this opinion.

NORA L. LONGORIA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
5th day of November, 2020.

⁷ Because this issue is dispositive, we need not address the State’s remaining issues of whether the trial court abused its discretion by refusing to consider the State’s additional documentary evidence and whether the trial court failed to make adequate findings of fact and conclusions of law. See TEX. R. APP. P. 47.1.