

NO. PD-0878-17

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
AUSTIN, TEXAS

FILED
COURT OF CRIMINAL APPEALS
10/16/2017
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS,
Appellant,
vs.

JUAN MARTINEZ, JR.,
Appellee.

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
TO THE THIRTEENTH COURT OF APPEALS DISTRICT
CORPUS CHRISTI
CAUSE NUMBER 13-15-00592-CR

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

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TABLE OF INTERESTED PARTIES

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TRIAL JUDGE:

STARR BOLDRICK BAUER
156th Judicial District Court
Bee County, Texas

THE STATE OF TEXAS,	§	IN THE COURT OF
Appellant,	§	
vs.	§	CRIMINAL APPEALS
	§	
JUAN MARTINEZ, JR.,	§	AUSTIN, TEXAS
Appellee.	§	

PETITION FOR DISCRETIONARY REVIEW OF CAUSE NUMBER
13-15-00592-CR IN THE COURT OF APPEALS FOR
THE THIRTEENTH COURT OF APPEALS DISTRICT OF TEXAS
CORPUS CHRISTI, TEXAS

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

Now comes, Edward F. Shaughnessy, III, Attorney-at-Law, on behalf of the appellant, The State of Texas, and prays that a Petition for Discretionary Review be granted to the appellant in the above styled and numbered cause. The arguments in support of that request are provided hereinafter and are incorporated by reference.

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TABLE OF AUTHORITIES

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STATEMENT REGARDING ORAL ARGUMENT

Counsel for the appellant would submit that in the event that this petition is granted, oral argument would be warranted inasmuch as the issue to be resolved by this Court is novel and worthy of oral argument on the issue presented.

THE STATE OF TEXAS, § IN THE COURT OF
Appellant, §
vs. § CRIMINAL APPEALS
JUAN MARTINEZ, JR., § AUSTIN, TEXAS
Appellee

ARGUMENTS AND AUTHORITIES IN SUPPORT
OF THE APPELLANT’S PETITION FOR DISCRETIONARY REVIEW
OF CAUSE NUMBER 13-15-00592-CR

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

NOW COMES, The State of Texas, appellant in the lower Court, by and through, Edward F. Shaughnessy, III, attorney at law, and offers the following arguments and authorities in support of his request that this Court grant his request for a Petition for Discretionary Review in the instant case, cause number PD-.

NATURE OF THE CASE

The appellee, Juan Martinez, Jr., was indicted by a Bee County Grand Jury for the offense of Intoxication Manslaughter. (C.R.-4) Prior to the onset of trial the defendant/appellee filed a written “Defendant’s Motion to Suppress”. (C.R.-8) Following an evidentiary hearing on the motion the trial Court granted the motion. (C.R.-11) The trial Court thereafter entered

written findings of fact and conclusions of law regarding the defendant/appellee's motion. (C.R.-8) The state of Texas then filed timely notice of appeal and an appeal to the Thirteenth Court of Appeals was pursued. (C.R.-11)

PROCEDURAL HISTORY OF THE CASE IN THE LOWER COURT

On July 13, 2017, the Corpus Christi Court of Appeals, in a published opinion, authored by Justice Hinojosa, affirmed the order of the trial court in suppressing the evidence. *State v. Martinez*, (No. 13-15-00592-CR, Tex. App.-Corpus Christi, July 13, 2017, 2017 WL 297791) (Appendix) The State of Texas would submit that there exists one ground for review that warrants review by this Court. It is urged by the State of Texas that there exist, at a minimum, two distinct reasons for reviewing the action of the Court of Appeals for the Thirteenth Court of Appeals District.

REASONS FOR REVIEW

A

The State respectfully petitions this Honorable Court to grant this Petition for Discretionary Review pursuant to *Rule 66.3 (c), Tex. R. App. Proc.* which states that one of the non-exclusive reasons for this Court to grant a petition for discretionary review is that the Court of Appeals has decided an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals. The State would respectfully submit that the opinion of the Thirteenth Court of Appeals is in conflict with the applicable decisions of this Court.

B

The State respectfully petitions this Honorable Court to grant this Petition for Discretionary Review pursuant to *Rule 66.3(b), Tex. R. App. Proc.* which states that, one of the non-exclusive reasons for this Court to grant a discretionary review, is that the Court of Appeals has decided an important question of state law that has not been, but should be, settled by the Court of Criminal Appeals. The State would respectfully submit that the Court of Appeals has decided an important question of state law that has not been, but should be settled the Court of Criminal Appeals.

GROUND FOR REVIEW

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT PROPERLY GRANTED THE DEFENDANT/APPELLEE'S MOTION TO SUPPRESS EVIDENCE THAT REVEALED THE RESULTS OF TESTING OF THE BLOOD OF THE DEFENDANT/APPELLEE.

ARGUMENT AND AUTHORITIES IN SUPPORT OF THE GROUND FOR REVIEW

STATEMENT OF APPLICABLE FACTS

The facts pertinent to the ruling of the trial court are fairly straightforward and are sufficiently recounted in the opinion of the court below. The Court wrote as follows:

The following evidence was adduced at the suppression hearing. Martinez was transported by ambulance following his involvement in a traffic accident in Beeville, Texas. A nurse drew Martinez's blood for medical purposes. Martinez subsequently told hospital staff that he did not want them to perform any testing of his blood, and he refused to provide a urine sample. Martinez then removed his I.V. and monitors and left the hospital.

John Richard Quiroga, a Department of Public Safety (DPS) Trooper, went to the hospital to investigate the traffic accident. Officer Quiroga was unable to speak to Martinez who had left the hospital moments before his arrival, but he directed Hospital staff to preserve Martinez's blood sample. The Following day, Sargaent Daniel J. Keese served a grand jury

Subpoena on the hospital and obtained four vials of Martinez's Blood and his medical records. Sergeant Keese forwarded two of the vials to a DPS crime lab for testing.

The trial Court made conclusions of law that concluded among other things that 1) the seizure of the blood from the hospital and the subsequent testing thereof constituted a search and seizure under the Fourth Amendment; 2) the seizure of the blood under the auspices of the grand jury subpoena constituted a valid seizure; 3) the testing of the blood was conducted without a valid search warrant and without a valid exception to the warrant requirement; and 4) the results of any testing on the blood was inadmissible "at this time". *State v. Martinez, id. at slip opinion pgs. 2 & 3.*

A

As noted above, the State has asserted that the opinion of the Court of Appeals warrants review, by this court because it has decided an important question of state law in a manner that is in conflict with the applicable decisions of this Court.

In *State v. Hardy*, 963 S.W.2d 516 (Tex. Crim. App. 1997) this Court held that when blood is drawn from an individual by hospital personnel without the involvement of law enforcement officials the individual does not enjoy a reasonable expectation of privacy in the results of testing on that blood by medical personnel. The opinion of the Court below is in conflict with this Court's holding in *State v. Hardy*, *id.*

In *State v. Huse*, 491 S.W.3d 833 (Tex. Crim. App. 2016) this Court stated that when a blood a warrantless blood draw from an individual is conducted by hospital personnel without any manner of direction or compulsion from law enforcement personnel, that individual enjoys no right to complain, under the auspices of the Fourth Amendment, the extraction of the blood or the subsequent analysis thereof . The opinion of the Court below is in conflict with this Court's holding in *State v. Huse*, *id.*

Inasmuch as the holding of the Court below is in conflict with the above-cited holdings of this Court, the instant petition should be granted.

B

In its second reason for review the State urges that the instant case was worthy of review on the basis that it presents an important question of state law that has not been, but should be settled by the Court of Criminal Appeals. *Ford v. State*, 477 S.W.3d 321 (Tex. Crim. App. 2015).

The Court below held that the holdings of this Court, in *Huse* and *Hardy* were inapplicable, to the facts which unfolded in the instant case. The Court reasoned that due to the fact that the blood was analyzed, not by hospital personnel, but rather by law enforcement technicians, that the holdings of *Huse* and *Hardy* did not preclude a requirement that such an analysis could be conducted only under the auspices of a search warrant. It is the State's position that this holding mandates an overly broad interpretation of what constitutes a valid "privacy interest" for purposes of invoking the protections of the Fourth Amendment. See generally: *Ford v. State*, 477 S.W.3d 321 (Tex. Crim. App. 2015). The State would submit that the question as to whether an individual, in the situation such as the one presented herein, maintains a "privacy interest" in the blood samples lawfully obtained by law enforcement so as to require suppression of the results of the testing of those samples without the benefit of a search

warrant, is an issue which has not been, but should be decided by this Court.

In sum, the opinion of the lower Court decided an important question of state law that has not been, but should be decided by this court. For that reason the instant petition for discretionary review warrants being granted. *Rule 66.3(b), supra.*

CONCLUSION AND PRAYER

It is respectfully requested, by the appellant that a petition for discretionary review to the Thirteenth Court of Appeals be granted and that the case be briefed on the merits of the appellant's ground for review with argument to follow.

Respectfully submitted,

_____/s/ _____

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CERTIFICATE OF SERVICE

I, Edward F. Shaughnessy, III., certify that a copy of the foregoing petition was mailed to Michelle Rice, attorney for the appellee, 331A North Washington, Beeville, Texas 78102, on this the ____ day of October, 2017.

_____/s/_____

Edward F. Shaughnessy, III

CERTIFICATE OF SERVICE

I, Edward F. Shaughnessy, III certify that a copy of the foregoing petition was mailed to Stacy Soule, State Prosecuting Attorney, P.O. Box 78711, Austin, Texas 78711, on this the ____ day of October, 2017.

_____/s/_____

Edward F. Shaughnessy, III

CERTIFICATE OF COMPLIANCE

I, Edward F. Shaughnessy, III certify that the instant document contains 1,925 words.

_____/s/_____

Edward F. Shaughnessy, III

APPENDIX



NUMBER 13-15-00592-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

THE STATE OF TEXAS,

Appellant,

v.

JUAN MARTINEZ, JR.,

Appellee.

**On appeal from the 156th District Court
of Bee County, Texas.**

OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa
Opinion by Justice Hinojosa**

Appellee Juan Martinez Jr. was indicted for the offense of intoxication manslaughter, a second-degree felony. See TEX. PENAL CODE ANN. § 49.08 (West, Westlaw through Ch. 49 2017 R.S.). The State appeals the trial court's order granting Martinez's motion to suppress evidence obtained from the State's warrantless acquisition

of Martinez's blood sample.¹ By one issue, the State argues "[t]he trial [c]ourt erred in granting [Martinez's] pre-trial Motion to Suppress" because its ruling is inconsistent with Texas Court of Criminal Appeals precedent, particularly *State v. Huse*, 491 S.W.3d 833 (Tex. Crim. App. 2016). We affirm.

I. BACKGROUND

The following evidence was adduced at the suppression hearing. Martinez was transported by ambulance to a hospital following his involvement in a traffic accident in Beeville, Texas. A nurse drew Martinez's blood for medical purposes. Martinez subsequently told hospital staff that he did not want them to perform any testing of his blood, and he refused to provide a urine sample. Martinez then removed his I.V. and monitors and left the hospital.

John Richard Quiroga, a Department of Public Safety (DPS) Trooper, went to the hospital to investigate the traffic accident. Officer Quiroga was unable to speak to Martinez who had left the hospital moments before his arrival, but he directed hospital staff to preserve Martinez's blood sample. The following day, Sergeant Daniel J. Keese served a grand jury subpoena on the hospital and obtained four vials of Martinez's blood and his medical records. Sergeant Keese forwarded two of the vials to a DPS crime laboratory for testing.²

¹ This appeal is brought pursuant to Texas Code of Criminal Procedure article 44.01(a)(5), which authorizes the State "to appeal an order of a court in a criminal case if the order . . . grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case[.]" TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(5) (West, Westlaw through Ch. 49 2017 R.S.).

² The results of the State's blood analysis are not included in the record on appeal.

The trial court granted Martinez's motion to suppress the results of the State's blood analysis and entered written findings of fact and conclusions of law. The trial court concluded in pertinent part that:

1. [T]he seizure of [Martinez's] blood from the Hospital and subsequent search of that blood by the DPS lab constitute a search and seizure within the scope of the Fourth Amendment of the United States Constitution.
2. The initial seizure of [Martinez's] blood from the Hospital by the State using a Grand Jury Subpoena was a valid seizure. However,
3. The *search* of the blood was performed without the necessary search warrant. The blood had been drawn and was no longer subject to mutation or metabolization. Further, the blood was in the possession of the DPS and was not subject to destruction. There were no exigent circumstances to justify a search of the blood without a warrant.
4. The search of the blood and the subsequent blood test results are found to be inadmissible at this time.

(Emphasis in original). This interlocutory appeal followed.

II. SUPPRESSION OF EVIDENCE

A. Standard of Review and Applicable Law

The Fourth Amendment protects against unreasonable searches and seizures. U.S. CONST. amend. IV; *State v. Villarreal*, 475 S.W.3d 784, 795 (Tex. Crim. App. 2015). Under the privacy theory, a person has standing to contend that a search or seizure was unreasonable if (1) he has a subjective expectation of privacy in the place or object searched, and (2) society is prepared to recognize that expectation as "reasonable" or "legitimate." *Ford v. State*, 477 S.W.3d 321, 328 (Tex. Crim. App. 2015) (quoting *State v. Granville*, 423 S.W.3d 399, 405 (Tex. Crim. App. 2014)).

In general, to comply with the Fourth Amendment, a search pursuant to a criminal investigation (1) requires a search warrant or a recognized exception to the warrant requirement, and (2) must be reasonable under the totality of the circumstances. *Villarreal*, 475 S.W.3d at 795. The purpose underlying the search-warrant requirement is to ensure that the inferences to support a search are “drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Id.* (quoting *Riley v. California*, ___ U.S. ___, 134 S.Ct. 2473, 2482 (2014)). “Searches conducted without a warrant are per se unreasonable, subject to certain ‘jealously and carefully drawn’ exceptions.” *Ford*, 477 S.W.3d at 328 (quoting *Jones v. United States*, 357 U.S. 493, 499 (1958)).

A defendant asserting a motion to suppress bears the initial burden of producing evidence that rebuts the presumption of proper police conduct. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005) (citing *Russell v. State*, 717 S.W.2d 7, 9 (Tex. Crim. App. 1986)). A defendant can satisfy this burden by establishing that a search or seizure occurred without a warrant. *See id.* (citing *Bishop v. State*, 85 S.W.3d 819, 822 (Tex. Crim. App. 2002)). The burden then shifts to the State to establish that the warrantless search or seizure was reasonable. *Id.*

In reviewing the trial court’s ruling on a motion to suppress, we apply a bifurcated standard of review. *Pecina v. State*, 361 S.W.3d 68, 78–79 (Tex. Crim. App. 2012) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). We review the ruling in light of the totality of the circumstances, giving total deference to the trial court on questions of historical fact, as well as its application of law to fact questions that turn on

credibility and demeanor. *Pecina*, 361 S.W.3d at 79; *Leza v. State*, 351 S.W.3d 344, 349 (Tex. Crim. App. 2011). But we review de novo the trial court's rulings on questions of law and mixed questions of law and fact that do not depend on credibility determinations. *Pecina*, 361 S.W.3d at 79; *Leza*, 351 S.W.3d at 349. We will uphold the trial court's ruling if it is correct under any applicable theory of law. *Hereford v. State*, 339 S.W.3d 111, 117–18 (Tex. Crim. App. 2011).

B. Analysis

The State's argument on appeal is as follows:

Since the trial court entered its order suppressing the blood test results in the instant case, the Court Of Criminal Appeals has had the occasion to address both of the assertions relied upon by [Martinez] in support of his motion to suppress the blood testing results.^[3] The Court expressly rejected both of those arguments. *State v. Huse*, [491 S.W.3d 833 (Tex. Crim. App. 2016)]. Consequently a *de novo* review by this Court of the lower Court's ruling, reveals that the ruling of that court, granting [Martinez's] motion to suppress, was erroneously entered and should be reversed by this Court. See *State v. Hardy*, 963 S.W.2d 516 (Tex. Crim. App. 1997).

In reviewing the authority cited by the State, we construe its argument as asserting that no search occurred under the Fourth Amendment because Martinez's blood was drawn by hospital staff, not law enforcement. Martinez responds that a Fourth Amendment violation resulted when the State obtained and later tested Martinez's blood without securing a warrant.

Generally, the taking of a blood specimen is a search under the Fourth Amendment. *Schmerber v. California*, 384 U.S. 757, 767 (1966); *Villarreal*, 475 S.W.3d

³ Martinez argued to the trial court, and maintains on appeal, that the evidence should be suppressed because (1) the State did not obtain a warrant for the search of Martinez's blood, and (2) the grand jury subpoena was defective.

at 796–97. The court of criminal appeals has identified the three different stages in which a person’s expectations of privacy, and corresponding Fourth Amendment protections, might be implicated with regard to blood alcohol test results: (1) the physical intrusion into the body to draw blood, (2) the exercise of control over and the testing of the blood sample, and (3) obtaining the results of the test. *State v. Hardy*, 963 S.W.2d 516, 526 (Tex. Crim. App. 1997). The facts of this case implicate the second stage—obtaining the blood and subsequent testing. The cases relied on by the State implicate only the third stage—obtaining records which reflect the results of the blood test.

In *Hardy*, the court of criminal appeals recognized that when the State itself extracts blood from a DWI suspect and then conducts the subsequent blood alcohol analysis, two discrete “searches” have occurred for Fourth Amendment purposes. 963 S.W.2d at 523–24. The defendant in *Hardy* was taken to a hospital following a traffic accident, where his blood was drawn and analyzed by hospital personnel for medical purposes. *Id.* at 517–18. A state trooper later obtained a grand jury subpoena for medical records which reflected that the defendant’s blood alcohol content was above the legal limit. *Id.* at 518. The court noted that obtaining medical records of privately conducted blood extraction and analysis is much less invasive than either the extraction or the chemical analysis themselves. *Id.* at 527. The court concluded that “whatever interests society may have in safeguarding the privacy of medical records, they are not sufficiently strong to require protection of blood-alcohol test results taken by hospital personnel solely for medical purposes after a traffic accident.” *Id.*

In *Huse*, the court of criminal appeals revisited its earlier decision in light of the subsequent passage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). 491 S.W.3d at 841-42. The court concluded that HIPAA “actually serves to bolster our [earlier] holding[,]” explaining as follows:

While codifying a broad requirement of patient confidentiality in medical records, HIPAA nonetheless provides specific exceptions in which the disclosure of otherwise protected health care information is permitted. Section 164.512(f)(1)(ii)(B) of Title 45 of the Code of Federal Regulations, for example, allows for the disclosure of “protected health information” when to do so is “[i]n compliance with and as limited by the relevant requirements of ... [a] grand jury subpoena[.]” Under this provision, a DWI offender would have no legitimate expectation of privacy sufficient to block a health care provider from disclosing otherwise protected health care information when required to do so under the terms of a grand jury subpoena.

Id. at 842 (internal citations and footnotes omitted).

We disagree with the State that *Huse* and *Hardy* are controlling. Unlike those cases, the State did not just seek Martinez’s medical records, but also obtained Martinez’s blood sample and then conducted its own analysis of the sample. Martinez’s blood was never analyzed by hospital staff for medical purposes, and his medical records contained no information concerning his blood alcohol content.

The facts in this case are similar to those before the court of criminal appeals in *State v. Comeaux*, 818 S.W.2d 46 (Tex. Crim. App. 1991) (plurality op.). In *Comeaux*, the defendant was taken to the hospital following a traffic accident where his blood was drawn for medical purposes. *Id.* at 48–49. The investigating officer presented the nurse on duty with a form entitled “Statutory Authorization: Mandatory Blood Specimen,” and she provided the officer with a sample of defendant’s blood. *Id.* The State later conducted its own analysis of the blood sample, which the defendant moved to suppress.

Id. at 48.

The *Comeaux* plurality framed the issue presented as follows: “[W]hether an accused, after voluntarily giving a sample of his blood to a third party, maintains a legitimate expectation of privacy in that sample sufficient to allow him to object to what the third party does with the blood sample thereafter.” *Id.* at 51. The plurality noted that, “a person does not assume that, by giving a sample of blood for private testing, that blood sample could then be submitted to the State, or to any other person or entity, for a purpose other than that for which it was given.” *Id.* at 52. The plurality concluded that the defendant had a legitimate expectation of privacy in the blood sample given for medical purposes. *Id.* at 51, 53. The plurality observed that there were no exigent circumstances nor was there probable cause that would justify the warrantless search of the defendant’s blood. *Id.* at 53. Therefore, the plurality held that the defendant’s Fourth Amendment rights were violated and that the blood alcohol content analysis conducted by the State had to be suppressed. *Id.*

The court of criminal appeals has since observed that “[b]ecause *Comeaux* is only a plurality opinion, it is not binding precedent.” *Hardy*, 963 S.W.2d at 519. Nevertheless, the court noted the opinion’s “persuasive value.” *Id.* Likewise, we find *Comeaux* persuasive. Martinez does not complain of the taking of his blood by hospital personnel, nor could he. “[T]he Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on [its] own initiative[.]” *Huse*, 491 S.W.3d at 840 (quoting *Skinner v. Railway Labor Exec. Assn.*, 489 U.S. 602, 614 (1989)). However, the subsequent acquisition of Martinez’s blood sample and later

testing by law enforcement constitute a search by the State implicating Fourth Amendment protections. See *Comeaux*, 818 S.W.2d at 51–53; *Huse*, 491 S.W.3d at 840 (recognizing that blood alcohol analysis conducted by the State is a discrete search); see also *People v. Perlos*, 462 N.W.2d 310, 320 (Mich. 1990) (noting that the Fourth Amendment does not permit the warrantless acquisition of a suspect’s blood sample taken for medical purposes for discretionary testing). Accordingly, it was the State’s burden to establish that the warrantless search was reasonable by presenting evidence in support of an established exception to the warrant requirement. See *Villarreal*, 475 S.W.3d at 796; *Ford*, 158 S.W.3d at 492. The State neither argues on appeal, nor did it present evidence to the trial court, concerning any justification for a warrantless search.⁴ Therefore, conducting a de novo review of the trial court’s application of the law, we hold that the warrantless search of Martinez’s blood sample violated the Fourth Amendment. See *Pecina*, 361 S.W.3d at 79; *Leza*, 351 S.W.3d at 349; *Comeaux*, 818 S.W.2d at 53. We overrule the State’s sole issue.

IV. CONCLUSION

We affirm the trial court’s suppression ruling.

LETICIA HINOJOSA
Justice

Publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
13th day of July, 2017.

⁴ Although not challenged by the State, we note the trial court concluded there were no exigent circumstances that would justify the warrantless search. See *Missouri v. McNeely*, ___ U.S. ___, 133 S.Ct. 1552, 1558 (2013) (recognizing exigent circumstances as a well-recognized exception to the warrant requirement).