

Reverse and Remand; Opinion Filed June 29, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01148-CR

**THE STATE OF TEXAS, Appellant
V.
PEDRO BOCANEGRA, Appellee**

**On Appeal from the County Criminal Court No. 3
Dallas County, Texas
Trial Court Cause No. M17-18606-C**

MEMORANDUM OPINION

Before Justices Bridges, Pedersen, III, and Evans
Opinion by Justice Pedersen, III

The State appeals the trial court's order granting appellee Pedro Bocanegra's motion to suppress. In a single issue, the State argues the trial court's order is erroneous. We agree. We reverse the trial court's order granting the motion to suppress and remand this cause to the trial court for further proceedings.

Bocanegra was arrested for driving while intoxicated. He refused to provide a voluntary specimen of his breath or blood; he also refused to perform field sobriety tests. Officer Myers with the Dallas County Sheriff's Department executed an affidavit for a search warrant. The affidavit stated that Bocanegra "has possession of

and is concealing human blood, which constitutes evidence that [Bocanegra] committed the offense” of driving while intoxicated. The affidavit continued, stating that Bocanegra operated a motor vehicle while intoxicated “by not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the suspect’s body.” The affidavit requested a warrant “that will authorize Affiant or Affiant’s agent to search the person of the suspect for the blood evidence described above and seize the same evidence that the offense described was committed and that the suspect committed the said offense.”

Magistrate Hal Turley issued a search warrant, which states:

Now, therefore, you are commanded to take custody of the suspect and transport the suspect to a medical or jail facility in Dallas County, Texas where you shall search for, seize and maintain as evidence the property described in said Affidavit, to-wit: human blood from the body of [Bocanegra].

The magistrate also issued an order for assistance in execution of the search warrant, which states: “[T]his court has issued a warrant to search for and seize blood” from Bocanegra. Pursuant to the warrant and assistance order, a qualified technician from Parkland Hospital drew Bocanegra’s blood as evidence. The State had Bocanegra’s blood tested and determined that its blood-alcohol concentration was 0.287 g/100 mL. The State then charged Bocanegra with his second driving while intoxicated offense.

Bocanegra moved to suppress the results of the analysis of his blood that was seized pursuant to the warrant.¹ He argued that the search warrant only allowed the State to seize his blood, and it did not allow the State to then analyze the blood it collected. The trial court granted Bocanegra’s motion to suppress the results of the blood-alcohol analysis. The court’s order states: “the warrant gave permission to search for, seize, and maintain as evidence the Defendant's blood sample. It did not, however, permit the blood that was seized to be analyzed further.” The court concluded that Bocanegra had an expectation of privacy in his blood specimen and the analytics that were performed invaded his privacy.

We review a trial court’s ruling on a motion to suppress under a bifurcated standard of review. *State v. Ruiz*, 577 S.W.3d 543, 545 (Tex. Crim. App. 2019). We give almost total deference to the trial court’s determination of historical facts and review de novo the application of the law to the facts. *Id.* We view the record in the light most favorable to the trial court’s ruling and uphold the ruling if it is supported by the record and is correct under any theory of the law applicable to the case. *Id.*

Bocanegra has not filed a brief in this appeal. According to our review of the record, including Bocanegra’s motion to suppress, he argued to the trial court that a recent opinion from the court of criminal appeals, *State v. Martinez*, 570 S.W.3d 278 (Tex. Crim. App. 2019), required the State to obtain an additional search warrant to

¹ Bocanegra did not challenge the existence of probable cause to support the blood-draw warrant.

authorize the testing and analysis of his blood and, because the State failed to do so, the results of the testing must be suppressed.

In *Martinez*, the defendant was charged with intoxication manslaughter. *Id.* at 281. After a traffic accident, Martinez was transported to a hospital where medical personnel drew his blood for medical purposes. *Id.* at 282. Martinez voluntarily left the hospital after informing nurses he could not afford any tests. *Id.* Law enforcement obtained a grand jury subpoena and took possession of the blood sample. *Id.* Law enforcement then submitted the blood sample for testing without obtaining a warrant for that testing. *Id.* Martinez moved to suppress the blood-test results, and the trial court granted his motion. The court found that the search of the blood and subsequent tests were performed without the necessary search warrant. *Id.* at 283. Affirming the trial court's decision, the court of criminal appeals held there is an expectation of privacy in blood drawn for medical purposes. *Id.* at 291. “[This] expectation is not as great as an individual has in the sanctity of his own body against the initial draw of blood.... But it is greater than an individual has in the results of tests that have already been performed on the blood.” *Id.* Therefore, the court concluded the State's testing of the previously drawn blood was itself a Fourth Amendment search and seizure that was improper absent a warrant or an exception to the warrant requirement. *Id.* at 292. Because no exception to the warrant requirement applied, the State was required to obtain a warrant before testing Martinez's blood. *Id.*

Here, in contrast, Bocanegra’s blood was not drawn by hospital personnel for medical purposes, but rather was drawn pursuant to a valid warrant being executed by law enforcement. Officer Myers obtained Bocanegra’s blood sample pursuant to a valid search warrant. Although the warrant does not expressly authorize testing and analysis of the blood sample, *Martinez* does not require that it do so. *See Crider v. State*, No. 04-18-00856-CR, 2019 WL 4178633, at *2 (Tex. App.—San Antonio Sept. 4, 2019, pet. granted) (mem. op., not designated for publication) (citing *Martinez*, 570 S.W.3d at 291). In *Crider*, the Fourth District Court of Appeals considered facts similar to the case before us, and distinguished *Martinez* as follows:

Here, in contrast, police obtained Crider’s blood sample pursuant to a valid search warrant. Although the warrant does not expressly authorize testing and analysis of the blood sample, *Martinez* does not require that it do so. Rather, *Martinez* merely holds that an individual has an expectation of privacy not only in the blood in his body, but also in blood previously drawn for purposes other than police testing. Crider does not identify, and we are not aware of, any authority requiring that a search warrant authorizing the drawing of a blood sample must also expressly authorize testing and analysis of the blood sample.

Id. (internal citation omitted). The *Crider* court did not “believe the *Martinez* court intended to require specific authorization for testing where probable cause supports a warrant for blood collection.” *Id.* (citing *Martinez*, 570 S.W.3d at 290). Rather, it stated, “common sense dictates that blood drawn for a specific purpose will be analyzed for that purpose and no other.” *Id.* (citing *State v. Comeaux*, 818 S.W.2d 46, 52 (Tex. Crim. App. 1991)). The *Crider* court concluded that the officer’s affidavit, which requested a blood sample “constitut[ing] evidence that the offense

[driving while intoxicated] was committed and that [Crider] committed the offense,” was sufficient to allow the State to test and analyze the blood for that purpose as well. *Id.* Therefore, “[a]bsent any authority requiring specific authorization for testing and analysis of blood drawn pursuant to a valid search warrant, we conclude the trial court did not err in denying Crider’s motion to suppress.” *Id.*

This Court recently issued its opinion in a case with similar facts, *State v. Staton*, 599 S.W.3d 614 (Tex. App.—Dallas 2020, no pet.). In *Staton*, we distinguished *Martinez* in analyzing the trial court’s order granting a motion to suppress the results of Staton’s blood-alcohol analysis. *Id.* at 616–17. Following a car accident, Staton was arrested for driving while intoxicated. *Id.* at 615. When she refused to give a voluntary specimen of her breath or blood, the police obtained Staton’s blood sample pursuant to a valid search warrant. *Id.* at 615–16. Her blood was drawn solely to test for alcohol, as indicated in the police affidavit. *Id.* The search warrant gave authorization to “search for, seize and maintain as evidence the property described in said Affidavit, to-wit: human blood from the body of” Staton. *Id.* at 616. Although the warrant did not expressly authorize testing and analysis of the blood sample, we reasoned that *Martinez* does not require that it do so. *Id.* at 618. “Rather, *Martinez* holds that an individual has an expectation of privacy in blood previously drawn for purposes other than police testing. Those are not the facts before us.” *Id.* (citing *Martinez*, 570 S.W.3d at 291). Based on our analysis of *Martinez* and *Crider*, we concluded the trial court erred by granting Staton’s motion

to suppress. *Id.*; see also *Jacobson v. State*, No. 02-19-00307-CR, 2020 WL 1949622, at *5 (Tex. App.—Fort Worth Apr. 23, 2020, no pet.) (distinguishing *Martinez*, once State had warrant to seize blood, that prior step removed expectation of privacy that blood would not be tested for exactly the purpose for which it was seized); *Hyland v. State*, 595 S.W.3d 256, 260–61 (Tex. App.—Corpus Christi-Edinburg 2019, no pet.) (op. on remand) (distinguishing *Martinez*, State authorized to re-analyze evidence lawfully in its possession pursuant to valid search warrant).

In this case, Bocanegra’s blood was drawn and analyzed for the purpose of testing for intoxicating substances, and the State sought to admit the results of that specific testing. We conclude the trial court erred by granting Bocanegra’s motion to suppress, and we sustain the State’s sole issue. We reverse the trial court’s order granting the motion to suppress and remand this cause to the trial court for further proceedings consistent with this opinion.

/Bill Pedersen, III/
BILL PEDERSEN, III
JUSTICE

191148f.u05
Do Not Publish
TEX. R. APP. P. 47.4



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-19-01148-CR V.

PEDRO BOCANEGRA, Appellee

On Appeal from the County Criminal
Court No. 3, Dallas County, Texas
Trial Court Cause No. M17-18606-C.
Opinion delivered by Justice
Pedersen, III. Justices Bridges and
Evans participating.

Based on the Court's opinion of this date, the trial court's order granting appellee's motion to suppress is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 29th day of June, 2020.