

Reverse and Remand; Opinion Filed July 9, 2020



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

No. 05-19-00927-CR

**THE STATE OF TEXAS, Appellant
V.
BRIAN CARL JONES, Appellee**

**On Appeal from the County Criminal Court No. 3
Dallas County, Texas
Trial Court Cause No. MA17-81084-C**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichel
Opinion by Justice Myers

This is a State's appeal from an order granting the defendant's motion to suppress driving while intoxicated (DWI) blood analysis. Appellee Brian Carl Jones was charged via complaint and information with second offense DWI. *See* TEX. PENAL CODE ANN. §§ 49.04(a), 49.09(a). The trial court suppressed the blood analysis because it found, according to its findings of fact and conclusions of law, that analyzing the warrant-drawn blood was a separate Fourth Amendment search that required its own judicial authorization. The State appealed, arguing the analysis of warrant-drawn blood is not a search because there is no legitimate expectation of privacy in a blood sample drawn for forensic purposes. We reverse and remand.

DISCUSSION

In its only issue in this appeal, the State argues that a person does not have a reasonable expectation of privacy in evidence seized with a valid search warrant, nor do drivers arrested for DWI have a reasonable expectation of privacy in their blood-alcohol concentrations. In both this appeal and the related appeal involving Vincent Russell Giordano, cause number 05-19-00926-CR, law enforcement arrested the defendants for DWI and seized their blood specimens pursuant to a valid search warrant. The trial court found that testing the blood for alcohol violated a reasonable expectation of privacy and suppressed the test results as the fruit of unreasonable searches. The State argues the trial court erred in suppressing Jones's blood-alcohol concentrations under the Fourth Amendment, and that we should reverse the trial court's suppression order and remand for further proceedings. We agree.

Jones was arrested for DWI (second) on December 26, 2017. His blood was drawn early in the morning on December 27, 2017, pursuant to a December 26, 2017 search warrant authorizing officers to "search for, seize, and maintain as evidence" a blood sample from him. Jones's blood sample was analyzed in March 2019. The trial court signed its order granting Jones's motion to suppress on July 18, 2019.

Relying largely on the Texas Court of Criminal Appeals decision in *State v. Martinez*, 570 S.W.3d 278, 281 (Tex. Crim. App. 2019), Jones argues the State-initiated testing of his blood sample was a search separate and apart from the seizure of the blood, just like the state-initiated testing in *Martinez*. Jones maintains that the

State was required under *Martinez* to obtain a warrant authorizing the testing of his blood, regardless of whether it obtained a warrant to seize his blood. Because the State did not do so in his case, Jones argues the blood test was outside the scope of the warrant and violated his rights under the United States and Texas constitutions.

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.*

In *Martinez*, the Court of Criminal Appeals held "there is a Fourth Amendment privacy interest in blood that has already been drawn for medical purposes." 570 S.W.3d at 292. In that case, Martinez had a subjective expectation of privacy in his blood drawn for medical purposes, and the State's warrantless testing of the blood was a Fourth Amendment search separate and apart from the seizure of the blood by the State. *Id.* Because no exception to the warrant requirement applied, the State was required to obtain a warrant before testing Martinez's blood. *Id.*

Recently, this Court has concluded *Martinez* does not mandate a second warrant to test a blood sample obtained initially through a warrant. *See State v. Staton*, 599 S.W.3d 614, 617 (Tex. App.—Dallas Mar. 30, 2020, no pet.); *State v.*

Bocanegra, No. 05-19-01148-CR, 2020 WL 3496353, at *3 (Tex. App.—Dallas June 29, 2020, no pet. h.) (mem. op., not designated for publication) (discussing *Staton*); see also *Jacobson v. State*, No. 02-19-00307-CR, — S.W.3d —, 2020 WL 1949622, at *1 (Tex. App.—Fort Worth Apr. 23, 2020, no pet.); *Hyland v. State*, 595 S.W.3d 256, 257 (Tex. App.—Corpus Christi—Edinburg 2019, no pet.) (op. on remand); *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).

The blood draw in *Staton*, like the blood draw in this case, occurred pursuant to a warrant, whereas the blood draw in *Martinez* was not made pursuant to a warrant. See *Staton*, 599 S.W.3d at 617–18. In *Staton*, we agreed with other courts that read *Martinez* as not requiring specific authorization for testing when collection of the sample was done pursuant to a warrant based on probable cause. *Id.* We stated that ““common sense dictates that blood drawn for a specific purpose will be analyzed for that purpose and no other.”” *Id.* at 618 (quoting *Crider*, 2019 WL 4178633, at *2). We concluded *Martinez* had no application because it dealt with a different question—i.e., whether “an individual has an expectation of privacy in blood previously drawn for purposes other than police testing.” *Id.* (citing *Martinez*, 570 S.W.3d at 291). We also noted in *Staton* that “[t]hose are not the facts before us,” *id.*, a conclusion that is equally applicable here.

In response to *Staton*, Jones argues that because *Staton* allegedly “merged the

requirements to justify blood analysis with the requirements for obtaining a blood draw warrant, the timeframe requirements for blood testing are controlled by the timeframe for blood draws.” Jones cites article 18.07 of the Texas Code of Criminal Procedure, titled “Days allowed for warrant to run,” which gives an officer three days for the “execution” of most search warrants, excluding the date of issuance and the date of execution. *See* TEX. CODE CRIM. PROC. ANN. art. 18.07(a)(3). Jones contends the State “substantially exceeded” this alleged three-day time limit for conducting tests on his blood. *See id.* Jones, however, cites no authority beyond the statute itself to support this argument, nor have we found any. The statute merely provides the deadlines for seizing the evidence, not analyzing it. It specifies that with certain exceptions not applicable here, a warrant must be *executed* within three days of its issuance, exclusive of the day of issuance and the day of execution. *See id.* The execution of the warrant is the blood draw, not the testing and/or analysis of that blood. Our opinion in *Staton* says nothing about imposing a deadline for the testing and/or analysis of blood, much less applying the statutory deadline of article 18.07(a)(3) to the testing and/or analysis of the blood, and we decline Jones’s invitation to create new law on this subject.

We conclude the trial court erred in granting Jones's motion to suppress. We therefore reverse the trial court's order granting the motion to suppress and remand for further proceedings.

/Lana Myers/

LANA MYERS
JUSTICE

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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-19-00927-CR V.

BRIAN CARL JONES, Appellee

On Appeal from the County Criminal
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Trial Court Cause No. MA17-81084-
C.

Opinion delivered by Justice Myers.
Justices Partida-Kipness and Reichek
participating.

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 9th day of July, 2020.