

Reversed and Remanded and Opinion Filed March 23, 2021



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

No. 05-20-00307-CR

**THE STATE OF TEXAS, Appellant
V.
MARGARET MENDEZ, Appellee**

**On Appeal from the County Criminal Court No. 4
Dallas County, Texas
Trial Court Cause No. M19-53611-E**

MEMORANDUM OPINION

**Before Justices Molberg, Reichel, and Nowell
Opinion by Justice Reichel**

In this appeal, the State of Texas contends the trial court erred in granting a motion to suppress evidence obtained through a blood draw. In a single issue, the State argues there is no deadline by which a blood sample that has been lawfully seized pursuant to a warrant must be tested and analyzed. For the reasons that follow, we reverse the trial court's order and remand the cause for further proceedings.

Appellee Margaret Mendez was arrested on March 14, 2019 for driving while intoxicated with an open container of alcohol in her immediate possession. Shortly

after appellee was arrested, a warrant was issued for the seizure and forensic analysis of her blood. The warrant was executed and appellee's blood was drawn the same day the warrant issued. A toxicology analysis report dated March 25, 2019 shows a blood-alcohol level of 0.167g/100ml.

Appellee moved to suppress the results of the blood test contending the testing had been performed after the warrant had become stale. Specifically, Appellee argued the State was required to conduct its toxicology analysis within the three day period for executing the warrant. If testing was not conducted within that period, appellee argued the blood could not be analyzed without either her consent or a second warrant. The trial court granted appellee's motion and the State brought this appeal.

This Court has already addressed this issue in several recent cases. *See e.g., State v. Tighe*, No. 05-20-00698-CR, 2021 WL 248666, at *2 (Tex. App.—Dallas Jan. 26, 2021, no pet.)(mem. op., not designated for publication); *State v. Riddle*, No. 05-20-00320-CR, 2020 WL 6390506, at *2–3 (Tex. App.—Dallas Nov. 2, 2020, no pet.)(mem. op., not designated for publication); *State v. Jones*, 608 S.W.3d 262, 265 (Tex. App.—Dallas 2020, pet. ref'd). Pursuant to article 18.07(a)(3) of the Texas Code of Criminal procedure, a warrant for the seizure and analysis of blood must be executed within three days, exclusive of the day the warrant is issued and the day of its execution. TEX. CODE CRIM. PROC. ANN. art. 18.07. As we have previously held, the execution of the warrant is the blood draw, not the subsequent

testing and analysis. *Jones*, 608 S.W.3d at 265. Accordingly, article 18.07 provides the deadline for seizing the evidence, not analyzing it. *Id.*

There is no dispute that appellee's blood was drawn within the three day period for executing the warrant. Because there is no time period within which blood must be tested after it is seized pursuant to a validly executed warrant, we conclude the trial court erred in granting appellee's motion to suppress the results of the toxicology analysis.

We reverse the trial court's order granting the motion to suppress and remand the cause to the trial court for further proceedings.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-20-00307-CR V.

MARGARET MENDEZ, Appellee

On Appeal from the County Criminal
Court No. 4, Dallas County, Texas

Trial Court Cause No. M19-53611-E.

Opinion delivered by Justice

Reichek. Justices Molberg and
Nowell participating.

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

Judgment entered March 23, 2021