SEARCH WARRANT FOR BLOOD IN DWI CASE

A. SEARCH WARRANT FOR BLOOD IN DWI CASE

1. IS PROPER

Beeman v. State, 86 S.W. 3d 613, (Tex.Crim.App. 2002). See also Dye v. State, No. 08-02-00018-CR, 2003 WL 361289 (Tex.App.-El Paso 2003, no pet.) (not designated for publication).

This case involved a rear end collision without injuries that resulted in the suspect's arrest for DWI. After the suspect refused to give a breath sample, the officer got a search warrant that authorized a blood sample be drawn and said sample was taken over the suspect's objection. The issue on appeal is whether the implied consent law prohibits drawing a suspect's blood under a search warrant. The Court of Criminal Appeals holds that is does not; pointing out that that to interpret the statue in that way would afford DWI Suspects more protection than other criminal suspects.

2. SEARCH WARRANT AFFIDAVIT FAILED TO NOTE DATE/TIME OF STOP

(a) NOT FATAL

Zalman v. State, No. 13-13-00471-CR, 2015 WL 512914 (Tex.App.-Corpus Christi 2015)

Failure to note time of stop in warrant was not fatal when it stated offense was committed on Sept 13, 2009 and it was issued at 3:09 a.m. the morning of the 13th gave Magistrate sufficient basis to infer that details observed also occurred that same date.

Ashcraft v. State, No. 03-12-00660-CR,2013 WL 4516193(Tex.App.-Austin 2013).

Failure to set out the time at which the Defendant was operating a motor vehicle in the affidavit was not fatal where affidavit did state officer made contact with Defendant on May 14th at 11:05 p.m. and was sworn on May 15th which indicates it was sworn to sometime after midnight as it was issued at 12:28 a.m. on the 15th. Since less than two hours elapsed between the time of "contact" with the Defendant and the time warrant was issued and the description of the signs of intoxication observed at the time of said contact, the magistrate had a substantial basis for determining that evidence of intoxication would likely be found in the Defendant's blood within two hours of stop.

State v. Dugas, 296 S.W. 3d 112 (Tex.App.-Houston (14th Dist.) 2009, pet.ref d).

In this case the blood search warrant affidavit was challenged because it failed to include the time the alleged offense occurred. Argument raised =no basis upon which the magistrate could have determined whether the defendant's blood contained evidence of a crime. Trial Court suppressed the blood. In reversing Trial Court, the Court of Appeals pointed out that though time is not noted, it is undisputed that offense and issuance of warrant occurred the same day as warrant was signed at 6:03 a.m., leaving the maximum potential time elapsed between traffic stop and warrant as 6 hours and 3 minutes. Nor was it unreasonable for magistrate to have assumed, based on facts in affidavit, that there would be some evidence of intoxication in the defendant's blood when warrant was signed. "The issue is not whether there are other facts that could have or even should have been included in that affidavit; instead, we focus on the combined logical force of facts that are in the affidavit."Cites Rodriguez v. State, 232 S.W.3d 55 (Tex.Crim.App. 2007).

State v. Jordan, 342 SW.3d 565 (Tex.Crim.App. 2011).

The defense argued that the affidavit did not state the date and time when facts of offense are alleged to have occurred so was insufficient to give magistrate PC to believe blood would constitute evidence of guilt at time warrant issued. Trial Court agreed and suppressed blood. State argued that because warrant was issued at 3:54 a.m. on June 6th, the maximum amount of time that could have elapsed between stop and

issuance of warrant was 3 hours and fifty-four minutes. State cited State v. Dugas. Court of Appeals rejected that it was undisputed that offense and issuance of warrant were in the same day. Though statement in affidavit by officer was, "I have good reason to believe that heretofore, on or about the 6th day of June 2008…did then and there commit offense of DWI," the Court finds this to just be a statement of the officer's "belief and not a statement of "fact" which distinguishes this case from Dugas as it holds affidavit did not state the offense date. Trial judge suppression is affirmed. This holding was reversed by the Court of Criminal Appeals which upheld the warrant. In its holding the Court states that the four comers of a warrant affidavit have to be considered to determine probable cause, rejecting the approach of the lower court which seemed to be testing the introductory statement and the description of facts separately. It held that the magistrate could infer that observations of defendant's conduct occurred on the date specified in the introductory statement and find that this was the date of offense. Magistrate had substantial basis to determine evidence of intoxication would be found in defendant's blood. Evidence of any amount of alcohol or other controlled substance could be probative of intoxication as it is evidence that suspect introduced substance into his body.

(b) FATAL

Crider v. State, 352 S.W.3d 704 (Tex.Crim.App. 2011).

Affidavit in support of search warrant to draw blood from defendant, who had been arrested for DWI, was insufficient to establish probable cause that evidence of intoxication would be found in defendant's blood at the time the search warrant was issued. Affidavit did not state the time that the officer conducted traffic stop of defendant's vehicle, and nothing in the four corners of the affidavit suggested what time gap existed between defendant's last moment of driving and the moment the magistrate signed the warrant; such that there could have been a 25-hour gap between the time the officer first stopped defendant and the time he obtained the warrant.

3. SEARCH WARRANT AFFIDAVIT LISTED THE WRONG YEAR NOT FATAL

Schornick v. State, No.02-10-00183-CR, 2010 WL 4570047 (Tex. App.-FortWorth 2010, no pet.).

This involved a warrant where the officer erroneously listed the stop occurred on January 21, 2008, rather than January 31, 2009. At the hearing officer testified that it was a clerical error. Trial Court denied MTS. Trial Court holding was affirmed.

4. SEARCH WARRANT AFFIDAVIT HAVING MULTIPLE CLERICAL ERRORS NOT FATAL

Welder v. State, No. 04-12-00706-CR, 2013 WL 4683156 (Tex.App.-San Antonio 2013, no pet.).

This case concerns a computer program generated warrant that inserted boiler plate language into the body of the warrant that could objectively be argued was untrue. Specifically it stated the Affiant Officer personally saw the offense committed when he got there only after the stop. In response the Court points out that the affidavit body correctly states the name of the officer who did see the Defendant operating his vehicle and that the affidavit when read as a whole reflected the collective observations of all officers involved in the investigation.

Salzido v. State, 2011 WL 1796431 (Tex.App.-Amarillo 2011, pet. refd).

Defense attacked warrant because an erroneous date, June 7, 2008, was listed in warrant's first word paragraph and the name "Hoover" appeared once where the name Salzido should have been. He further pointed out the warrant affidavit stated the defendant was asked to perform standard field sobriety test drills (plural}, when only one standard field sobriety test drill was performed (HGN). Trial Court denied the motion. In upholding the warrant, the Court referred to the errors in the date and name as clerical errors based on the officer's failure to change names in the template he used. The explanation, that the defendant was initially asked

to perform drills and that some were not later offered due to back issue, adequately explained why that mistake was not a problem. Even without the FST, there was sufficient other evidence to support the PC.

See Also Munoz v. State, No. 02-12-00513-CR, 2013 WL 4017622 (Tex.App.-Fort Worth 2013, no pet.).

5. SEARCH WARRANT AFFIDAVIT FAILED TO SET OUT THE BASIS FOR THE TRAFFIC STOP NOT FATAL

Hughes v. State, 334 S.W.3d 379 {Tex.App.- Amarillo 2011, no pet.).

Defendant attacks the affidavit for failing to state the specific articulable facts to authorize the stop of the defendant. It also failed to state how the blood draw would constitute evidence of DWI, and complained about slash marks that are not explained in the part describing FST's. Language asserts that officer swore to affidavit before the magistrate when in fact it was sworn to in front of an officer at station who was notary so the affidavit constitutes perjury. No exigent circumstances warranted the intrusion of blood draw. In rejecting that argument, the Court explains that the failure to detail facts regarding the basis for the stop is not fatal to magistrate's overall PC determination because the issue is not reasonable suspicion to detain but rather PC to authorize a search. In rejecting the blood use argument, the Court finds that the magistrate is allowed to make a reasonable inference that blood would be analyzed for presence of alcohol for use in prosecution of DWI. Slash marks are merely "I's that indicate officer observed those matters. As to the issue of who it was sworn to, this is judged to be extra wording that does not impact the legality of the warrant. The Court further finds that no exigent circumstances are required to authorize a warrant based on PC for a blood draw.

6. SEARCH WARRANT AFFIDAVIT WAS NOT SIGNED BY AFFIANT =NOT FATAL

Smith v. State, 207 S.W.3d 787 (Tex.Crim.App. 2006).

Affiant swore before magistrate and then failed to sign the affidavit. The magistrate did not notice the omission and signed the SW Court of Appeals held failure to sign affidavit does not invalidate warrant. Court of Criminal Appeals agreed holding that the "purpose of the affiant's signature...memorializes the fact that the affiant took the oath; it is not an oath itself " Dicta in the opinion references that some federal and state courts now permit telephonic warrants "and one can foresee the day in which search warrants might be obtained via email or a recorded video conference with a magistrate located many miles away. In state as large as Texas, such innovations should not be foreclosed by the requirement of a signed affidavit in officer's oath which can be memorialized by other equally satisfying means. We leave those potential future changes to the legislature." The Court further notes that forgetfulness or carelessness in formalities of affidavit may affect credibility of the officer.

7. SIGNATURE ON WARRANT NOT LEGIBLE IS NOT FATAL

Nguyen v. State, No.14-09-00995-CR, 2010 WL 2518250 (Tex. App.-Houston [14th Dist.] 2010, no pet.).

In attacking the blood search warrant, the defendant argued that because the signature on the warrant affidavit was illegible, the warrant was defective. The Court rejected this argument pointing out it is the act of swearing and not the signature that is essential. Additionally, another officer testified that he and the magistrate did recognize the signature.

8. SEARCH WARRANT AFFIDAVIT CONTAINING MULTIPLE ABBREVIATIONS THAT WERE NOT EXPLAINED = NOT FATAL

Hogan v. State, 329 S.W.3d 90 (Tex.App.-Fort Worth 2010, no pet.).

Attacked the warrant affidavit on the basis that it contained "conclusory and nonsensical statements." It described driving path of "IMP" without saying what IMP is or that defendant was driving IMP. It contains terms HGN, WAT and OLS without defining those acronyms or explaining significance of number of clues. Does not state officer is qualified to conduct FST's or that he has experience in DWI cases. Trial Court denied MTS. In rejecting these arguments, the Court found that there was sufficient evidence to tie defendant to IMP. The description of the clues on the FST's and other facts were sufficient to show PC. Although it could have been more complete about officer's experience in DWI cases, such information is not required to make affidavit adequate. Cites Swearingen v. State, 143 S.W.3d 808 (Tex.Crim.App. 2004). When reviewing a magistrate's decision to issue a warrant, we apply a highly deferential standard in keeping with constitutional preference for a warrant. "Even in close cases, we give great deference to a magistrate's determination of PC to encourage police officers to use the warrant process rather than making a warrantless search and later attempting to justify their actions by invoking some exception to the warrant requirement."

9. THE RELIABILITY OF THE FST'S DESCRIBED IN THE SEARCH WARRANT AFFIDAVIT ARE ATTACKED = NOT FATAL

Foley v. State, 327 S.W.3d 907 (Tex. App.-Corpus Christi-Edinburg 2010, pet. refd).

In attacking the affidavit, the defendant contends that the FST's mentioned were not credible source of information regarding his intoxication because of his age being over 65. Court of Appeal's response is to assume that the FST's described were not good indicators for this defendant, but found that there were enough other independent indicators of intoxication to sustain the warrant.

10. FAXED WARRANT WHERE OATH WAS ADMINISTERED BY MAGISTRATE TO AFFIANT OVER THE PHONE

Clay v. State, 391 S.W.3d 94 (Tex.Crim.App. 2013).

This case involves the legality of an officer swearing to the truth of a search warrant affidavit over the phone with a magistrate. In holding that the oath under these facts was valid, the Court put great weight on the fact that the magistrate testified he recognized the officer's voice. The purpose of a sworn affidavit has two important functions. The first of these is to impress upon the swearing individual an appropriate sense of obligation to tell the truth. The second is that the sum total of information conveyed to magistrate in support of PC is memorialized (done by affidavit being in writing in this case). The Court finds no compelling reason to construe the terms "sworn affidavit" contemplated by article 18.01(b) to require that oath always be in corporeal presence of magistrate so long as solemnizing function exists similar to that when affiant is in presence of magistrate.

Franklin v. State, No 14-11-00961-CR, 2012 WL 3861970 (Tex. App.-Houston [14th Dist.] 2013, no pet.)

This case involved a telephonic oath swearing to affidavit. The Court upholds this under the "Good Faith Exception" which was argued in this case (distinguishing it from Aylor v. State).

11. THE JURISDICTION OF THE STATUTORY COUNTY COURT IS ATTACKED AND FOUND TO BE LIMITED

Sanchez v. State, 365 S.W.3d 681 (Tex.Crim.App. 2012).

Houston police arrested suspect in Harris County and sought a warrant from Judge of County Court at Law of Montgomery County. Kingwood is in Harris and Montgomery County. The arrest was in Harris. It was during a "No Refusal" weekend in Montgomery a few miles away so the cop drove 5 miles to MOCO rather than 22 miles to Houston. The issue presented was whether the judge of a statutory county court, acting as a magistrate, may sign a search warrant to be executed in a county other than the one in which he serves? The Court first pointed out that jurisdiction of JP's is limited to county, and the jurisdiction of District Judge is statewide. It then held that County Courts at Law do not have statewide authority because gov't code does not expressly grant them that jurisdiction, so the Court held that legislature limited a statutory county court judge's authority to acting within the county of the court. For this reason the warrant was invalid. ***Decision affirmed by Court of Criminal Appeals.***

12. SEARCH WARRANT AFFIDAVIT ATTACKED FOR HAVING INSUFFICIENT FACTS TO SUPPORT PC AND FOR FAILING TO NOTE DATE/TIME OF STOP.

(a) NOT FATAL

Rentrop v. State, No. 09-14-00060-CR. 2015 WL 993477 (Tex.App.-Beaumont 2015)

The search warrant affidavit failed to list month events sworn to were observed. Citing to reasoning in of Court of Criminal Appeals in Jordan the Court found this omission to not be fatal us as under totality of circumstances and giving due deference to all reasonable inferences that can be drawn from the rest of the facts in affidavit made it signature including fact that the affidavit oath listed the month as did the judges signature line and the fact that there was less than a three hour interval between time of stop and signing warrant.

Wheat v. State, No. 14-10-00029-CR, 2011WL 1259642 (Tex.App.-Houston (14th Dist.) 2011, pdr.refd

Defendant challenges sufficiency of affidavit to establish PC through MTS warrant. Denied by Trial Court. Police received a call from citizen that described defendant running red light and then parking along side of the road. When police responded to call, they found vehicle running and defendant asleep behind the wheel. Deficiency argued were (1) no time reference, (2) no witness saw defendant operating, (3) nothing to show when defendant consumed alcohol, and (4) no indication if vehicle was parked in right of way. Court rejected those arguments pointing out there were sufficient details from which approximate time could be inferred. The defendant was still "operating" vehicle when the officer arrived. No need to show when alcohol was consumed and irrelevant if vehicle was in right of way.

(b) FATAL

Farhat v. State, 337 S.W.3d 302 (Tex.App.-Fort Worth 2011, pet. refd).

In this case the affidavit was attacked for not containing sufficient basis for concluding PC. Affidavit stated the following:

1) *Defendant was driving 30 mph in a 40 mph zone at 12:50 a.m.*
2) *He was weaving from side to side.*
3) *He continued in left Jane for half mile.*
4) *Turned on right turn signal and then turned left into parking Jot.*
5) *Upon stopping him, officer saw two pill bottles in center console.*
6) *Defendant refused FST's.*
7) *Officer believed he had committed DWI based on the erratic driving, pills in console and personal observations.*

In reversing the case, the Court pointed to the fact that there was no mention in affidavit of what those personal observations were (i.e. odor of alcohol, bloodshot eyes, and slurred speech). That contrary to what is stated in the findings of fact, the record shows only that pill bottles and not pills were observed and no mention of type of pills or that type would point to intoxication. It rejects the Trial Court's interpretation of the testimony that he drove in the left lane meant he was driving into oncoming traffic as the Court does not understand why officer would not have immediately turned on lights and pulled him over. The Court finds the other driving behavior may be enough to justify reasonable suspicion for stop but not PC.

13. FAILURE TO SPECIFY WHAT POLICE INTEND TO DO WITH BLOOD SAMPLE= NOT FATAL

State v. Webre, 347 S.W.3d 381 (Tex.App. - Austin 2011, no pet.).

Police officer's affidavit was not insufficient to support probable cause for draw of defendant's blood for evidence that she had committed offense of driving while intoxicated simply because affidavit did not detail what police intended to do with sample after it was taken; magistrate simply needed to determine there was probable cause that evidence of the offense would be found in defendant's blood, and magistrate could have reasonably inferred that sample sought would be tested for presence of alcohol or other intoxicants.

14. JURISDICTION OF MUNICIPAL POLICE DEPARTMENT AS REGARDS EXECUTION OF WARRANT IS COUNTY WIDE

Meadows v. State, 356 S.W.3d 33 (Tex.App.-Texarkana 2011, no pet.).

Police officer employed by home-rule municipality had jurisdiction to execute search warrant for sample of defendant's blood outside municipality, but within county in which municipality was located, as municipality's powers were derived from state constitution rather than from statute, and warrant was executable by any "peace officer" with jurisdiction throughout county.

15. SEARCH WARRANT NOT RELATING DETAILS ABOUT CREDIBILITY OF AFFIANT NOT FATAL

Hughey v State, No. 02-11-00175-CR, 2012 WL 858596 (Tex App.-Fort Worth 2012, pdr refd) (not designated for publication).

This case involves a search warrant for blood where the defendant contended that the warrant did not provide a reasonable basis for the magistrate to determine PC and that there were matters in the affidavit that were not true. The State conceded that the affidavit did not include information about the credibility of the witness to the bad driving or the fact that he was an off-duty police officer and does not specify that only Rivera and not the officer witnessed the bad driving and redacted by agreement some oral statements referred to in the affidavit. The Court found that none of what was referred to as inaccurate statements was intentional and that even if all the driving facts were redacted, the affidavit still supported the magistrates finding of PC.

16. AFFIANT MISSTATEMENTS IN WARRANT AFFIDAVIT MAY OR MAY NOT INVALIDATE AND MAY LEAD TO SUPPRESSION

(a) MAY

State v. Lollar, No. 11-10-00158-CR, 2012 WL 3264428 (Tex.App. – Eastland 2012, no pet.) (not designated for publication).

The case involves a Defendant who was in an accident and was arrested for DWI and the officer got a search warrant to obtain a blood sample. At a motion to suppress hearing, the officer admitted a number of items that he had put in the affidavit were not true and this resulted in the Trial Court suppressing the blood evidence and

issuing a finding that the officer was not credible. Not surprisingly, this decision was affirmed by the Court of Appeals. In its ruling the Court points out that form affidavits, like that used in this case, can be a valuable tool for law enforcement when time is of the essence, but if abused, they have the potential to infringe on 4th Amendment rights.

(b) MAY NOT

Pullen v. State, No. 01-13-00259-CR, 2014 WL 4219483 (Tex.App.-Houston [1st Dist.] 2014).

The Defendant challenged the search warrant on the basis of what he called false statements contained therein. Officer admitted at trial that she had mistakenly said in her affidavit that she had offered "some" field sobriety tests to Defendant when in fact she had only administered the HGN test at the scene as it was another officer at the scene who administered the other tests at Intox room. The Court found that Trial Court could have found that these were simple mistakes and weren't intentional or reckless and that the remaining information in the four corners of the warrant supported probably cause.

17. *MAY THE JUDGE WHO SIGNED WARRANT PRESIDE OVER MTS HEARING ON THAT SAME WARRANT – YES*

Diaz v. State, 380 S.W.3d 309 (Tex.App. - Fort Worth 2012, pdr ref'd).

In this case the Defendant filed a motion to suppress the blood search warrant in his DWI case and the trial judge who signed the warrant was the same judge who presided over the hearing. The Defendant's motion was denied and on appeal he argues that he received ineffective assistance of counsel because defense counsel did not pursue a motion to recuse the trial judge or otherwise complain or object that the same Judge who had signed the blood warrant also presided over the suppression hearing and the trial. In affirming his conviction, the Court of Appeals found that the mere fact that the same Judge signed a Defendant's search or arrest warrant and then presided in subsequent criminal proceedings does not establish bias pointing out that Judges are often called on to reconsider matters they have previously ruled on. Generally, a Judge is not required to be recused based solely on his prior rulings, remarks, or actions.

18. QUALIFIED PERSON NOT NAMED IN WARRANT MAY DRAW BLOOD

Walters v. State, No. 02-11-00474-CR, 2013 WL 1149306 (Tex.App.- Fort Worth 2013, no pet.).

The issue concerns the fact that an LVN did the blood draw pursuant to a warrant that excluded LVN's from the list of qualified persons who could do the draw. In rejecting that argument, the Court points out that in blood draw ***cases*** *when the State has obtained a warrant, it is not fatal that the State might draw "in a manner other than that directed by the magistrate". It also found that there was sufficient evidence that the LVN was qualified to do the blood draw.*

19. SEARCH WARRANT OATH NOT ADMINISTERED

Ashcraft v. State. No. 03-12-00660-CR, 2013 WL 4516193 (Tex.App.- Austin 2013).

Fact that officer qualified to administer oath to affiant did not actually verbalize the recitation of an oath was not fatal where on the face of the affidavit it begins with statements, "after being duly sworn" and concludes with language "sworn and subscribed". This is sufficient because it supports that if the affidavit were proven to be false, it would subject affiant to charges of perjury.

20. AFFIDAVIT NEED NOT SPELL OUT HO BLOOD WILL BE EVIDENCE

Kriss v. State, No. 05-12-00420-CR, 2013 WL 6050980 (Tex.App.- Dallas 2013, pdr refd).
Hughes v. State, 334 S.W.3d 379 (Tex.App.- Amarillo 2011, no pet.).
Rodriguez v. State, 232 S.W.3d 55 (Tex.Crim.App. 2007).

A blood warrant affidavit in a DWI case that states that blood will be evidence of a crime does not need to state how blood draw would constitute evidence of driving while intoxicated because magistrate can draw logical inferences from affidavit's facts. It is not a great leap of faith or unknown intuitiveness to realize that magistrate knows that blood is being requested to analyze it for presence of blood alcohol.

21. BLOOD NEED NOT BE DRAWN AT LOCATION SPECIFIED IN SEARCH WARRANT

Bailey v. State, No. 03-13-00566-CR, 2014 WL 3893069 (Tex.App.-Austin 2014).

Body of search warrant said blood would be taken at the county jail when in fact it was drawn at a local hospital. In holding that this was not a basis for suppressing the blood evidence, the Court pointed out there is no authority that blood obtained by warrant may only be drawn at location specified in the warrant.

22. THE NAMED AFFIANT NEED NOT BE THE ONE WHO SIGNS AFFIDAVIT

Patterson v. State, No. 08-12-00289-CR, 2014 WL 5502453 (Tex.App.-El Paso 2014).

The warrant affidavit was drafted by one officer while the LEADRS program which was under another officer's name inserted that other officer's name as affiant into the beginning of warrant. The affidavit was actually signed by the first officer. In short the affiant name listed and the affiant signature are two different people. The Court holds this error does not invalidate the warrant.

23. DIRECT EVIDENCE OF DRIVING NOT NEEDED TO SUPPORT PC IN SEARCH WARRANT

State v. Castro, No. 07-13-00146-CR, 2014 WL 4808738 (Tex.App.-Amarillo 2014).

In this case an officer approached a Defendant to assist him in changing a tire. Defendant was outside vehicle at the time retrieving a spare. This contact led to DWI investigation and to arrest for DWI. The search warrant erroneously stated that FST's had been done and that Defendant refused to do them along with other details of the investigation. The Defendant sought to suppress the SW on the basis of the mistakes in the affidavit stated above and with the argument that there was insufficient evidence to prove he had been operating the vehicle. The Trial Court granted the motion. In reversing the Trial Court and upholding the warrant, the Court of Appeals found that the officer's warrant did have sufficient detail to support PC even with the mistakes and that the Trial Court's belief that there needed to be "direct" evidence of driving before PC could exist was erroneous. There was sufficient evidence based on Defendant's presence at the scene to support the interest he was driving.

24. MAGISTRATES WHO SIGNED IS NOT AN ATTORNEY

Zalman v. State, No. 13-13-00471-CR, 2015 WL 512914 (Tex. App.-Corpus Christi 2015)
Barrios v. State, 452 S.W.3d 835 (Tex. App.-Amarillo 2014)

Fact that judge who signed warrant was not a licensed attorney permitted by CCP 18.02 (10) and that is not limited by language in 8.01 U) which lists that all "attorneys" may sign blood search warrants. The Court reconciles what Defendant calls a contradiction and upholds the draw.

25. REVIEW OF WARRANT AFFIDAVIT SHOULD NOT BE HYPER TECHNICAL

State v. Crawford, No. 02-14-00289-CR, 2015 WL 3377873 (Tex.App. - Fort Worth 2015).

A motion to suppress on blood search warrant was held and trial granted MTS PC did not support concluding SW In reversing the trial court the Court of Appeals cautioned against reviewing supporting affidavit hyper technically and said magistrate finding was be deferred to as long as there is a substantial basis for his finding PC. In reversing the trial court's finding the Court of Appeals focused on the following: The fact that the trial court focused on the fact that the affidavit said Defendant had admitted he had been "drinking"and was bothered by the failure to clarify if drinking referred to water, mile, lemonade, etc., or alcohol, statement that he failed field sobriety tests was found Jacking because specific tests were not named and how they were failed. Trial Court further focused on the fact that the Defendant was not described as having unsteady balance or needing support. In total 13 of the 24 findings of fact focused not on what was in the warrant affidavit but on what was missing. The court points out that merely because conflicting inferences could be drawn from the affidavit does not justify a reviewing court's conclusion that the magistrate did not have substantial basis upon which to find PC. In this case the Court finds the four comers of warrant affidavit support PC.

Texas District & County Attorneys Association

Published on *Texas District & County Attorneys Association* (http://www.tdcaa.com)

Legislative changes to the occupational driver's license statutes [1]

2015
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Big changes are afoot when it comes to impaired drivers who want to be out on the roads again.

The Texas Legislature finally figured out what every misdemeanor prosecutor gets in his first few days on the job: Suspending someone's driver's license does not keep him from driving.

Being able to move across the big distances this state is so famous for has always been an issue. (Heck, there was a time that stealing a horse in Texas carried the death penalty.) And the "one size fits all" driver's license suspension tool met some real challenges here—but it was the only tool we prosecutors had for a long time.

But not anymore. In the 84th Regular Session, the Legislature passed House Bill 2246, which makes sweeping changes to how impaired drivers can stay on the road. While HB 2246 does not end automatic license revocation (ALR), essential need licenses, or Driving with License Invalid offenses, it does add a lot more sanity to the complicated system of license suspensions in impaired driving cases.

What changed

The act begins in Code of Criminal Procedure Art. 42.12, §13, which deals with impaired driving offense probation. That section was amended with a subsection (c) that grants probationers whose driver's licenses have been suspended the right to drive if: 1) they install ignition interlock, and then 2) obtain an "occupational driver's license with an ignition interlock designation" under the Transportation Code. They can't get that occupational license until they can prove they have already installed ignition interlock on all vehicles they own and operate. Smart and capable defense counsel will want to get this handled before or with the plea or sentencing.

The act goes on to fix potential conflicts between CCP Art. 42.12 §13 and Penal Code §49.09(h), which deals with mandatory ignition interlock for repeat offenders, by clearing up that §49.09(h) controls over all of Art. 42.12, §13.

Perhaps most importantly, the act fixes lots of head-scratching issues in the occupational license laws. Transportation Code §§521.242(a) and 521.243(a) were amended to make it clear that the occupational driver's license provisions in those sections apply to all Chapter

49 DWI offenses (including DWI with a Child and flying, boating, and setting up carnival rides while intoxicated), and not just the jumble that appeared in the statute before.

No longer must the defendant show a need for the occupational license, nor must the judge find such a need, nor must the court limit the driving to certain events or times or require driving diaries and all the other crap we have cobbled together over the years. All that incessant arguing about the defendant's unique work hours and unfathomable work responsibilities are gone. To get the occupational license a defendant needs two things, and only two things: First, he must have evidence of financial responsibility; second, he must prove he has already had an ignition interlock device installed on "each motor vehicle owned or operated" by the petitioner. Yes, he must show that he already did it, not that he swears, promises, and affirms that he will. Judges and prosecutors no longer have to trust that "the check is in the mail" on installing the interlock.

The act goes on to radically amend §521.246 of the Transportation Code concerning requiring ignition interlock as part of the occupational license. Gone is the language that the court "may" require ignition interlock. Now the court simply "shall" order ignition interlock—the order must state that the driver can't operate a vehicle without interlock. Gone is the court's ability to require it during only half of the suspension period—now the order is for the whole duration of the suspension period. The act also amends §521.248 of the Transportation Code to make it clear that the only restriction on driving is having that ignition interlock on the vehicle—all time, reason, and location limitations are prohibited. (The limitations still exist for suspensions not connected to impaired driving convictions.)

Did you ever think that requiring the driver to carry around and show the occupational license order to an officer who had to somehow make sense of it was kinda stupid and fraught with danger? Well, me too—and now that requirement is gone. The act amends §521.2465 of the Transportation Code to have the driver's license conspicuously show that the person's right to drive is limited to vehicles with ignition interlock. The driver gets his old, unrestricted license back when he reapplies for it and shows the suspension is over. This is a great tool for officers making stops.

Finally, the act amends §521.248 of the Transportation Code to require the court to revoke the occupational license of any person who "fails to maintain an installed ignition interlock device on each motor vehicle operated by the person." Now how the court finds out that someone failed to maintain an interlock is still a little vague. But obviously pursuant to that, the amendment goes on to prohibit a non-court of record from order the driver to be supervised by community supervision. But for those defendants being supervised in the criminal case, there is a chance to police compliance.

What did not change

Two helpful provisions remain unchanged. Section 521.2461 of the Transportation Code still allows the court to order the driver to have alcohol or drug testing done. Even more importantly, if the holder of an occupational license violates the terms of that license—yes, that means driving a car without an interlock—§521.253 of the Transportation Code makes that violation a Class B misdemeanor. To actually enforce this life-saving restriction, prosecutors will need to actively coordinate the efforts of local police, probation departments, and courts.

It will probably distress victims in intoxication manslaughter and intox assault cases to hear that their defendant still gets to drive, but let's be honest: The defendant was already driving. Now at least he can do it legally. We will also need to be able to tell victims and their families that we are keeping track of that defendant and his interlock device, but first we need to make sure we are keeping track.

Final thoughts

My final advice is to read the law and talk to the other players. These new measures simplify the work of prosecutors, defense counsel, defendants, probation officers, courts, and police. Talk with local ignition interlock providers and make sure you can be notified somehow if the defendant quits complying. Heck, make sure you can be notified if the defendant keeps trying to start the car with too high a blood-alcohol concentration.

While future tweaking is certainly inevitable, this new law is a good start in the proper direction—but like any new legislative tool, it will work only if we make it work.