2020 Impaired Driving Symposium

Case Law Update

Judge Laura A. Weiser
Judicial Resource Liaison

1

Housekeeping

1. Ask questions in the chat box found on the side-you may chat to “all participants” or to a selected participant
2. To rule, you will be asked to complete a poll.
   A=Sustained, the evidence is excluded
   B=Overruled, the evidence is admitted
   **Be sure to click “submit”

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Reasonable Suspicion

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Get Ready to Rule!

Officer is behind a vehicle. He calls in the license plate and finds that the vehicle is registered to Swervin Mervin. Swervin Mervin's driver's license is revoked for being a habitual violator. He pulls over the vehicle, identifies the driver as Swervin Mervin and gives him a citation for driving while license invalid.

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At trial Mervin moves to suppress all evidence from the stop arguing that the officer lacked reasonable suspicion to pull him over and the stop violated his Fourth Amendment rights.

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The State argues that a law enforcement officer may infer that the owner of the vehicle is the one driving the vehicle, absent any information to the contrary and that the knowledge that the owner of the vehicle has a suspended license coupled with that inference is enough to conduct an investigative stop.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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Kansas v. Glover, U.S. Supreme Court Docket #18-556 4/6/2020

When the officer lacks information negating an inference that the owner is driving the vehicle, an investigative traffic stop made after running a vehicle's license plate and learning that the registered owner's driver's license has been revoked is reasonable under the Fourth Amendment.

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Get Ready to Rule!

Weaving Stephen is driving down a four lane highway. There is no other traffic, other than Officer Driveright, in his lanes or the oncoming lanes. He is weaving out of his lane and in his own lane. Officer Driveright stops Stephen for failing to maintain a single lane.

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After stopping Stephen, Officer Driveright administers SFSTs and arrests Stephen for DWI. In a motion to suppress, Stephen moves to suppress the SFSts and all evidence gathered during the stop arguing that Officer Driveright did not have reasonable suspicion to stop Stephen without a showing that his driving was unsafe.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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A or B

In support of A: (13th COA)

State v. Hardin PD-0799-19 (submitted 2/26/20)

Weaving in one's own lane of traffic, without evidence indicating that such movement was unsafe, does not furnish an officer with reasonable suspicion to stop a driver for failing to maintain a single lane.

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In support of B:

State v. Meras 10th COA PDR filed 3/10/20

Following CCA plurality opinion *in Leming v. State* that an individual can violate TTC 545.060(a) regardless of whether anything unsafe occurs and;

Reyes v. State 8th COA 08-18-00145-CR

Also following *Leming*

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Get Ready to Rule!

Officer sees Littering Larry toss a lit cigarette from his car. The cigarette landed on the road but did not start a fire. Officer stopped Larry for violating §365.012(a-1) HSC. After further investigation, Larry was arrested for DWI.

Larry moved to suppress arguing that the cigarette had to start a fire for this to be an offense.

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HSC §365.012(a)

ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

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Health and Safety Code 365 a-1

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision 1

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See *State v. Wood*, 575 S.W.3rd 929 (Tex. App.-Austin 2019, no pet.)

Even if cigarette didn't start a fire, driver could be stopped under §365.012(a)

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Get Ready to Rule!

Officer stops Linda Light for driving without headlights at nighttime in violation of TTC §547.302. Officer testified that at the time he made the stop, store lights were on, street lamps were on and all but possibly one other car's headights were on.

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At trial, evidence is offered that sunset the day of the stop was at 7:37pm and the stop was at 7:58pm. Linda's attorney argues that since "nighttime" is defined in the statute as 30 minutes after sunset, any evidence found after the stop should be suppressed.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See *Babel v. State,* 14-17-00762-CR No PDR Filed

"[Officer's] mistaken belief of the timing of sunset (Approximately 11 minutes) was reasonable under the totality of the circumstances"

See *Heien v. North Carolina*, 135 S. Ct. 530 (2014)

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Exigent Circumstances

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Get Ready to Rule!

Officer received information that Senseless Susie appeared to be very drunk and had gotten into a van and driven off. Susie was located wandering near a lake. She was so intoxicated, she had trouble standing. The officer decided she was too intoxicated to try SFSTs.

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On the way to the police station, Susie passed out. After reading the standard admonishment and getting no response from Susie, the officer ordered the hospital staff to draw blood. Susie moved to suppress the results of the blood test on the ground that it violated her Fourth Amendment right against "unreasonable searches" because it was conducted without a warrant.

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The State chose to rest its response on the notion that its implied-consent law (together with Susie's free choice to drive on its highways) rendered the blood test a consensual one, thus curing any Fourth Amendment problem.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See *Mitchell v. Wisconsin*, 139 S.Ct. 2525, (2019)

"When police have probable cause to believe a person has committed a drunk-driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may **almost always** order a warrantless blood test to measure the driver's BAC without offending the Fourth Amendment."

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Get Ready to Rule!

Fleeing Fred fled the scene of a car wreck under circumstances demonstrating that he had been driving while intoxicated. Officers found him unresponsive in a nearby field and carried him to a patrol car. Emergency medical responders tried to revive him, but he remained unresponsive, and they took him to the hospital.

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Sergeant McBride arrested Fred at the hospital and, although Fred was unconscious, she read the DWI statutory warnings to him and then ordered a warrantless blood draw pursuant to Texas Transportation Code Sections 724.011 and 724.014.1

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At trial, Fred moves to suppress the results of the blood test and argues that it violates his 4th Amendment rights.

State argues implied consent under Section 724.014 is equivalent to voluntary consent as a recognized exception to the warrant requirement.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See *State v. Ruiz*, 581 S.W.3rd782 (Crim. App. 2019)

"We hold that irrevocable implied consent is not free and voluntary and does not satisfy the consent exception to the warrant requirement of the Fourth Amendment."

Remanded to the appellate court to consider exigency

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Consider *State v. Couch* PD-1372-18
(Tex. Crim. App. 5/8/19)
(Unpublished)

Reviewing courts should afford **almost total deference** to the trial judge's findings on matters of historical fact, especially when those findings are based on an evaluation of credibility and demeanor

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Search Warrants

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Get Ready to Rule!

Sargent Sally gets a warrant for a blood draw for Picky Penny who is under arrest for DWI. At trial Penny moves to suppress the results of the blood draw because the magistrate's signature was illegible and Art. 18.04 requires a clearly legible signature or the name printed below the signature..

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The State argues that Sargent Sally relied on the executed warrant and thus the good faith exception in Art. 38.23 applies.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See *State v. Arrellano* PD-0287 (5/6/2020)

"Reliance on the statutory good-faith exception was not **automatically** precluded based on an illegible magistrate's signature in violation of Code of Criminal Procedure Article 18.04(5)."

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Get Ready to Rule!

You are presented with an application for a search warrant to permit a blood draw. The affidavit was signed by Officer One at the direction of Officer Two. Officer Two signed the jurat. When asked, Officer One says he knows that he was under oath but that Officer Two did not administer any kind of oath. You are asked to sign the warrant without any additional procedures.

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A: Refuse to Sign

B: Agree to Sign

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See *State v. Hodges*, 07-19-00237-CR (Tex. App.-Amarillo, 1/8/2020 pet ref'd)

"We are bound to follow precedent from the Court of Criminal Appeals. It said that before a written statement in support of a search warrant constitutes a "**sworn affidavit,"** the requisite oath must be administered before a magistrate or other qualified officer. Clay, 391 S.W.3d 94 (Tex. Crim. App. 2013)"

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Get Ready to Rule!

Officer Doright got a search warrant to take a sample of Drinking Donna's blood. The warrant did not include separate authorization to test the blood.

At trial Donna moved to suppress the results of the blood draw because the testing of the blood was a separate search and the warrant only authorized seizure of the blood, not testing.

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The State argued that Donna did not have a reasonable expectation of privacy in a blood sample collected pursuant to a search warrant.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See:

Jacobson v. State, 02-19-00307-CR

State v. Staton, 05-19-0061-CR

Crider v. State, PD-1070-19 PDR granted submitted 6/3/2020

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Trial

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Get Ready To Rule!

During trial, on Thursday, the State moves to continue the trial because their police officer witness, Sickly Sydney was in the ER and unable to testify. Defense objects because this will throw off the schedule for their expert witnesses. You grant the State's motion and continue the case until the next day. The next day after Sydney's testimony, the State rested.

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After the State rested, the Defense moved for a continuance, in writing and stated that because of the State's continuance, their expert was not available that day and asked for a continuance until Monday.

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Your ruling:

A: Defense continuance granted

B: Defense continuance denied

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See Rodriguez-Cruz v. State, 590 S.W.3d 29 (Tex. App.-San Antonio 2019, no pet)

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The COA held that the trial judge **abused its discretion** in denying Defendant's motion for continuance because Defendant's motion was not made for delay but was instead made to allow D's expert to testify at trial. The expert's testimony was "material" and D was prejudiced by the denial

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Get Ready to Rule!

During a trial for intoxication manslaughter, the State offered an analysis of Defendant's blood without calling the analyst. Pursuant to Art. 38.41 the State filed notice and the records. Defendant did not object pre-trial. When the state offered the records, Defendant objected claiming a violation of the confrontation clause of the 6th Amendment.

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Art. 38.41 CCP

Sec. 4. Not later than the 20th day before the trial begins in a proceeding in which a certificate of analysis under this article is to be introduced, the certificate must be filed with the clerk of the court and a copy must be provided by fax, secure electronic mail, hand delivery, or certified mail, return receipt requested, to the opposing party

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The certificate is not admissible under Section 1 if, not later than the 10th day before the trial begins, the opposing party files a written objection to the use of the certificate with the clerk of the court and provides a copy of the objection by fax, secure electronic mail, hand delivery, or certified mail, return receipt requested, to the offering party.

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Your Ruling:

A: Sustained-evidence is excluded

B: Overruled-evidence is admitted

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See *Williams v. State*, 585 S.W.3d 478 (Tex. Crim. App. 2019)

The CCA held that because the certificate substantially complied with Art. 38.41 and was filed more than twenty days before trial, Defendant was required to object to the use of the certificate in a timely manner or risk losing his ability to assert his right of confrontation.

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Get Ready to Rule!

During trial for DWI, the defendant the evidence showed that Intoxicated Isaac was stopped on a main highway road, standing by the side of his car alone. No other person was on the scene who could have operated the car. When the arresting officer arrived, he smelled alcohol on Isaac's breath.

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That and Isaac's "slow, deliberate speech" led the Officer to conclude that it was necessary to conduct field sobriety tests. Appellant twice failed HGN sobriety tests and blew .169 and .170 on his breath tests approximately three hours after his car stalled. Isaac admitted to the officer that he had been driving the car.

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Defendant then moved for a directed verdict under the "corpus delecti" rule alleging that the only evidence that defendant was "operating" a vehicle was his extra-judicial confession.

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Corpus Delecti Rule

This rule applies when there is an extrajudicial confession to involvement in a crime. A defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent corroborating evidence.

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Your Ruling:

A: Motion for Directed Verdict granted

B: Motion for Directed Verdict denied

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See *Taylor v. State*, 572 S.W.3d 816 (Tex. App.-Houston [14th Dist.] 2019, pet. ref'd)

Setting aside appellant's extrajudicial statements, the evidence shows that appellant's car was stopped in a main lane on the Southwest Freeway while appellant was observed standing alone outside the car near the front door. No other person was on the scene who could have operated the car. When the officer arrived, he smelled alcohol on appellant's breath. That and appellant's "slow, deliberate speech" led the officer to conclude that it was necessary to conduct field sobriety tests.

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Appellant twice failed HGN sobriety tests and blew .169 and .170 on his breath tests approximately three hours after his car stalled. We conclude, setting aside appellant's extrajudicial statements, there is corroborating evidence that appellant was operating a motor vehicle in a public place while intoxicated, and thus the corpus delicti rule was satisfied.

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1. An officer can pull over the registered owner of a car whose license is suspended or revoked unless he has some evidence that would rebut the inference that the registered owner is the driver. *Kansas v. Glover*

2. Weaving in your own lane of traffic and even in another lane, may or may not give rise to reasonable suspicion for a stop. –Waiting on decision from CCA

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3. Throwing a lit cigarette out the car window will give rise to reasonable suspicion for a stop even if the cigarette does not cause a fire. –*State v. Wood*
4. The officer may be mistaken about the law if the mistake is reasonable under an examination of the totality of the circumstances.-*Babel v. State*
5. When a person suspected of DWI is unconscious, the State may almost always take blood without a warrant.-*Mitchell v. Wisconsin*

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6. Irrevocable implied consent is not free and voluntary and does not satisfy the consent exception to the warrant requirement of the Fourth Amendment.-*State v. Ruiz*
7. Appellate Courts should give almost total deference to the trial court's findings of facts-*State v. Couch*
8. An officer's reliance on a warrant with an illegible signature may trigger the good faith exception in Art. *38.23-State v. Arrellano*

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9. A search warrant affidavit must be sworn.-*State v. Hodges*
10. A blood search warrant does not need to contain language permitting the state to both seize and test the blood. –*Crider v. State, et al*
11. The court can abuse its discretion by denying a properly filed motion for continuance to present evidence that is material and if its absence would prejudice the defendant-*Rodriguez-Cruz v. State*

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12. Defense must object to the State's properly filed certificate for lab analysis at least ten days before trial or waive any objection of violation of the confrontation clause.-*Williams v. State*
13. The corpus delecti rule is satisfied if, setting aside the extrajudicial confession of the defendant, there is corroborating evidence that shows a crime was committed.-*Taylor v. State*

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