the Jasuta / Schulman report

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TIBA's Case of the Week

Fourteenth Court of Appeals

Case Name: ***Jamin Citron Stocker v. The State of Texas***

- **OFFENSE**: Capital Murder
- **COUNTY**: Harris
- **C/A CASE No**. 14-21-00412-CR
- **DATE OF OPINION**: April 8, 2025 **OPINION**: Justice Kevin Jewell
- **DISPOSITION**: Trial Court Affirmed
- **TRIAL COURT**: Hon. Hilary Unger
- **LAWYERS**: Windi Pastorini (Defense); Clint Morgan (State)

(**Background Facts**): Brent Tapp was living in a homeless encampment near downtown Houston. Late on August 21, 2017, Tapp was hit in the leg by a shot coming from the balcony of a nearby townhouse. Tapp and his friend, Trampus Edwards, told responding law enforcement officers that they knew the shooter and that he lived in the townhouse. Tapp and Edwards did not know the shooter's name but identified the balcony of the unit in which they believed he resided. A witness at trial estimated that the townhouse was less than fifty yards away from where Tapp was shot. The officers conducted a computerized search for the townhouse's address. Appellant did not own or rent the townhouse and, in layman's terms, was a "squatter." Police showed a photo of Appellant to Tapp, who confirmed that it was Appellant who shot him. The police obtained and attempted to execute an arrest warrant for Appellant. An officer called Appellant, who said that he was not present at the townhouse. Officers entered the unit, found no one there, and seized a large number of guns and ammunition. Police did not arrest Appellant at that time because they could not locate him. A few months later, on November 7, 2017, police again responded to a call originating from the homeless camp. Tapp had been shot three times and died as a result of his injuries. The medical examiner recovered a bullet from Tapp's body, and police matched it to a gun known to belong to Appellant. After the shooting, Appellant left Texas and traveled to Georgia, where he stayed for approximately seven weeks. Appellant texted his friends, saying that he had to leave Texas because he shot a homeless man and the police were looking for him.

Appellant returned to Houston in late October 2017. He was arrested in January 2018 and a Harris County grand jury indicted him on a charge of capital murder.

Ed Note (**Seizure of Appellant's Cell Phone**): Houston Police Department ("HPD") Officer Jose Coronado executed an arrest warrant at Appellant's place of business, which was a pizza company that operated out of a "house that's turned into a business, more of a community center that's open to the public." According to Officer Coronado, "there were a lot of people coming in and out." His partner, HPD Officer Tony Villa, "started to call people out of the building so [officers] could detain them until [officers] could determine whether or not Mr. Stocker was actually inside or not." Stocker came out and spoke to the officers, although he initially gave them a fake name. The police then conducted a "safety sweep" of the building "to ensure that [people were not] there to ambush" the officers. Officer Coronado testified that the area was "pretty populated with gang activity, drugs, guns. There's a lot of people that don't like police in that neighborhood." He did not know "for sure" whether anyone else was inside the building, which was a "safety concern" for the officers. *** During the sweep, Officer Coronado found a cell phone inside "in plain sight," about which he commented, "Hey, they wanted this phone." He clarified "they" meant "Homicide." Officer Coronado believed the phone belonged to Appellant because the phone was found in the kitchen, and Appellant had told officers that "he was the only person that was cooking pizzas." Officer Coronado seized the phone. Officer Villa then transported Appellant "to Homicide," and he gave the cell phone to one of the homicide detectives.

Ed Note (**Seizure of Appellant's Cell Phone**): Houston Police Department ("HPD") Officer Jose Coronado executed an arrest warrant at Appellant's place of business, which was a pizza company that operated out of a "house that's turned into a business, more of a community center that's open to the public." According to Officer Coronado, "there were a lot of people coming in and out." His partner, HPD Officer Tony Villa, "started to call people out of the building so [officers] could detain them until [officers] could determine whether or not Mr. Stocker was actually inside or not." Stocker came out and spoke to the officers, although he initially gave them a fake name. The police then conducted a "safety sweep" of the building "to ensure that [people were not] there to ambush" the officers. Officer Coronado testified that the area was "pretty populated with gang activity, drugs, guns. There's a lot of people that don't like police in that neighborhood." He did not know "for sure" whether anyone else was inside the building, which was a "safety concern" for the officers. *** During the sweep, Officer Coronado found a cell phone inside "in plain sight," about which he commented, "Hey, they wanted this phone." He clarified "they" meant "Homicide." Officer Coronado believed the phone belonged to Appellant because the phone was found in the kitchen, and Appellant had told officers that "he was the only person that was cooking pizzas." Officer Coronado seized the phone. Officer Villa then transported Appellant "to Homicide," and he gave the cell phone to one of the homicide detectives.

Ed Note (**Procedural History**): On original submission, the Court of Appeals agreed with Appellant that the trial court erred in refusing to suppress evidence obtained from his cell phone. Then,

concluding that the erroneous admission of evidence obtained from the phone harmed Appellant, it sustained Appellant's third issue, reversed the trial court's judgment, and remanded for a new trial. ***Stocker v. State***, 656 S.W.3d 887 (Tex.App. - Houston [14th] 2022)(see ☙, Vol. 30, No. 46; 12/12/2022). The State filed a petition for discretionary review, and Appellant did not. The Court of Criminal Appeals granted the State's petition and addressed a single issue pertaining to the Court of Appeals' probable cause analysis. The high court reversed this court's judgment and remanded the case to this court for reexamination of probable cause. ***Stocker v. State***, 693 S.W.3d 385 (Tex.Cr.App. 2024)(see ☙, Vol. 32, No. 30; 08/05/2024). On remand, Appellant argues that the warrantless seizure of his phone was unreasonable and illegal and that the search warrant for his phone's contents was not supported by probable cause.

[☙ **31.07 Search & Seizure / Actions Not Constituting a Search - Plain View**]: A warrantless search or seizure is *per se* unreasonable under the Fourth Amendment unless it falls within a recognized exception to the warrant requirement. ***United States v. Place***, 462 U.S. 696 (1983). *** Two such exceptions are implicated here, the protective-sweep exception and the plain-view exception. Under the protective-sweep exception, when an officer has an objectively reasonable belief, based on specific and articulable facts, that someone may be inside the premises who poses a danger to the officer or to others in the area, the officer may perform a "protective sweep" of the premises without a warrant or consent. ***Maryland v. Buie***, 494 U.S. 325, 327 (1990); ***Reasor v. State***, 12 S.W.3d 813 (Tex.Cr.App. 2000)(see ☙, Vol. 8, No. 9; 03/06/2000). *** Appellant does not challenge the legality of the protective sweep or the officers' lawful presence and right of access. Appellant argues that the plain-view exception does not apply because a cell phone is not contraband or otherwise "inherently incriminating." *** The second requirement of the plain-view doctrine -- that the "incriminating character" of the object in plain view must be "immediately apparent" to the police officers -- requires a showing only of probable cause that the observed item is incriminating evidence; actual knowledge of the incriminating evidence is not required. ***Joseph v. State***, 807 S.W.2d 303 (Tex.Cr.App. 1991). *** Pursuant to the collective-knowledge doctrine, the officer who initiates the seizure "need not be personally aware of every fact that objectively supports" reasonable suspicion or probable cause. "Rather, 'the cumulative information known to the cooperating officers at the time of the [seizure] is to be considered in determining whether reasonable suspicion [or probable cause] exists.'" ***Derichsweiler v. State***, 348 S.W.3d 906 (Tex.Cr.App. 2011)(see ☙, Vol. 19, No. 4; 01/31/2011). *** The doctrine applies so long as there is "some degree of communication" between the cooperating officers. ***Woodward v. State***, 668 S.W.2d 337, 344 (Tex.Cr.App. 1984). *** Here, Officer Coronado testified that he knew "Homicide wanted to talk to [Appellant] about other shootings and murder he may be involved in" and that homicide detectives wanted Appellant's phone. The trial court could have impliedly found that there was "some degree of communication" between the officers investigating the offenses Appellant was suspected of committing and the officers who executed the search warrant. *** Thus, some evidence supports the application of the collective-knowledge doctrine to satisfy the requirement of the plain-view exception with respect to the warrantless seizure of Appellant's cell phone. *** Viewing the

evidence in the light most favoring the trial court's ruling, we conclude that the record supports implied findings and a determination by the trial court that the police were justified in seizing Appellant's cell phone under the plain view doctrine.

Sidebars

(**David A. Schulman**) Hmmm. There is only one person in the kitchen and only one unattended cell phone. Based on the Court of Criminal Appeals recognition that cell phones are indeed "ubiquitous" and that a "magistrate is entitled to take it as well-established fact that, in this day and age, almost everyone possesses a cell phone on or about his person at practically any time of day or night . . .," I think the officer was entitled to believe that the cell phone belonged to Appellant.

[**31.013 Search & Seizure / Search Warrants / Requirements of the Affidavit in Support (Probable Cause)**]: Appellant challenges the trial court's denial of his motion to suppress evidence obtained from his cell phone because the supporting affidavit failed to establish probable cause.

Holding: As applicable to searches of a cellular telephone or other wireless communications device in Texas, the nexus requirement demands a fair probability that searching the device is likely to produce evidence in the investigation of criminal activity. Art. 18.0215, C.Cr.P. Mere possession of a device by a suspect generally is not enough. ***State v. Baldwin***, 664 S.W.3d 122 (Tex.Cr.App. 2022)(see , Vol. 30, No. 17; 05/16/2022). Under Article 18.0215, an application to search a person's cell phone after a lawful arrest must "state the facts and circumstances that provide the applicant with probable cause to believe that (A) criminal activity has been, is, or will be committed; and (B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A)." *** Importantly, a probable cause affidavit supporting a cell phone search must contain evidence of the requisite nexus with more than mere conclusory assertions. ***Illinois v. Gates***, 462 U.S. 213 (1983). *** The affidavit at issue in today's case, like ***Baldwin***, includes generic assertions about cell phone use among criminals. Mindful of ***Baldwin***, we examined the affidavit's substance excluding those generic statements. Even so, in our original opinion we held the affidavit insufficient under Baldwin because it did not describe the capital murder for which Appellant was convicted, and it presented no factual nexus between Appellant's cell phone and the capital murder. The Court of Criminal Appeals held that we applied ***Baldwin*** too narrowly. As that court stated, while a sufficient factual nexus must exist between the device to be searched and criminal activity, it is not necessary that a connection exist between the device and the particular offense ultimately charged and tried. *** A factual connection between the device and criminal activity under investigation described in the affidavit is sufficient. *** Here, the affidavit in support of the warrant to search Appellant's cell phone describes substantial criminal activity under investigation and reasonably believed to have been perpetrated by Appellant. HPD Homicide Detective Mark Condon prepared the affidavit in support of the search warrant for Appellant's cell phone. Detective Condon at the time was assigned to Gang Murder Squad #14 and responsible for investigation of capital murders, murders,

and police related shootings. He specifically described Appellant's cell phone as the item to be searched and stated that he sought evidence of crimes of aggravated assault, including evidence tending to show that a particular person committed the offenses or to show flight or intent to cause harm, such as GPS data or other information found on the phone itself. *** Considering the affidavit's specific facts and reasonable inferences derived therefrom, is there a connection or nexus between the described criminal activity under investigation and Appellant's cell phone? We conclude there is. Although ***Baldwin*** instructs us that "generic, boilerplate language about cell phone use among criminals" is not sufficient to establish probable cause to search a cell phone, Detective Condon's affidavit went further than that. *** Moreover, the facts in the affidavit suggest a likelihood that evidence indicating a particular individual committed the patterned offenses -- reflected in the GPS location data -- would be revealed from a search of Appellant's phone. It is common knowledge that smart phones record and store location data. *** The location of a cell phone during separate instances of criminal activity described in the affidavit is evidence in the investigation of such criminal activity described. Thus, a magistrate could have reasonably inferred that GPS location data from Appellant's phone was likely to yield a location pattern that would be either consistent or inconsistent with the information known to officers at the time the warrant was presented. Additionally, the four unsolved aggravated assaults listed in the affidavit contain similar facts to Deputy Clopton's case, indicative of a pattern of criminal activity or a signature crime. The location of a cell phone during separate instances of criminal activity described in the affidavit is evidence in the investigation of such criminal activity described. Thus, a magistrate could have reasonably inferred that GPS location data from Appellant's phone was likely to yield a location pattern that would be either consistent or inconsistent with the information known to officers at the time the warrant was presented. *** Accordingly, we hold that the record supports the magistrate's finding that probable cause existed that searching Appellant's cell phone was "likely to produce evidence in the investigation" of the criminal activity described in Detective Condon's affidavit.

Sidebars

(**John G. Jasuta**) This opinion could well allow for the seizure of any phone when it says that the location of a cell phone during separate instances of criminal activity described in the affidavit is evidence in the investigation of such criminal activity described, thus, any magistrate could reasonably infer that GPS location data from the seized phone was likely to yield a location pattern that would be either consistent or inconsistent with the information known to officers at the time the warrant was presented. With due respect, a monkey could make that inference. Any phone would fit that test.

(**Rob Daniel**) One difference between this case and the Court of Criminal Appeals' recent opinion in ***Wells v. State*** (see 🙈, Vol. 33, No. 13; 04/07/2025) is that the police had a credible suspect before they applied for a warrant. Because the police were able to do some good traditional detective work, they did not need to apply for a geofence warrant for the homeless encampment and the surrounding buildings at the time of the murder.

That may also be what distinguishes this case from ***State v. Baldwin***, 664 S.W.3d 122 (Tex.Cr.App. 2022)(see ☙, Vol. 30, No. 17; 05/16/2022), in which the suspect was not strongly connected to the scene of the crime. Here, Appellant had ties to a house near the crime scene, had been identified by a witness as the person who shot the deceased (the first time), and a gun associated with Appellant had been used in the second shooting. On the other hand, none of those facts involve Appellant's cell phone. The Court of Appeals' conclusion that "GPS location data from Appellant's phone was likely to yield a location pattern that would be either consistent or inconsistent with the information known to officers at the time the warrant was presented" appears to assume Appellant possessed the phone at the time of the offenses. Didn't the Court of Criminal Appeals instruct lower courts not to do that in ***Baldwin***? Perhaps another PDR is in order.

(**David A. Schulman**) This opinion is totally consistent with the CCA's opinion last year. Thus, under the "revised" ***Baldwin*** interpretation, the conviction is properly affirmed.