the Jasuta / Schulman report

Volume 33, Number 24 ~ Monday, June 23, 2025 (Report No. 1,569)

TIBA's Case of the Week

Dallas Court of Appeals

Case Name: ***The State of Texas v. Dennis Anthony Hardridge***

- **OFFENSE**: State's Appeal / DWI
- **COUNTY**: Kaufman
- **C/A CASE No**. 05-24-00545-CR
- **DATE OF OPINION**: June 16, 2025 **OPINION**: Justice Emily Mickel
- **DISPOSITION**: Trial Court Affirmed
- **TRIAL COURT**: CCL 1; Hon. Tracy Gray
- **LAWYERS**: John D. Nation (Defense); W. Jackson Heard (State)

(**Background Facts**): On September 11, 2021, Forney Police Department Officer Luke Mansell received a dispatch call reporting a reckless driver. The officer located the subject vehicle and initiated a traffic stop. After observing signs of possible intoxication and conducting a field sobriety test, the officer arrested the driver, Hardridge, for driving while intoxicated. After Hardridge refused to voluntarily provide a breath or blood specimen, the officer applied for a search warrant permitting a blood draw. In support of his warrant application, the officer prepared a probable-cause affidavit. As drafted, the affidavit stated that the officer had "personally appeared" "[b]efore . . . the undersigned authority" and had been "duly sworn upon oath." But no such authority was identified in the affidavit. After reciting the facts supporting his contention for probable cause, the officer signed his name and badge number. The affidavit form included a jurat with a signature line for a notary public, but the officer never had his affidavit notarized. Instead, he completed the jurat himself and left the signature line for the notary public blank. As completed, the jurat stated that the officer had "subscribed and sworn to" the affidavit "before" the (non-existent) notary public. No other qualified officer signed or acknowledged the affidavit. The officer transmitted the unnotarized affidavit to Judge Jessica Spain of the Forney Municipal Court of Record No. 1 of Kaufman County, Texas. The judge issued a search warrant for Hardridge's blood based on the officer's affidavit. The judge's warrant repeated that the officer's affidavit had been given under oath. The officer executed the judge's warrant by transporting Hardridge to a local hospital and having a sample of his blood drawn.

[31.013 **Search & Seizure / Search Warrants / Requirements of the Affidavit in Support**]: After being charged with driving while intoxicated, Hardridge moved to suppress the search warrant and all derivative evidence. The trial court held a hearing and requested supplemental briefing from the parties. After the parties filed their respective briefs, the trial court granted the motion to suppress. Nevertheless, on appeal, the State argues that the officer's affidavit was essentially sworn under oath because, even though he did not recite a verbal oath, he filled out the affidavit in a manner indicating he was swearing to it. The State also argues that the good-faith exception applies to avoid exclusion of the improperly obtained evidence because the officer executed the search warrant believing that his affidavit had been sworn, and the warrant itself states it was supported by a sworn affidavit.

Holding (**Sworn Oath Requirement for Warrant Affidavits**): "One of the most fundamental tenets of search and seizure law is that a search warrant must be supported by a probable-cause affidavit that is sworn 'by oath or affirmation.'" *** "An oath is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully." *** "Texas law has always required that the oath must be made 'before' or in the presence of another to convey the solemnity and critical nature of being truthful." *** The Court of Criminal Appeals recognizes that "certain types of procedural irregularities may not affect the validity of a search warrant," but it has been "unwavering in emphasizing that the oath requirement is essential." ***"Thus, an officer's failure to take the oath and swear to the facts of his probable-cause affidavit renders defective any search warrant issued on the basis of the unsworn probable-cause affidavit." ***Wheeler v. State***, 616 S.W.3d 858 (Tex.Cr.App. 2021)(see , Vol. 29, No. 6; 02/15/2021), quoting ***Vaughn v. State***, 177 S.W.2d 59 (Tex.Cr.App. 1943), and ***Clay v. State***, 391 S.W.3d 94 (Tex.Cr.App. 2013)(see , Vol. 21, No. 2; 01/14/2013)(collecting cases dating back to 1929). *** In both ***Smith v. State***, 207 S.W.3d 787 (Tex.Cr.App. 2006)(see , Vol. 14, No. 46; 11/27/2006) and ***Clay***, even though the affiant failed to sign the affidavit before a magistrate, the warrant was valid because the affiant actually swore an oath before a magistrate in a manner sufficiently conveying the solemnity and critical nature of being truthful. *** This case presents the opposite scenario: the affiant signed the affidavit but failed to swear an oath before a magistrate or other qualified officer in any manner, let alone an adequately solemn one. The State concedes that the officer never gave a "verbal oath" or "formal oath" swearing to the truthfulness of the affidavit, and the evidence shows that the officer did not give an oath in any other manner. The officer testified that he simply typed up his search-warrant affidavit and sent it to the judge to review. He did not recall if he even spoke with the judge. *** We disagree that the oath requirement was substantively satisfied. While the purpose of the oath-affirming language in the preamble and jurat is to memorialize the fact that the affiant swore an oath before a qualified officer, it is the act of swearing before a qualified officer, not the oath-affirming language, that is essential. *** The Court of Criminal Appeals has never held that an affidavit's oath-affirming language -- by itself -- satisfies the essential oath requirement. And we decline to hold so ourselves, especially in a case like this where the oath-affirming language is generic ("being duly sworn upon oath") and does

not even specifically attest to the truthfulness of the representations made. *** We conclude that the affidavit was not validly sworn under oath.

Holding (**The Good-Faith Exception**): To determine whether the good-faith exception applies, a court focuses on what an "objectively reasonable officer" would have believed about the warrant's validity at the time of its execution. ***Wheeler***, 616 S.W.3d at 865, citing ***McClintock v. State***, 444 S.W.3d 15 (Tex.Cr.App. 2014)(see §§, Vol. 25, No. 11; 03/27/2017). "[I]t is the objective reasonableness of the officer's conduct, based on the facts and circumstances he knows at the time, that dictates whether the statutory good-faith exception applies. The officer's subjective intentions or beliefs about whether his conduct was lawful or reasonable are irrelevant under the statutory terms." To be objectively reasonable, the officer's conduct must be "'close enough to the line of validity' that an objectively reasonable officer preparing the affidavit or executing the warrant would believe that the information supporting the warrant was not tainted by unconstitutional conduct . . . notwithstanding the underlying constitutional violation." *** The facts of ***Wheeler*** are nearly identical to the present case. *** However, in ***Wheeler***, the officer understood that the facts in his affidavit were not properly sworn; he just believed that an oath was not required pursuant to his police department policy. *** The State argues that ***Wheeler*** rested on the conclusion that "no objectively reasonable police officer would have believed that the warrant [t]here was valid when it was knowingly obtained by an unsworn probable-cause affidavit." *** This argument does not withstand scrutiny. Foremost, the officer's "subjective intentions or beliefs about whether his conduct was lawful or reasonable are irrelevant." See id. The officer's subjective belief that his affidavit was properly sworn, when it objectively was not, is not a fact or circumstance known to the officer at the time upon which to measure the objective reasonableness of his conduct. The trial court made a finding that the officer knew and was trained that he was required to swear to the contents of affidavits for search warrants under oath. *** The State's other argument that it is not the officer's place to second guess the judge's warrant is similarly ill reasoned. The State explains that "[a]n objectively reasonable officer would believe the search warrant in question was valid if the officer . . . did not know the proper procedure to swear to its validity." As discussed above, an objectively reasonable officer knows that a search warrant must be based upon a sworn affidavit. Therefore, the officer was not entitled to rely on the warrant's recitation that it was based on a sworn affidavit because he knew he had not sworn an oath before anyone, even if he subjectively believed such a failure did not constitute a significant defect. *** We conclude that the good-faith exception does not apply.

Sidebars

(**John G. Jasuta**) If I had to point a finger, it would be at the magistrate who is supposed to make sure everything is correct.

(**David A. Schulman**) This is simple. Whether the document in question is executed by an officer, a civilian, or an inmate, it must either be executed under an oath given by an authorized officer, or made "under penalty of perjury" if unsworn. That simply didn't happen here. Yeah, sure, the officer needs some re-training, but what about the issuing

magistrate. How is that she never noticed that the actual document didn't contain either of the above stated requirements?