

the Jasuta / Schulman report

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TIBA's Case of the Week

Austin Court of Appeals

Case Name: *[The State of Texas v. Adrian Chavez](#)*

- **OFFENSE:** Felony Driving While Intoxicated
- **COUNTY:** Comal
- **C/A CASE No.** 03-25-00124-CR
- **DATE OF OPINION:** October 17, 2025 **OPINION:** [Justice Rosa Theofanis](#)
- **DISPOSITION:** Trial Court Affirmed
- **TRIAL COURT:** 433rd D/C; Hon. Dib Waldrip
- **LAWYERS:** [Steve Turro](#) (Defense); [Cody Kent](#) (State)

(Background Facts): New Braunfels Police Department (NBPD) Officer Heidi Lima arrested Appellee for DWI following a traffic stop. Appellee refused to consent to a breath or blood test. Officer Lima applied to a magistrate judge for a search warrant for Appellee's blood and submitted a probable-cause affidavit in support of the application. The magistrate judge issued the search warrant, and Appellee's blood was drawn at a hospital.

[§§ 31.016 Search & Seizure / Search Warrants / "Good Faith Exception" / Article 38.23 (b), C.Cr.P.]: Appellee moved to suppress all evidence obtained as a result of the warrant, arguing that Officer Lima's affidavit had not been sworn or made under oath. Following a hearing during which multiple explanations for the state of the search warrant affidavit were developed, the trial court allowed the State time to file a written response to the motion to suppress. Ultimately, the trial court granted the motion in its entirety and ordered the exclusion of "[a]ll evidence or testimony related to the application for the search warrant, and all evidence related to the administering, testing or recording of the blood draw." The State appealed, arguing that the boilerplate language in the affidavit and search warrant, together with the officers' testimony and the exchange recorded in Officer Lima's body-cam video, which was admitted in evidence, demonstrates that Officer Lima subjected herself to perjury and was therefore under oath. Citing factors considered in the Court of Criminal Appeals' decision in *Vaughn v. State*, 177 S.W.2d 59 (Tex.Cr.App. 1943), and this Court's opinion in *Nix v. State*, No. 03-21-00123-CR (Tex.App. - Austin; 03/29/2023)(not designated for publication, the State asserts that the affidavit was sworn because: (1) Officer Lima prepared the affidavit, which contained "oath-affirming language"; (2) she asserted to both the magistrate judge and Officer Roy that the affidavit's contents were true; (3) Officer Lima signed

the affidavit before Officer Roy; and (4) Officer Lima understood that she was under oath. Appellee responds that the officers' signing of the affidavit was not accompanied by the solemnity and gravity necessary to the swearing of an oath or affirmation and that the boilerplate language alone was insufficient to show that the affidavit was sworn.

Holding (Whether the Document was Sworn or Unsworn): The Texas Constitution guarantees that no warrant "shall issue . . . without probable cause, supported by oath or affirmation." Tex. Const. art. I, § 9.5 Article 18.01(b) of the Code of Criminal Procedure similarly requires that "[a] sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested." *** Evidence obtained in violation of either provision may not be admitted during a criminal trial under Texas's exclusionary rule. *** Although "certain types of procedural irregularities may not affect the validity of a search warrant[,], . . . the oath requirement is essential." *Wheeler v. State*, 616 S.W.3d 858 (Tex.Cr.App. 2021)(see ¶8, [Vol. 29, No. 6](#); 02/15/2021). In determining whether an officer swore to an affidavit, we may consider evidence outside its "four corners." *Smith v. State*, 207 S.W.3d 787 (Tex.Cr.App. 2006)(see ¶8, [Vol. 14, No. 46](#); 11/27/2006). *** An officer's failure to swear to the facts in her affidavit "renders defective any search warrant issued on the basis of the unsworn probable-cause affidavit." *** To "swear" means to "take an oath" or "administer an oath to (a person)." Swear, *Black's Law Dictionary* (12th ed. 2024); see *Ex parte Bornhop*, 654 S.W.3d 195 (Tex.App. - Austin 2022)(see ¶8, [Vol. 30, No. 29](#); 08/15/2022); see also Article 3.01, C.Cr.P. ("All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined"). [In *Smith v. State*] the Court of Criminal Appeals has explained that swearing an oath or affirmation is not the same as merely signing an affidavit (stating that "the affiant's signature" is "not an oath itself"). "Although the affiant's signature on an affidavit serves as an important memorialization of the officer's act of swearing before the magistrate, it is that act of swearing, not the signature itself, that is essential." *** We disagree with the State's assertion that *Vaughn* established subjection to criminal liability for perjury as a "test" for finding the existence of a sworn oath. The Court of Criminal Appeals stated only that "[a] reasonable test to be applied in the instant case would be to ascertain whether or not a charge of perjury might have been predicated thereon, in the event statements contained in the affidavit were false." *** Regardless, the State's proposed test merely shifts the same question to a different statute; the perjury statute still requires that the perjurer make a false statement "under oath" or "swear to the truth of a false statement." Tex. Penal Code § 37.02(a)(1). *** Here, by contrast [to *Vaughn*], there was affirmative evidence at the suppression hearing that the affidavit was not made under oath or affirmation and that Officer Lima did not swear to the truth of its contents. See *State v. Hodges*, 595 S.W.3d 303 (Tex.App. - Amarillo 2020)(see ¶8, [Vol. 28, No. 2](#); 01/13/2020)(stating that officer's testimony that "no one had administered any oath" suggested that "he somehow placed himself under oath" and noting that "the officer did not testify about the content of the supposed oath he purportedly operated under" or "that the oath obligated him to acknowledge the truthfulness of what he said in the affidavit"). *** Both Officer Lima and Officer Roy testified that Officer Lima was never placed

under oath; Officer Lima further testified that no one asked her if the affidavit's facts were true and correct. Although the State underscores both officers' testimony regarding their subjective understanding of what Officer Lima's signature meant, the trial judge in a suppression hearing is "the sole trier of fact and judge of the weight and credibility of the evidence." [*State v. Mendoza*](#), 365 S.W.3d 666 (Tex.Cr.App. 2012)(see [§§](#), [Vol. 20, No. 19](#); 05/14/2012). We must show almost complete deference to the trial court's implicit credibility determinations that are supported by record, and a reasonable trial judge could have chosen to believe only the testimony that the affidavit was unsworn and was not made under oath. *** Next, rather than sign the affidavit in the presence of a magistrate judge or justice of the peace, Officer Lima signed it while on the phone with Officer Roy, her fellow officer. Although there is no requirement that an oath or affirmation be sworn in person, the Court of Criminal Appeals has noted that many states attempt to "maximize the solemnizing efficacy of the telephonic oath to compensate for the absence of face-to-face administration." [*Clay v. State*](#), 391 S.W.3d 94 (Tex.Cr.App. 2013)(see [§§](#), [Vol. 21, No. 1](#); 01/14/2013). *** When an affiant does not swear in person, "sufficient care" must be taken "to preserve the same or an equivalent solemnizing function to that which corporal presence accomplishes." *** As noted above and unlike [*Nix v. State*](#), No. 03-21-00123-CR (Tex.App. - Austin; 03/29/2023)(not designated for publication), Officer Lima affirmatively testified during the suppression hearing that she was not placed under oath or asked if her affidavit's contents were true and correct. Importantly, Officer Roy and Officer Lima did not just engage in small talk; rather, the trial judge could have reasonably concluded from their conversation that Officer Lima lacked familiarity with probable-cause affidavits and did not understand the purpose or significance of her signature and the jurat and that she therefore did not intend to bind herself "in conscience to perform an act faithfully and truthfully" or to swear to the truth of her statements. *** As noted above, her signature was not the act of swearing. . . and the trial judge could have found that the remainder of the evidence failed to show that she was impressed with "the solemnity and critical nature of being truthful." *** For these reasons, the trial court would not have abused its discretion by concluding that Officer Lima's affidavit was unsworn in violation of Article 18.01(b).

Sidebars

([David A. Schulman](#)) When one examines the case law cited in this opinion, it is clear that, for at least the last 19 years (since [*Smith v. State*](#) --- 11/22/2006), the training that peace officers received vis-a-vis the formalities and solemnities involved in obtaining a search warrant has been woefully inadequate. Despite the trial prosecutors' best efforts to apply some lipstick to this pig, the bottom line is that the lack of training given to officers is the problem. As an aside, a tip of the hat to 40-year defense lawyer Steve Turro, who had never handled an appeal before this case. His first and last appeal --- yielding an unblemished record of victory. Well done brother Turro.

([John G. Jasuta](#)) I find it amazing when the folks who are supposed to uphold the rules don't follow them.

Holding (Officer's "Good Faith" Belief): [Per [Wheeler](#)] When a search warrant issues despite an officer's failure to swear to the facts of her affidavit, "the question becomes whether the good-faith exception applies to allow the admissibility of the improperly-obtained evidence." *** The good faith exception to Texas's exclusionary rule is codified in Article 38.23(b), C.Cr.P., which provides that the exception applies if "the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause." *** The question is whether a reasonable police officer in Officer Lima's position would have believed the warrant was valid. *** We conclude that a reasonable officer would have known that the search warrant in this case was invalid because a sworn affidavit was not filed, and there was no oath or affirmation. *** No oath or affirmation was verbally administered. Nowhere -- either in the affidavit itself or elsewhere -- did Officer Lima explicitly swear to the truth of the affidavit's contents. Although she signed the affidavit, her signature is "not an oath itself," and it is "that act of swearing, not the signature itself, that is essential." *** Other than the boilerplate language in the affidavit and warrant, the only objective evidence to which the State has directed us is a single statement from Officer Roy during an informal conversation that directed Officer Lima where to sign. Yet telling an officer where to sign an affidavit is not the same as placing her under oath or asking her to confirm the truth of her statements, and there is nothing in the body-cam video to indicate that Officer Lima understood Officer Roy's instruction to be the latter. *** The Court of Criminal Appeals has recognized that "no objectively-reasonable officer would execute a search warrant knowing that it was procured through an unsworn probable-cause affidavit." *** Accordingly, the trial court would not have abused its discretion by concluding that the good-faith exception did not apply and that any evidence obtained as a result of the search warrant was inadmissible under the exclusionary rule.

Sidebars

([John G. Jasuta](#)) I recently saw an affidavit that said, basically, "I'm a cop. I think X committed murder. Therefore I get to search X's house for evidence." But at least it was sworn to properly.

([David A. Schulman](#)) Although this group is strictly coppers, the whole scenario reminded me of the 1969 Jimmy Breslin novel, "The Gang That Couldn't Shoot Straight." To reiterate, better instruction and/or better instructors is what is needed.