

CAUSE NO.

STATE OF TEXAS

vs.

§ IN THE COUNTY CRIMINAL
§ COURT AT LAW NO. 1
§ GRAYSON COUNTY, TEXAS

MOTION TO SUPPRESS BLOOD ALCOHOL ANALYSIS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant in the above entitled and numbered cause and moves the Court to suppress the following evidence:

I.

The State has the results of a blood alcohol analysis performed on on blood that was drawn pursuant to a warrant dated

II.

A blood search warrant was obtained to collect a blood sample from Defendant. See attached search warrant. The search warrant is silent as to analysis/testing of the blood specimen collected.

III.

The Court of Criminal Appeals in *State v. Martinez*, PD-0878-17 (March 20, 2019) recognized that the State's blood alcohol analysis is a separate search discrete from the State's drawing of blood (citing *State v. Huse*, 491 S.W.3rd at 840 and *State v. Hardy*, 963 S.W. 2d at 523-524):

In Hardy, we explicitly recognized that, when the State itself extracts blood from a DWI suspect, and when it is the State that conducts the subsequent blood alcohol analysis, two discrete "searches" have occurred for Fourth Amendment purposes. 963 S.W.2d at 523- 24.

In *Martinez*, in the conclusion section of the opinion, the Court was crystal clear in creating black letter law with no exceptions. **The testing of a specimen of blood by the state is a search protected under the 4th amendment and must be supported by a warrant.**

Because this is a clear ruling, and in this case there is no evidence a warrant was obtained to "test" the specimen, only to obtain the sample, the burden shifts to the State to establish there is a warrant signed to do an analysis of the specimen. In the event the

State argues this is not the holding of the Court, the State must cite to some authority to support its position. As there is no case law on the issue, the State has no authority to support that conclusion.

Here, a warrant was obtained to seize the blood of the Defendant but the warrant is silent on the issue of analysis.

WHEREFORE, the Defendant respectfully moves that this Honorable Court to Suppress the results of any analysis performed on the Defendant's blood sample.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion was personally served upon/mailed to the District Attorney's Office on the same date that it was filed with the trial Court.

CAUSE NO.

STATE OF TEXAS

vs.

§ **IN THE COUNTY CRIMINAL**
§
§ **COURT AT LAW NO. 1**
§
§ **GRAYSON COUNTY, TEXAS**

ORDER

The foregoing Motion to Suppress having been duly filed and presented to the Court, after a hearing on the evidence, the Court is of the opinion that the same should be:

_____ GRANTED

_____ DENIED

Signed on this the _____ day of _____, 2019.

JUDGE PRESIDING