Affirmed and Opinion filed December 2, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00865-CR

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MARK ANTHONY LEWIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 758,065

O P I N I O N

Appellant was charged by indictment with the offense of murder. The jury convicted appellant of the charged offense. The trial court assessed punishment at seventy years confinement in the Texas Department of Criminal Justice--Institutional Division. Appellant raises two points of error. We affirm.

I. Automobile Search

Appellant filed a motion to suppress the evidence seized from the search of his automobile, namely the firearm used to cause the death of the complainant. At the hearing on this motion, the State offered into evidence the search warrant and its supporting affidavit. Following argument of counsel, the trial court

denied the motion. The first point of error contends the trial court erred in denying the motion because the supporting affidavit is insufficient to establish probable cause.

The warrant authorized the search of appellant's residence, which was an apartment, and appellant's automobile, which was parked in the apartment complex parking lot. The warrant also authorized the arrest of appellant. The affidavit supporting the warrant was prepared by Sergeant Williamson of the Houston Police Department. In the affidavit, Williamson summarized the conversation he had with J. C. Bonaby, another Houston Police Officer, who spoke with the complainant's eight year old son, Damone Matthews, as a part of the investigation into this offense.

According to Bonaby, Matthews related the following: Appellant and the complainant were in one of the apartment bedrooms and Matthews was in another. Matthews heard a loud bang come from the area of the bedroom where appellant and the complainant were. Matthews then heard appellant laughing. Matthews looked out of his bedroom door and appellant shouted for Matthews to get back in the bedroom. Matthews then heard appellant leave the apartment. Matthews entered the other bedroom and saw the complainant lying motionless across the bed.

Bonaby stated that he arrived at the scene soon after Matthews discovered the complainant. The complainant was dead with a gunshot wound to the head. Bonaby spoke with appellant who stated that when he arrived at the apartment, the complainant was already dead. Bonaby observed cast-off blood splattered on appellant's shoes.

Williamson knew from his experience in the homicide division that splattered blood is consistent with having been produced at the time of the initial injury. Bonaby concluded appellant's statements were inconsistent with the statement of Matthews and the physical evidence.

Under Texas law, no search warrant may be issued unless supported by an affidavit setting forth facts sufficient to establish probable cause. TEX. CODE CRIM. PROC. ANN. art. 18.01(b). The magistrate evaluating the affidavit is to make a practical, common-sense decision whether, given the totality of the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. *Borsari v. State*, 919 S.W.2d 913, 917-18 (Tex. App.–Houston [14th Dist] 1996,

pet. ref'd). The magistrate's sole concern is probability. Although bound by the four corners of the affidavit, the magistrate may make reasonable inferences from the facts and circumstances contained in the affidavit. *Id*.

At trial, appellant relied upon *Lowery v. State*, 843 S.W.2d 136, 140 (Tex. App.—Dallas 1992, pet. ref'd). However, that case is distinguishable from the case at bar because it dealt with an anonymous informant and whether the information supplied by the informant had been sufficiently corroborated by independent police work. Here the individuals supplying the information contained in the affidavit were not anonymous, but were in fact named in the affidavit.

On appeal, appellant similarly contends there was insufficient independent police work to corroborate the statements of Matthews. We disagree for several reasons. First, there is no indication that Matthews was not credible. Second, Matthews' statements were corroborated by independent police work conducted by Bonaby. Matthews stated he overheard an argument between appellant and the complainant. The argument was followed by a loud bang at which time Matthews heard appellant leave the apartment. Matthews subsequently found the complainant lying across the bed. These statements were corroborated by Bonaby who arrived at the scene and discovered the complainant with a gunshot wound to the head. Bonaby also observed splattered blood on appellant's shoes. Williamson knew that splattered blood was consistent with having been produced at the time of the initial injury. Third, appellant said he was away from the apartment when the complainant was shot. His professed absence coupled with Matthews hearing appellant leave the apartment, when viewed in a common-sense fashion, could lead one to the reasonable belief that appellant had recently been in, or had access to, his automobile. For these reasons, we hold a magistrate could find probable cause, given the totality of the circumstances set forth in the affidavit, that evidence of the crime would be in appellant's vehicle. The first point of error is overruled.

II. Autopsy Report

The State called Dr. Vladimir M. Parungao as a witness to establish the cause of death. At the time of his testimony, Parungao was employed by the Harris County Medical Examiner's Office. He was a

licensed physician who had testified on many prior occasions as an expert witness in the field of pathology. Dr. Marilyn G. Murr, also a licensed pathologist, performed the autopsy on the complainant. That report was admitted into evidence. Parungao stated he had previously testified as an expert based on autopsies performed by other medical examiners. Based upon the autopsy report prepared by Murr and the photographs introduced into evidence, Parungao formed the opinion that the cause of the complainant's death was a close-range gunshot wound to the head.

The second point of error contends the trial court erred in permitting Dr. Parungao to testify concerning the findings of Dr. Murr. Specifically, appellant argues there was no showing that Murr was qualified to make such a report or to give her opinion as to the complainant's cause of death under Texas Rule of Evidence 702.

We reject this argument for several reasons. First, the record establishes that Murr was a licensed pathologist. Second, her autopsy report was admissible as a public record. *See* TEX. R. EVID. 803(8); *Garcia v. State*, 868 S.W.2d 337, 338 (Tex. Crim. App. 1993). Third, under Rule 703 of the Texas Rules of Evidence, an expert witness may base his opinion on data reasonably relied upon by experts in that particular field. Therefore, Parungao was entitled to review and rely upon the autopsy report prepared by Murr to form his (Parungao's) opinion as to the complainant's cause of death. The second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed December 2, 1999.

Panel consists of Justices Hudson, Anderson and Baird.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Former Judge Charles F. Baird sitting by assignment.