69663-7

69663-7

NO. 69663-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

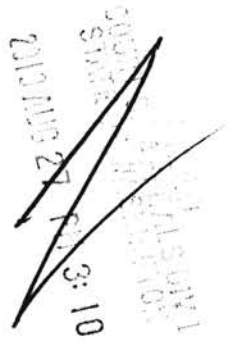
STATE OF WASHINGTON,

Respondent,

v.

JOSE MARTINES,

Appellant.



APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARIANE C. SPEARMAN

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Once law enforcement has conducted a lawful search and has the fruits of that search in its custody, a suspect no longer has a constitutionally protected privacy interest in the property seized. Here, a trooper obtained Martines's blood through execution of a validly issued search warrant, although the warrant did not specifically authorize forensic examination of the blood. No Washington case requires judicial authorization to examine evidence already lawfully in police custody to determine its evidentiary value. Did the trial court properly deny Martines's motion to suppress the results of forensic testing of his blood?

2. Criminal Rule 3.6(b) requires the trial court to enter written findings of fact and conclusions of law memorializing its ruling if the court holds an evidentiary hearing on a defendant's motion to suppress evidence. Here, no evidentiary hearing was conducted. Did the trial court comply with CrR 3.6(b)? If not, was any failure harmless, in that no facts are in dispute, the court made detailed conclusions of law on the record, those conclusions of law are subject to de novo review, and Martines has failed to allege how he was prejudiced?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On June 20, 2012, the State charged appellant, Jose Martines, with one count of Felony Driving Under the Influence. CP 1. The Information was later amended solely to correct the spelling of Martines's middle name. CP 22; 1RP 5-6.[1]

The matter was assigned to the Honorable Mariane C. Spearman for trial on November 5, 2012. 1RP 1. Pretrial, Martines moved to suppress any evidence of drugs in his blood, on the grounds that there was inadequate probable cause that he was under the influence of drugs to warrant testing his blood for anything other than alcohol. CP 7-12. After hearing argument but taking no testimony on this issue, the trial court denied the motion. 1RP 30-39, 52-55. Evidence that Martines's blood was tested for alcohol or drugs and the results of that testing were admitted at trial. 3RP 43-47.

The jury found Martines guilty as charged. CP 55. On November 30, 2012, the court sentenced him to 17 months in custody, a standard range sentence. CP 73-81. This appeal timely followed. CP 83.

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[1] This brief uses the following notation to refer to the five-volume Verbatim Report of Proceedings: 1RP for November 5, 2012; 2RP for November 6, 2012; 3RP for November 8, 2012; 4RP for November 9, 2012; and 5RP for November 30, 2012.

2. SUBSTANTIVE FACTS

On June 16, 2012, around 11:00 p.m., Christopher Goldie-Wells was driving a Ford Escort at the interchange of Highway 18 and Highway 167. 2RP 11-12, 26-28. His girlfriend Michelle Francis, who owned the car, was in the front passenger seat. 2RP 11-14, 28. Steven Goldie-Wells, Christopher's brother, and Alan Pruitt, Steven's friend, were in the back seat.[2] 2RP 28.

As the Escort merged from the interchange onto 167 northbound, a white SUV started following too closely. 2RP 12-14, 28-29, 97-98; 3RP 5. The SUV ultimately pulled to the right, began to pass, and then veered at the Escort, as if trying to cut it off or possibly strike it. 2RP 12-13, 29, 47, 97-98; 3RP 5. The rear left portion of the SUV then collided with the Escort, hitting the passenger side from the front door all the way to the front bumper. 2RP 12-14, 29, 98-99; 3RP 5. After the impact, the SUV careened to the left, bounced off the highway barrier, veered back to the right across several lanes of traffic, and rolled over. 2RP 13-14, 29; 3RP 5-6. Christopher stopped. 2RP 15, 100; 3RP 6.

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[2] This brief will refer to Christopher and Steven Goldie-Wells by their first names to avoid any confusion.

As they got out of their car, Francis, Steven, and Pruitt noticed Martines crawl out of the driver's side of the overturned SUV.[3] 2RP 15-16, 34, 100-02; 3RP 7. He was agitated and shouting about a woman still in the car. 2RP 17, 100-01. Steven approached the SUV and observed a woman in the passenger seat, still buckled in and hanging upside down. 2RP 107. Because the passenger side door would not open, he watched as Martines kicked out the back passenger window; the woman released herself from her seatbelt, crawled along the roof of the car to the back seat, and climbed out the broken window. 2RP 107-09.

Francis stayed near the Escort and called 911. 2RP 15. At some point, Martines approached her car and was displaying hostility toward the members of her party; she stepped between him and Christopher and asked him to return to his car. 2RP 17, 22-23, 36. He complied. 2RP 17. However, Martines was still agitated, upset, aggressive, and pacing around. 2RP 18, 22-23, 49-50, 102.

Around that time, Daniel Lindstrom arrived. Lindstrom was an off-duty detective with the Tukwila Police Department wearing plain clothes and driving his personal car. 2RP 58-63. He had been headed south on Highway 167 when he saw the collision, so he turned around and drove to the accident site. 2RP 58-63. As Lindstrom arrived, he observed

[3] Christopher thought he saw Martines exit the passenger side, but he described Martines as "acting like" he was the driver of the SUV. 2RP 35.

Martines punch another man in the face.[4] 2RP 64-65. Lindstrom confronted Martines, identified himself as an off-duty police officer, and told Martines to relax. 2RP 67. Martines challenged Lindstrom, demanding to see his "police things," claiming the Washington State Patrol owed him $10,000, and telling him, "You're not a F'ing cop." 2RP 36-37, 67, 70.

While the group waited for on-duty law enforcement officers to arrive, they observed Martines crawl back into his overturned SUV through a window, retrieve a bag, and throw the bag into a ditch. 2RP 18, 35, 81.

When asked whether she thought Martines was intoxicated, Francis said that he seemed "off." 2RP 20. Christopher thought that Martines was intoxicated because of his attitude, the smell of alcohol, his aggression, and the fact that he was hiding beer bottles. 2RP 38-39. Steven observed that Martines's speech was slurred and that he seemed intoxicated, but wasn't confident that he could differentiate that from shock about the car accident. 2RP 102-03.

Lindstrom, an officer with significant training and experience regarding the effect of alcohol on drivers, concluded that Martines was

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[4] That man was never identified. It appears he was associated with a different car that had stopped after the collision, and he departed without further contact with the police. 2RP 64-65, 109.

intoxicated. His eyes were glassy and bloodshot; he had an odor of alcohol about him that was stronger when he was speaking, and he also smelled as if he had spilled beer on his clothing; his speech was slurred; he was unsteady standing and stumbled when he walked; he was uncoordinated; and he was agitated, angry, and stomping around. 2RP 54-57, 68-70, 82-83. Lindstrom also clarified that he had seen numerous people affected by rollover accidents, and that Martines's conduct was different. He concluded that Martines was drunk. 2RP 90-91.

Washington State Patrol Trooper Dennis Tardiff eventually arrived at the scene of the collision. 2RP 113-14. A King County Sheriff's deputy had arrived earlier and placed Martines in handcuffs; Tardiff took custody of Martines from that deputy. 2RP 114-15. He noticed that Martines had red, bloodshot, and watery eyes, a flushed face, and the odor of intoxicants about his person, and that he lacked control of his functions, hitting his head on the car door and wobbling while standing. 2RP 116-17. Tardiff also recovered the bag that Martines had thrown into the ditch. 2RP 120. It contained a six-pack of Blue Moon beer with only one unopened bottle remaining. 2RP 19, 120.

Tardiff obtained a search warrant for Martines's blood, then transported him to Valley Medical Center for a blood draw, which

occurred at 5:04 a.m. 2RP 129-32; CP 94-103[5]; Ex. 20. Sarah Swenson, a toxicologist with the Washington State Patrol Toxicology Laboratory, tested Martines's blood, and determined that it had a blood alcohol concentration of about .061 g/100 mL. 3RP 40-42. Further, his blood also contained .05 mg/L of diazepam (also known as Valium), a central nervous system depressant, and .03 mg/L of nordiazepam, also a central nervous system depressant and a metabolite of diazepam. 3RP 43-47. Swenson estimated that Martines had a blood alcohol level of .121 four hours before the blood draw, which was still about two hours after the collision. 3RP 59, 115-16.

Martines had a prior conviction for Vehicular Assault while under the influence of intoxicating liquor or any drug, a predicate offense for Felony Driving Under the Influence. Ex. 1, 2, 3; RCW 46.61.502(6)(b)(ii).

C. ARGUMENT

1. THE TRIAL COURT PROPERLY DENIED MARTINES'S MOTION TO SUPPRESS THE RESULTS OF THE FORENSIC EXAMINATION OF HIS BLOOD.

Martines contends that the evidence of a forensic toxicologist's examination of his blood should have been suppressed at trial because the

[5] Martines filed the search warrant paperwork on June 26, 2013, and then designated it as clerk's papers 94-103 for this Court's review. However, the documents were already in the record as Exhibit 20.

State failed to obtain a search warrant specifically authorizing the testing. But no such search warrant is required. Rather, once the police lawfully have evidence in their custody, the owner no longer has a constitutionally protected privacy interest in the property, and no judicial authorization is needed to examine the evidence more closely and determine its evidentiary value. The trial court properly denied Martines's motion to suppress.

On review of a denial of a motion to suppress evidence pursuant to CrR 3.6, unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Challenged findings of fact are reviewed for substantial evidence. Id. at 647. Evidence is substantial when it is enough to persuade a fair-minded person of the truth of the stated premise. Id. at 644. Conclusions of law are reviewed de novo. State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010).

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). "A search occurs for Fourth Amendment purposes when 'an expectation of privacy that society is prepared to consider reasonable is infringed.'" State v. Young, 123 Wn.2d 173, 189, 867 P.2d 593 (1994) (citations omitted). Article I, section 7 of the Washington constitution provides greater protection in some areas than

does the federal constitution. State v. Surge, 160 Wn.2d 65, 70, 156 P.3d 208 (2007). That provision prohibits government intrusion upon private affairs without authority of law. WASH. CONST. art. I, § 7. Under Article I, section 7, a search occurs when there is an intrusion into "those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant." State v. Rose, 128 Wn.2d 388, 400, 909 P.2d 280 (1996) (citations and internal quotation marks omitted). For the intrusion to constitute a search, it must be an unreasonable intrusion. State v. Boland, 115 Wn.2d 571, 800 P.2d 1112 (1990).

For a warrant to be valid under both the Fourth Amendment and Article I, section 7, it must be supported by probable cause and particularly describe the place to be searched and the items to be seized. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002); State v. Griffith, 129 Wn. App. 482, 488, 120 P.3d 610 (2005). Probable cause is established when the affidavit provides sufficient facts and circumstances for a reasonable person to conclude that evidence of the crime can be found at the place to be searched. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Particularity is required to prevent general searches, to prevent the seizure of objects on the mistaken assumption that they fall within the issuing magistrate's authorization, and to prevent the issuance

of warrants on loose, vague, or doubtful bases of fact. State v. Perrone, 119 Wn.2d 538, 545, 834 P.2d 611 (1992).

Here, Trooper Tardiff seized a sample of Martines's blood. 2RP 129-32. The taking of a blood sample constitutes a search and seizure for purposes of the Fourth Amendment and Article I, section 7. State v. Kalakosky, 121 Wn.2d 525, 534, 852 P.2d 1064 (1993); State v. Judge, 100 Wn.2d 706, 711, 675 P.2d 219 (1984). However, the trooper obtained a search warrant authorizing his seizure of Martines's blood sample. CP 94-103; Ex. 20. Further, there is no dispute that the search warrant was supported by probable cause that Martines was driving under the influence of alcohol, and that evidence of that crime could be found in Martines's blood. CP 95-101; Ex. 20. Instead, Martines contends that the results of the blood testing must be suppressed because the affidavit did not contain probable cause to believe that Martines's blood contained drugs in addition to alcohol, and because the search warrant did not authorize the testing of his blood at all. But no such specific probable cause or authorization was necessary.

Martines cites no cases for the proposition that a search warrant is needed not only to search for and seize a suspect's property, but also to examine that property once seized. There appear to be no Washington

cases that support his argument. Instead, the weight of authority—both in Washington and across the country—is to the contrary.

Looking first at Washington cases, in State v. Cheatam, 150 Wn.2d 626, 81 P.3d 830 (2003), police took a defendant's shoes and forensically examined them by comparing their tread to shoeprints left at the scene of a rape. The shoes had been seized from the defendant when he was arrested for an unrelated crime, and had been inventoried and stored in the jail's property room; the police removed them from the jail four days later. The Supreme Court upheld the denial of Cheatam's motion to suppress the shoe evidence on the grounds that, once the shoes had been lawfully taken from him, his expectation of privacy in the shoes was so reduced that no protectable interest remained under either the federal or state constitution. Id. at 634-44. Applying Cheatam, the Supreme Court in State v. Gregory, 158 Wn.2d 759, 147 P.3d 1201 (2006), concluded that once a suspect's property is lawfully in the State's custody or control—in that case, through a court order for a blood sample—the State can perform forensic tests upon it and use the resulting information to further even an unrelated criminal investigation without running afoul of either constitution. Id. at 820-29.

Here, Trooper Tardiff had lawful custody of Martines's blood; he obtained it pursuant to a judicially authorized search warrant based upon

probable cause. Under Cheatam and Gregory, Martines no longer had a constitutionally protectable privacy interest in his blood. Accordingly, subjecting it to further examination—to support a prosecution for driving under the influence of alcohol or driving under the influence of drugs—did not violate Martines's rights under either the Fourth Amendment or Article I, section 7.

Similarly, in State v. Athan, 160 Wn.2d 354, 158 P.3d 27 (2007), the Supreme Court determined that Athan had no privacy interest in saliva that he used to lick and seal an envelope that he then mailed (unwittingly) to the police. That saliva was then used to develop a DNA profile linking Athan to a murder. In concluding that he had no privacy interest in saliva that he voluntarily relinquished, the Court analogized the ruse used to obtain the saliva sample from Athan to officers surreptitiously following a suspect to collect spit from a sidewalk or a cigarette butt in an ashtray, and then analyzing it for DNA, which the Court viewed as unquestionably constitutional. Id. at 374, 367. Although Martines's case is plainly different, in that the blood sample was taken from him forcibly through the use of a search warrant, the analysis in Athan makes clear that the examination of bodily fluid alone does not constitute a search that must be supported by either a warrant or probable cause. Otherwise, the police would have needed a warrant to analyze Athan's saliva, spit on the street,

or any other biological substance casually or unintentionally discarded by a suspect. Rather, it is the obtaining of the biological sample that is the subject of constitutional scrutiny. Id. at 367. Here, the police constitutionally obtained Martines's blood with a search warrant. No additional court authorization was needed in order to examine the blood forensically.

Finally, in State v. Grenning, 142 Wn. App. 518, 174 P.3d 706 (2008), aff'd, 169 Wn.2d 47 (2010), the Court of Appeals examined the question of whether law enforcement could examine the defendant's computer, seized pursuant to a valid search warrant, outside the ten-day period in which the warrant was to be executed. In concluding that such an examination was proper, the Grenning court stated that "it is generally understood that a lawful seizure of apparent evidence of a crime using a valid search warrant includes a right to test or examine the seized materials to ascertain their evidentiary value." Id. at 532 (citing 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 4.10(e), at 771 (4th ed. 2004)). That is exactly what occurred here. Martines was searched and his blood was seized pursuant to a valid search warrant. The blood was later further examined to determine its evidentiary value, if any. No warrant to conduct this examination was required.

Cheatam, Gregory, Athan, and Grenning are consistent with cases from across the country that maintain that no court authorization is required to examine evidence that is lawfully in police custody. For instance, in State v. Petrone, 468 N.W.2d 676 (Wisc. 1991), overruled on other grounds by State v. Greve, 468 N.W.2d 676 (Wisc. 1991), the Wisconsin Supreme Court analyzed a defendant's claim that a search warrant was needed for police to develop film that was lawfully seized pursuant to a search warrant. In rejecting Petrone's claim, the court held that a "search warrant does not limit officers to naked-eye inspections of objects lawfully seized." Id. at 681. Instead, law enforcement could develop the film as a lawful method of examination, just as blood stains could be subjected to laboratory analysis, or a magnifying glass could be used to enlarge documents or photographs for more detailed review. Id.

In United States v. Snyder, 852 F.2d 471 (9th Cir. 1988), the Ninth Circuit confronted an argument nearly identical to the one Martines raises here. In rejecting Snyder's claim that a warrant was needed in order to test the alcohol content of his blood (which was lawfully seized pursuant to exigent circumstances, as authorized by Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)), the court explained that Schmerber "viewed the right to seize the blood as encompassing the right to conduct a blood-alcohol test at some later time." Snyder, 852 F.2d

at 474. Thus, so long as a blood sample is lawfully obtained, "the subsequent performance of a blood-alcohol test has no independent significance for fourth amendment purposes." Id.

In State v. Wallace, 910 P.2d 695 (Haw. 1996), the Hawaii Supreme Court addressed a defendant's argument that the police needed a warrant in order to test cocaine that they had seized during the execution of a search warrant. The court rejected this claim, reasoning that the chemical testing of evidence already within police custody does not invade any legitimate expectation of privacy. Id. at 718-19.

Numerous additional examples exist of the general proposition that "a lawful seizure of apparent evidence of crime pursuant to a search warrant carries with it a right to test or otherwise examine the seized materials to ascertain or enhance their evidentiary value." 2 LAFAVE § 4.10(e) at 988-93 & nn.231-34 (citing cases); see also Josh Goldfoot, The Physical Computer and the Fourth Amendment, 16 Berkeley J. Crim. L. 112, 149-54 & nn.153-72 (2011) (explaining that "so long as . . . objects come into law enforcement's possession lawfully, courts do not require additional Fourth Amendment justification before police subject [those objects] to examination," and citing cases relating to examination of blood, film, clothing, cars, carpet fibers, purses, paper, videotapes, and the defendant's hands). "Indeed, it is difficult to perceive what is

unreasonable about the police's examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest." United States v. Edwards, 415 U.S. 800, 803-06, 94 S. Ct. 1234, 39 L. Ed. 2d 771 (1974).

This line of cases, remarkable in its uniformity, is plainly correct. A forensic examination is not the same as a search. A search is an infringement of a reasonable expectation of privacy, or an intrusion into private affairs. Young, 123 Wn.2d at 189; Rose, 128 Wn.2d at 400. But once the police already are in possession of a suspect's blood, the infringement or intrusion has already occurred, and there is no further constitutionally protectable privacy interest. Forensic examination merely converts the thing that the police have lawfully seized into information of evidentiary value. Moreover, blood is not a "place" that can be "searched"; rather, it is a "thing" that can be "seized." Compare U.S. CONST. amend. IV ("[N]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."). Indeed, taken as a whole, search and seizure law is concerned with the seizure of objects, not with information that can be obtained from those objects. Goldfoot, supra, at 154.

Further, blood is a substance whose evidentiary value lies in its components. It has no probative value in itself. Rather, it must be examined for its evidentiary value to be understood. See, e.g., Ex. 20; CP 97 (affidavit in support of search warrant explaining that Martines's blood, "if extracted within a reasonable period of time after he/she last operated, or was in physical control of, a motor vehicle, may be tested to determine his/her current blood alcohol level and to detect the presence of any drugs that may have impaired his/her ability to drive."). Thus, it makes no sense to authorize the taking of blood or a similar biological sample without the implied authorization to conduct forensic testing upon it.

Finally, as suggested above, the implications of Martines's argument are far reaching. If judicial authorization is required to test blood for alcohol or drugs, even once that blood is lawfully in police custody, there is no principled reason to conclude it would not be needed for a host of other forensic testing as well: to test controlled substances seized from a car during an inventory search; to testfire a handgun to determine its operability or to determine whether bullet casings at the scene of a shooting were fired from the same gun, even though the gun was seized pursuant to a warrant; to analyze fingerprints left at a crime scene or DNA left on a discarded cigarette; to translate writings from a

foreign language into English, or perhaps even to read writings that are in English, even though the documents were lawfully seized in a search incident to arrest. Such an additional warrant would not serve to protect any reasonable privacy interests. Rather, it would be an empty formality as well as a trap for the unwary. This Court should not invent such a requirement in the absence of any authority supporting it.

Perhaps in recognition that the weight of authority is against him, Martines attempts to characterize his argument as an attack on the particularity of the warrant. But the warrant here was quite particular. After finding that "there is probable cause to believe that . . . evidence of the crime(s) of: Driving While under the Influence, RCW 46.61.502 is concealed in, about or upon the person of Martines, Jose Figeroa," the warrant authorizes the seizure of a single, specific, particular thing: "a sample of blood, consisting of one or more tubes, from the person of Martines, Jose Figeroa, within 4 hours" and by a properly trained technician. Ex. 20; CP 100-01. The warrant was so particular that there was no danger of Trooper Tardiff conducting a general search, mistakenly seizing anything but Martines's blood, or obtaining a warrant on a vague or doubtful basis of fact. See Perrone, 119 Wn.2d at 545. Martines's mischaracterization of the forensic examination of his blood as running afoul of the particularity requirement should be rejected.

In short, a search warrant for a blood sample, based on probable cause, was all that was required here. Once Trooper Tardiff had lawfully obtained Martines's blood, his expectation of privacy in it was extinguished, and further forensic examination required no judicial authorization. The trial court properly denied Martines's motion to suppress the results of the forensic examination of his blood.

2. THE TRIAL COURT DID NOT ERR IN FAILING TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW, BECAUSE WRITTEN FINDINGS ARE NOT REQUIRED BY CrR 3.6 IN THE ABSENCE OF AN EVIDENTIARY HEARING.

Martines argues that this Court should reverse his conviction because the trial court failed to enter findings of fact and conclusions of law after denying his motion to suppress evidence pursuant to CrR 3.6. But the rule does not require written findings and conclusions where, as here, no evidentiary hearing was conducted. Martines's argument should be rejected.

Criminal Rule 3.6 governs the procedures to be followed when a court entertains a motion to suppress evidence. The portion of the rule that Martines relies on reads, in its entirety: "If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law." CrR 3.6(b) (emphasis added). Martines claims that the failure to follow this rule requires reversal.

However, the trial court did not err in failing to enter written findings of fact and conclusions of law, because no evidentiary hearing was held; instead, the parties just presented oral argument. 1RP 30-41. An evidentiary hearing is a condition precedent for the requirement of entry of written findings of fact and conclusions of law. CrR 3.6(b). In the absence of such a hearing, the trial court did not err in failing to enter written findings and conclusions.

Martines cites State v. Emery, 161 Wn. App. 172, 201-02, 253 P.3d 413 (2011), aff'd, 174 Wn.2d 741 (2012), for the proposition that the trial court erred by failing to make any findings regarding the existence or absence of facts to support probable cause. But here, there was no factual dispute to be settled by an evidentiary hearing. Rather, the CrR 3.6 issue that Martines raised below centered on the failure of the search warrant affidavit to establish probable cause to test his blood for drugs, and the related question of whether a warrant is required in order to test blood, as opposed to merely seize it. CP 7-12. These are legal questions, which are reviewed de novo. State v. Chamberlin, 161 Wn.2d 30, 40, 162 P.3d 389 (2007). Moreover, whether an affidavit establishes probable cause is determined by the four corners of the warrant. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). As there were no facts in dispute relevant

to Martines's suppression motion, the trial court did not err in failing to hold an evidentiary hearing or make findings of fact.

Further, even if written findings of fact and conclusions of law were required, any trial court error in failing to enter them is harmless if the oral findings and conclusions are sufficient to permit appellate review. State v. Miller, 92 Wn. App. 693, 703, 964 P.2d 1196 (1998). Here, the trial court provided a detailed explanation for its ruling that is adequate for appellate review. 1RP 52-55. Moreover, as the court's ruling is subject to de novo review, Chamberlin, 161 Wn.2d at 40, written conclusions of law here are particularly unnecessary.

Finally, when written findings of fact and conclusions of law are required, a delay in their entry may justify reversal only when the delay prejudiced the defendant or the findings and conclusions were tailored to meet the issues presented in the appellate brief. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006). Martines has failed even to allege how he was prejudiced by the trial court's failure to enter written findings and conclusions. Rather, he hopes this Court will determine that the failure alone is sufficient for reversal. It is not. Martines's argument to the contrary should be rejected.

D. CONCLUSION

For all of the foregoing reasons, Martines's conviction for Felony Driving Under the Influence should be affirmed.

DATED this 27th day of August, 2013.

Respectfully submitted,

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Certificate by Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver R. Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JOSE MARTINES, Cause No. 69663-7-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 27th day of August, 2013

U Brame

Name
Done in Seattle, Washington