

No. 14-24-00278-CR

In the Court of Appeals

for the

Fourteenth District of Texas

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
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DEBORAH M. YOUNG
Clerk of The Court

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No. 1813531

In the 482ND District Court

of Harris County, Texas

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ESEOSA OMORUYI OBADAGBONYI,

Appellant

Vs.

STATE OF TEXAS,

Appellee

-----◆-----
APPELLANT'S BRIEF

-----◆-----
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ORAL ARGUMENT NOT REQUESTED

IDENTIFICATON OF THE PARTIES

Pursuant to TEX. R. APP. 38.2(a)(1)(A), below is a complete list of the names of all interested parties.

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Presiding Judge	Honorable Veronica M. Nelson In the 482 nd District Court Harris County, Texas

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TO THE HONORABLE COURT OF APPEALS:

Comes now the Appellant, Mr. Eseosa Obadagbonyi, by and through his attorney, and respectfully urges this Court to REVERSE judgment in this and vacate five (5) year probated sentence imposed on Mr. Obadagbonyi or REVERSE the trial court's order denying the Appellant's Motion to Quash and Exception to Substance of Indictment and Appellant's Motion to Suppress and REMAND the case back to the trial court with orders to grant the Appellant's Motion to Suppress. Further, we request that this court REMAND to the trial court the instruction to disregard the perjured testimony of Officer Roth.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On the 31st day of March 2023, a Harris County Grand Jury returned an Indictment, charging the Appellant with Driving While Intoxicated Third or More, a Third-Degree Felony (C.R., Vol. 1, Pg. 7). Following that indictment, on the 8th day of January 2024, Mr. Obadagbonyi by and through his attorney filed "Defendant's Notice to the Court of Falsification on Government Record," "Defendant's Motion to Quash and Exception to Substance of Indictment," and "Motion to Suppress" each with the complaint that the officer in this case falsified documents, did not read or provide a copy of the statutorily required DIC-24 to Mr. Obadagbonyi, and did not allow Mr. Obadagbonyi the opportunity to voluntarily participate in or reject a blood or breath test (C.R., Vol. 1, Pg. 53-66).

On March 22, 2024, a jury was selected for this case (R.R., Vol. 2). A jury trial commenced and concluded on March 26, 2024, after hearing two witnesses, Officer Richard Toth and Forensic Scientist Andrea Gooden (R.R., Vol. 3). This appeal is to contest the five (5) year probated sentence imposed on Mr. Obadagbonyi on March 27, 2024, by the Jury (C.R., Vol. 1, Pg. 163).

SUBSTANTIVE HISTORY

On the 31st day of March 2023, Mr. Obadagbonyi was at the gate of his apartment complex when the [arresting officer] observed the [Mr. Obadagbonyi] was sleeping in the vehicle. (R.R., Vol. 3, Lin 10, Pg. 29). Without Field Sobriety Testing or other affirmative findings of intoxication, he was arrested, a blood search warrant was applied for and executed, and Mr. Obadagbonyi was charged with Driving While Intoxicated 3rd or More by Officer R. Toth of the Midwest Patrol Unit. Officer R. Toth testified as follows:

R.R., Vol. 3, Page 55

8. (Attorney Obas) Q. Is it true that [defendant] had three prior convictions?
9. (Officer Toth) A. At the time - -
10. (Attorney Obas) Q. Is it true, yes or no?
11. (Officer Toth) A. At the time that I prepared the report. I
12. believed it's true.
13. (Attorney Obas) Q. Have you come to realize that that is not
14. correct?
15. (Officer Toth) A. Later a few days ago. I did, yes.
16. (Attorney Obas) Q. Now, we watched a video just now. Is there any
17. way you asks the defendant to submit to a breath or
18. blood test?
19. (Officer Toth) A. No

R.R., Vol. 3, Page 56:

19. (Attorney Obas) Q. in this report you prepared, DIC-23, did you

- 20. say that you give – that statutory warning to the
- 21. person the subject of DIC-24?
- 22. (Officer Toth) A. I did not read DIC-24
- 23. (Attorney Obas) Q. Huh?
- 24. (Officer Toth) A. I did not read the DIC-24

R.R.; Vol. 3. Page 57:

- 18. (Attorney Obas) Now, did you give - - did you give [defendant] his legal
- 19 warning according to your General Order 500-01?
- 20, (Officer Toth) A. Legal warning. You mean DIC-24?

R.R.; Vol. 3. Page 58:

- 14. (Attorney Obas) Q. BY MR. OBAS: Are you familiar with the
- 15. department's General Order 500-1, subsection 2 that - -
- 16. with your position?
- 17. (Officer Toth) A. as far as I remember, the General Order, yes,
- 18 but I am not familiar. I'd have to see what part of it.

Arresting officer, R. Toth did not request Mr. Obadagbonyi to submit to breath or blood test which officer Toth claimed that Mr. Obadagbonyi refused to submit to breath or blood test. Proper warnings were not given to the Defendant and the defendant was not allowed the opportunity to knowledgeably decide to participate in or refuse Field Sobriety testing or voluntarily provide a blood or breath sample (R.R., Vol. 3, Pg. 56, Line 22 stating, "I did not read DIC-24").

ARGUMENT

FIRST POINT OF ERROR

THE APPELLATE COURT SHOULD REVERSE AND REMAND THIS CASE WITH THE INSTRUCTION TO EXCLUDE ANY AND ALL EVIDENCE OF AN INPROPERLY INFORMED "REFUSAL" TO GIVE BLOOD OR BREATH SAMPLING DUE TO THE OFFICER NOT READING AND PROVIDING A COPY OF THE DIC-24.

Section 724.015 of the Texas Transportation Code requires an officer, before requesting a person to submit to the taking of a specimen, shall inform that person both orally and in writing by providing a copy of the DIC-24 of the statutory warnings. That did not occur in this case (R.R., Vol. 3, Pg. 56, Line 22, the arresting Police Officer, R. Toth, testimony on witness stand, stating, "I did not read DIC-24"). Officer R. Toth failed to read or provide the accused a copy of DIC-24. Officer R. Toth did not prepare DIC-24, in this case.

In *Janak v. State*, 826 S.W.2d 803 (Tex. App. 1992), a similar case where an officer was allowed to testify over objection to the accused refusing a breath/blood test after failing to read or provide a copy of the DIC-24, it was determined in that case that the proper remedy for failing to inform a suspect in writing and verbally of their rights under DIC-24 is the exclude any and all evidence of their "refusal" into evidence, and that is what we are asking for in this case.

Some leniency has been given to officers in *Rowland v. State*, 983 S.W.2d 58 (Tex. App. – Houston [1st Dist.] 1998, pet. Ref'd) and *Tex. Dep't of Pub. Safety v. Jauregui*, 176 S.W.3d 846 (Tex. App.—Houston [1st Dist.] 2005, rev. denied); however, neither of these leniencies apply to the case. In *Rowland v. State*, oral warnings were given, and a specimen was asked for. Then, after refusal, the written warnings were given; in contrast, in the case currently before the court, there is no evidence that the warnings were ever given or that Mr. Obadagbonyi orally or in writing and Mr. Obadagbonyi was not allowed to refuse or deny giving a sample.

In *Tex. Dep't of Pub. Safety v. Jauregui*, the issue was the DIC-24 page was not signed by the defendant again. That is not the case here because Mr. Obadagbonyi was not given the opportunity to sign or refused to sign the form because one was never provided or read to him.

In the case currently before the court, not only did Officer Roth not properly warn Mr. Obadagbonyi orally or in writing, he falsely swore on the DIC-23 that he did warn Mr. Obadagbonyi orally and in writing, and Officer R. Toth falsely testified in court, in the DIC-23, about warning Mr. Obadagbonyi orally and/or in writing when Officer Toth prepared the DIC-23 under oath of penalty of perjury that DIC-24, was incorporated in the DIC-23. As Officer Toth never prepared DIC-24, that Officer Toth claimed to be incorporated in the DIC-23. The arresting Officer R. Toth, never prepared and never read and or present a copy of the DIC-24 to Mr. Obadagbonyi. (R.R. Vol. 3, pg. 51-62).

SECOND POINT OF ERROR

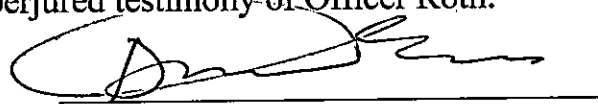
THE APPELATE COURT SHOULD REVERSE AND REMAND DUE TO THE OFFICER PERJURYING HIMSELF ON DIC-24 AND OFFICE POLICY.

“A person commits perjury if, with knowledge of the statement’s meaning, he makes a false statement under oath” (*Redic v. State*, 2000 Tex. App. LEXIS 4188). In the case currently before the court, Officer Toth testified in the first instance that he completed and signed the DIC-23 under oath (which includes DIC-24) (R.R., Vol. 3,

Pg. 53) but later testified that per office policy (R.R., Vol. 3, Pg. 54-58) he did not have to complete the DIC-24.

CONCLUSION & PRAYER FOR RELIEF

Mr. Obadagbonyi, by and through his attorney, respectfully urges this Court to REVERSE judgment in this and vacate five (5) year probated sentence imposed on Mr. Obadagbonyi or REVERSE the trial court's order denying the Appellant's Motion to Quash and Exception to Substance of Indictment and Appellant's Motion to Suppress and REMAND the case back to the trial court with orders to grant the Appellant's Motion to Suppress. Further, we request that this court REMAND to the trial court the instruction to disregard the perjured testimony of Officer Roth.



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CERTIFICATE OF COMPLIANCE AND SERVICE

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