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(Cite as: 823 S.W.2d 744)

Court of Appeals of Texas,
Dallas.

The STATE of Texas, Appellant,
v.
Thomas Edwin TOONE, Appellee.
No. 05-91-00414-CR.

Jan. 17, 1992.

Petition for Discretionary Review Granted June 17, 1992.

Before STEWART, LAGARDE and WHITTINGTON^{FN1}, JJ.

FN1. The Honorable John Whittington, Justice, participated in this cause when it was submitted for decision. Because of his resignation December 31, 1991, he did not participate in the issuance of this opinion.

OPINION

LAGARDE, Justice.

Thomas Edwin Toone was charged by indictment with the offense of possession of less than twenty-eight grams of cocaine. The trial court granted Toone's motion to suppress which asserted that officers seized the cocaine in violation of state statutory laws as well as both the United States and the Texas Constitutions. The State of Texas appeals from the trial court's order. Because we find that the federal officers acted under a valid federal search warrant, we reverse the trial court's order and remand the cause for further proceedings.

FACTUAL BACKGROUND

Wayne W. Meyers, a federal postal inspector assigned to the Fort Worth Division of the United States Postal Inspection Service, investigated the mailing of material involving the sexual exploitation of minors and of obscene material. These offenses violate sections 1461, 2251, and 2252 of Title 18 of the United States Code. Meyers received several written requests from Toone for various illegal videotapes and publications. From these requests, Meyers planned a delivery of the contraband to Toone's house while disguised as a U.S. postman. Meyers obtained a federal search warrant in anticipation of this delivery to prevent possible destruction of the evidence. Meyers's lengthy search-warrant affidavit specified numerous fruits, instrumentalities, and evi-

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dence of possession of child pornography that he, through his investigation, believed would be found in Toone's home. Federal officers executed the search warrant on November 30, 1989.

During the search for the pornography, the officers discovered cocaine in a jewelry box. Subsequently, Toone was indicted in state court for cocaine possession and charged in federal court with receiving obscene materials through the mail.

TOONE'S MOTION TO SUPPRESS

Prior to the state court trial, Toone filed a motion to suppress the cocaine arguing that (1) the federal search warrant affidavit contained stale information, and (2) the search warrant was issued prior to the commission of any offense. The amount of delay that will make information stale for search warrant purposes depends upon the particular facts of a case, including the nature of criminal activity and the type of evidence sought. Ellis v. State, 722 S.W.2d 192, 196 (Tex.App.-Dallas 1986, no pet.). Mechanically counting days is of little assistance in the determination of staleness; rather, common sense and reasonableness must prevail, with considerable deference given to the magistrate's judgment. *Id.* Thus, our analysis will focus on Toone's second argument.

Specifically, Toone complained of the following language in the search warrant:

... there *will be* concealed a certain person or property, namely evidence, fruits, and instrumentalities of violations of Title 18, United States Code, Section 2251 and 2252....

(Emphasis added). Toone argued that the words "will be" made the warrant an "anticipatory search warrant" by indicating that probable cause would exist in the future. He contended that probable cause did not exist at the time the warrant issued because the contraband was not then on the premises. Therefore, he asserts, the warrant was invalid under article 18.01(b) and (c) of the Texas Code of Criminal Procedure.^{FN2} The trial court agreed and granted the motion to suppress.

FN2. Article 18.01(b) states in part:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

Article 18.01(c) provides in pertinent part that the search warrant affidavit must set forth sufficient facts to establish probable cause:

(3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.

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TEX.CODE CRIM.PROC.ANN. art. 18.01(b) and (c) (Vernon Supp.1991).

LEGAL ANALYSIS

A. Anticipatory Search Warrant

Toone's argument that anticipatory search warrants are invalid is based on the language in article 18.01(b) and (c) because, as he admits, there is no case law in Texas holding this type of warrant invalid. Other jurisdictions, both federal and state, have confronted this issue, and a majority have concluded that anticipatory warrants are constitutional.^{FN3}

FN3. United States v. Garcia, 882 F.2d 699 (2d Cir.), cert. denied, 493 U.S. 943, 110 S.Ct. 348, 107 L.Ed.2d 336 (1989); United States v. Dornhofer, 859 F.2d 1195 (4th Cir.1988), cert. denied, 490 U.S. 1005, 109 S.Ct. 1639, 104 L.Ed.2d 155 (1989); United States v. Hale, 784 F.2d 1465 (9th Cir.), cert. denied, 479 U.S. 829, 107 S.Ct. 110, 93 L.Ed.2d 59 (1986); United States v. Lowe, 575 F.2d 1193 (6th Cir.), cert. denied, 439 U.S. 869, 99 S.Ct. 198, 58 L.Ed.2d 180 (1978); United States ex rel. Beal v. Skaff, 418 F.2d 430 (7th Cir.1969); Johnson v. State, 617 P.2d 1117 (Alaska 1980); State v. Cox, 110 Ariz. 603, 522 P.2d 29 (1974); Bernie v. State, 524 So.2d 988 (Fla.1988); State v. Wright, 115 Idaho 1043, 772 P.2d 250 (Ct.App.1989); People v. Galdine, 212 Ill.App.3d 472, 156 Ill.Dec. 595, 571 N.E.2d 182 (1991); Russell v. State, 182 Ind.App. 386, 395 N.E.2d 791 (1979); Commonwealth v. Soares, 384 Mass. 149, 424 N.E.2d 221 (1981); State v. Doyle, 336 N.W.2d 247 (Minn.1983); State v. Mier, 147 N.J.Super. 17, 370 A.2d 515 (Ct.App.Div.1977); People v. Glen, 30 N.Y.2d 252, 331 N.Y.S.2d 656, 282 N.E.2d 614, cert. denied, 409 U.S. 849, 93 S.Ct. 58, 34 L.Ed.2d 91 (1972); Commonwealth v. Riviera, 387 Pa.Super. 196, 563 A.2d 1252 (1989); State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975); State v. Coker, 746 S.W.2d 167 (Tenn.1987), cert. denied, 488 U.S. 871, 109 S.Ct. 180, 102 L.Ed.2d 149 (1988); McNeill v. Commonwealth, 10 Va.App. 674, 395 S.E.2d 460 (1990).

OTHER STATES

For example, the following three cases are factually similar and they come from different states all of which have probable cause requirements comparable to those of Texas.^{FN4} First, in Massachusetts, the applicable statute provides that

FN4. See supra note 2.

A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such

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belief, issue a warrant identifying the property and naming or describing the person or place to be searched....

MASS.GEN. LAWS ANN. ch. 276, § 1 (West 1990). The Supreme Judicial Court of Massachusetts in Commonwealth v. Soares, stated, “we read G.L. c. 276, § 1, to permit search warrants to issue on a showing that concealment or possession is probable at the time a warrant is to be executed, and not solely at the time of its issuance.” Commonwealth v. Soares, 384 Mass. 149, 424 N.E.2d 221, 225 (1981).

Second, in McNeill v. Commonwealth, a Virginia state police detective obtained a search warrant in anticipation of delivery of cocaine reported by UPS employees. McNeill v. Commonwealth, 10 Va.App. 674, 395 S.E.2d 460, 461 (1990). The court held that this anticipatory warrant was valid because there was probable cause ^{FN5} to believe that the contraband would be located on the premises at the time the warrant would be executed. Id. 395 S.E.2d at 463. The probable cause was established by showing that the contraband was on a “sure course” to the premises. Id.

FN5. Section 19.2-52 of the Virginia Code provides in pertinent part:

[S]earch warrants, based upon complaint on oath supported by an affidavit ... may be issued by any judge, magistrate or other person having authority to issue criminal warrants, if he be satisfied from such complaint and affidavit that there is reasonable and probable cause for the issuance of such search warrant.

VA.CODE ANN. § 19.2-52 (1990).

Third, in Commonwealth v. Riviera, the Superior Court of Pennsylvania upheld the legality of a search warrant for a package of controlled substances, which, at the moment the warrant issued, was not yet on the premises. Commonwealth v. Riviera, 387 Pa.Super. 196, 563 A.2d 1252, 1254 (1989). The probable cause ^{FN6} requirement came from the magistrate's reasonable conclusion that there is a fair probability that the evidence will be on the premises to be searched at the time the warrant is executed. Id. 563 A.2d at 1255. The Court reasoned that permitting the issuance of an anticipatory warrant allows the police a reasonable degree of flexibility in responding to crime, while ensuring the oversight of a neutral authority who can act to protect the constitutional rights of criminal suspects. Id. at 1256.

FN6. Pennsylvania Rules of Criminal Procedure require that:

No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority.

PA.CONST. STAT. ANN. Rule 2003 (1989).

FEDERAL

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We turn now to an example under federal law of a legal anticipatory search warrant. In United States v. Wylie, the Fifth Circuit approved a magistrate's issuance of an anticipatory search warrant that authorized the search of premises when it was known that the contraband was on a sure course to its destination there. United States v. Wylie, 919 F.2d 969, 974 (5th Cir.1990); see also United States v. Hale, 784 F.2d 1465, 1468 (9th Cir.), (prior issuance of warrant permissible for four envelopes containing magazines and photographs in violation of 18 U.S.C. § 2252(a)(2) because they were on a sure course to their destination in the mail), cert. denied, 479 U.S. 829, 107 S.Ct. 110, 93 L.Ed.2d 59 (1986). In Wylie, the Fifth Circuit cites a Second Circuit case in which Drug Enforcement Association agents applied for and received an anticipatory warrant to search an apartment for cocaine, traces of cocaine, currency, drug records, and narcotics paraphernalia. United States v. Garcia, 882 F.2d 699, 701 (2d Cir.), cert. denied, 493 U.S. 943, 110 S.Ct. 348, 107 L.Ed. 336 (1989). Execution of this warrant was contingent upon the delivery of cocaine by two men operating in cooperation with the DEA agents. Garcia, 882 F.2d at 701. In rejecting the argument that an anticipatory search warrant was unconstitutional *per se*, the court held that the warrant was based on probable cause. The court stated that when a government official presents independent evidence indicating that delivery of contraband will, or is likely to, occur, and when the magistrate conditions the warrant on that delivery, there is sufficient probable cause to uphold the warrant. Id. at 702. The fact that the contraband is not presently located at the place is immaterial so long as there is probable cause to believe that it will be there when the warrant is executed. Id. The court further explained that the affidavits supporting the application for an anticipatory warrant must show: (1) the agent believes a delivery of contraband is going to occur, (2) how the agent obtained this belief, (3) how reliable his sources are, and (4) what part the government agents will play in the delivery. Id. at 703.

In the present case, there are even stronger facts supporting probable cause than in Garcia. In his affidavit, Meyers states that he received the requests from Toone, packaged the videotapes and magazines, and would personally deliver the items. No third parties were necessary to the completion of the delivery. This delivery was under the total control of the government.

Accordingly, we conclude that the federal search warrant based on the postal inspector's affidavit was valid. Because the federal officers were properly on the premises, the seizure of the cocaine was legal.

B. Reverse Silver-Platter Doctrine

Alternatively, assuming *arguendo*, that the cocaine seizure did violate Texas law, we hold that because the federal search warrant was valid, the cocaine may be used in a state proceeding. To reach this conclusion, we review the "silver-platter" doctrine and illustrate how, in Toone's case, the reverse applies.

Historically, federal standards for lawful searches and seizures were usually more protective than the standards followed by the states. Because state officers were not subject to the

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Fourth Amendment and the exclusionary rule, the Supreme Court in Lustig v. United States, 338 U.S. 74, 79, 69 S.Ct. 1372, 1374, 93 L.Ed. 1819 (1949), held that evidence independently obtained by state officials in compliance with state law, but in violation of federal law, could be handed over on a “silver platter” to federal agents for use in a federal criminal trial. The underlying concept of the silver-platter doctrine is that protections afforded by the constitution of a sovereign entity control the actions only of the agents of that sovereign entity. Burdeau v. McDowell, 256 U.S. 465, 475, 41 S.Ct. 574, 576, 65 L.Ed. 1048 (1921).

The essence of the silver-platter doctrine is still pertinent today. Recently, in United States v. McKeever, the Fifth Circuit held that evidence seized under a state warrant obtained by state agents is admissible in a federal court even if the state warrant fails to satisfy federal statutory requirements. McKeever, 905 F.2d 829, 832 (5th Cir.1990), cert. denied, 498 U.S. 1070, 111 S.Ct. 790, 112 L.Ed.2d 852 (1991).

In Toone's case we have the reverse scenario and, apparently, a case of first impression in Texas. Here, we have federal agents legally obtaining evidence under federal law but in assumed violation of state law. We proceed with this analysis with the recent case of Heitman v. State, 815 S.W.2d 681 (Tex.Crim.App.1991), in mind. There, the Court of Criminal Appeals held that when analyzing and interpreting article I, section 9 of the Texas Constitution, we are not bound by Supreme Court decisions addressing the comparable Fourth Amendment issue. The court recognized that state constitutions cannot subtract from the rights guaranteed by the United States Constitution, but they can provide additional rights to their citizens. Id. at 690. Other jurisdictions have held that state officials could use such evidence in state criminal proceedings. United States v. Lester, 647 F.2d 869, 875 (8th Cir.1981); State v. Mollica, 114 N.J. 329, 554 A.2d 1315, 1328 (1989); State v. Gwinner, 59 Wash.App. 119, 796 P.2d 728, 731 (1990).

In Mollica, the New Jersey Supreme Court stated, “[w]e endorse the principle that federal officers acting lawfully and in conformity to federal authority are unconstrained by the State Constitution, and may turn over to state law enforcement officers incriminating evidence, the seizure of which would have violated state constitutional standards.” Mollica, 554 A.2d at 1328. The court cautioned, however, that the federal agents may not act as agents of the state police or under “color of state law.” Id. at 1329. Evidence of antecedent mutual planning, joint operations, cooperative investigations, or mutual assistance between federal and state officers may sufficiently establish agency and serve to bring the conduct of the federal agents under the color of state law. Conversely, mere contact, awareness of ongoing investigations, or the exchange of information may not transform the relationship into one of agency. Id. In Toone's case, there is no evidence that state officers participated in any way in either the issuance or execution of the search warrant.

Because our state constitution has inherent jurisdictional limitations and can provide broader protections than those found in the United States Constitution, the application of our state constitution to the officers of another jurisdiction would disserve the principles of federalism and comity without properly advancing legitimate state interests. No deterrence of a state

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official's conduct is frustrated, because only the conduct of federal officials is involved. Further, Toone's individual constitutional rights were not violated because no state official or person acting under color of state law violated the state constitution. Consequently, we hold that evidence lawfully obtained by federal officers acting under a valid federal search warrant is admissible in state criminal proceedings. Accordingly, we sustain the State's point of error. The trial court erred in granting Toone's motion to suppress. We reverse the trial court's February 6, 1991, suppression order and remand this cause to the trial court for proceedings consistent with this opinion.

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Court of Criminal Appeals of Texas.
The STATE of Texas, Appellant,
v.
Thomas Edwin TOONE, Appellee.
No. 435-92.

Jan. 26, 1994.

OPINION ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW

MALONEY, Judge.

Appellee was indicted for possession of less than twenty-eight grams of cocaine. The trial court granted appellee's pre-trial motion to suppress on the grounds that the cocaine was seized in violation of Chapter 18 of the Texas Code of Criminal Procedure. The State appealed that ruling. The Fifth Court of Appeals reversed. *State v. Toone*, 823 S.W.2d 744 (Tex.App.-Dallas 1992). We granted appellee's petition for discretionary review to determine whether the Court of Appeals erred in holding that an anticipatory search warrant is valid under Texas law and in holding that the "reverse silver platter doctrine" is applicable under Texas law.

Participating in an undercover operation investigating federal offenses involving the mailing of obscene material, United States Postal Inspector Wayne Meyers received appellee's mail order requests for certain obscene material. Planning to deliver the materials himself, Meyers obtained a search warrant from a federal magistrate. The warrant affidavit provided, in part, that Meyers "believes there is probable cause to believe that evidence, fruits, and instrumentalities of violations of [federal law] will be concealed on the premises ... at the time of the search." The obscene materials were delivered and the search warrant subsequently executed, leading to the discovery and seizure of cocaine, in addition to obscene material. State officers did not participate in the issuance or execution of the warrant. Appellee was indicted in federal court for receiving obscene materials by mail and in state court for possession of cocaine. In his state court trial, appellee sought suppression of the evidence, claiming the warrant was issued prior to the time that any evidence of a crime was located at the described premises and prior to the commission of any offense. The trial court found that "the search warrant authorize[d] a search of the described premises for property not present at those premises at the time the search warrant was issued" in violation of Chapter 18 of the Code of Criminal Procedure.

Following federal and other state courts, the Court of Appeals held the anticipatory search warrant ^{FN1} was valid. ^{FN2} *Toone*, 823 S.W.2d at 747. The Court of Appeals alternatively held that even if the seizure did violate Texas law, "evidence lawfully obtained by federal officers acting under a federal search warrant is admissible in state criminal proceedings." *Id.* at 748. We agree with the Court of Appeals that the evidence was admissible, but we arrive at our conclusion based upon different reasoning.

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FN1. An “anticipatory search warrant” is a term that has frequently been used in referring to “a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.” WAYNE R. LAFAVE, SEARCH AND SEIZURE § 3.7(c), at 94 (1987).

FN2. The Court of Appeals framed appellee's argument as follows:

Toone's argument that anticipatory search warrants are invalid is based on the language in article 18.01(b) and (c) because, as he admits, there is no case law in Texas holding this type of warrant invalid.

Toone, 823 S.W.2d at 746. Thereupon, the Court of Appeals discussed state and federal courts that have upheld anticipatory search warrants, noting that the states discussed had statutory provisions similar to article 18.01. Following its discussion of state and federal decisions permitting the use of anticipatory search warrants, the Court of Appeals concluded that “the federal search warrant based on the postal inspector's affidavit was valid[,]” without any separate analysis of article 18.01 or any other Texas law in this regard. Id. at 747.

Any discussion pertaining to the exclusion of evidence logically begins with article 38.23, our exclusionary rule. Article 38.23 provides in part that:

No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal action.

TEX.CODE CRIM.PROC.ANN. art. 38.23(a). The evidence at issue here is only excludable, then, if it was obtained “in violation of” the Texas or United States Constitution or other Texas or federal law. Appellee does not contend the evidence was obtained in violation of the Fourth Amendment or other federal law.^{FN3} Nor does appellee contend the evidence was obtained in violation of the Texas Constitution;^{FN4} rather he claims the evidence, obtained pursuant to an anticipatory search warrant, was obtained in violation of the plain language of article 18.01.

FN3. We note that at least six federal circuits have upheld anticipatory search warrants under the Fourth Amendment. *See, e.g., United States v. Wylie*, 919 F.2d 969 (5th Cir.1990); *United States v. Garcia*, 882 F.2d 699 (2nd Cir.), *cert. denied*, 493 U.S. 943, 110 S.Ct. 348, 107 L.Ed.2d 336 (1989); *United States v. Dornhofer*, 859 F.2d 1195 (4th Cir.1988), *cert. denied*, 490 U.S. 1005, 109 S.Ct. 1639, 104 L.Ed.2d 155 (1989); *United States v. Hale*, 784 F.2d 1465 (9th Cir.), *cert. denied*, 479 U.S. 829, 107 S.Ct. 110, 93 L.Ed.2d 59 (1986), *United States v. Outland*, 476 F.2d 581 (6th Cir.1973); *United States ex rel. Beal v. Skaff*, 418 F.2d 430 (7th Cir.1969).

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FN4. In his brief before this Court appellee set forth Article I, § 9 of the Texas Constitution, and immediately thereafter set forth article 18.01(b) of the Code of Criminal Procedure. In the discussion following those provisions appellee argued that a search warrant must show that an offense has been committed and urged a strict construction of the express language of article 18.01. Appellee's brief otherwise contains no statement, suggestion or authority in support of an argument based upon the Texas Constitution or any indication that the Texas Constitution should provide different protection than the federal constitution with respect to anticipatory searches. Accordingly, appellee has preserved nothing with respect to a claim under the Texas Constitution. *See, e.g., Muniz v. State*, 851 S.W.2d 238, 251 (Tex.Crim.App.) (where defendant did not provide "argument or authority concerning the protection provided by Texas Constitution or how that protection differs from the protection provided by the United States Constitution" we will not address Texas Constitutional claim), *cert. denied*, 510 U.S. 837, 114 S.Ct. 116, 126 L.Ed.2d 82 (1993); *Robinson v. State*, 851 S.W.2d 216, 222 n. 4 (Tex.Crim.App.1991) (where defendant claimed violation of Texas Constitution but provided no argument or authority regarding its protection, we will not address it), *pet. for cert. filed* (May 11, 1993); *Johnson v. State*, 853 S.W.2d 527, 533 (Tex.Crim.App.1992) (declining to address defendant's claim that the Texas Constitution was violated where defendant offered no argument or authority as to the protection offered by the Texas Constitution or how that protection differed from the protection of the federal constitution), *cert. denied*, 510 U.S. 852, 114 S.Ct. 154, 126 L.Ed.2d 115 (1993).

In support of ground for review two pertaining to the application of the reverse silver platter doctrine, argued in a separate section of his brief, appellee suggested in a single statement that Texas should not follow federal law on this issue, citing *Heitman v. State*, 815 S.W.2d 681 (Tex.Crim.App.1991). We do not perceive this to relate to ground for review one, pertaining to anticipatory warrants.

Article 18.01 of the Code of Criminal Procedure, Search Warrant, sets forth conditions under which a search warrant may be issued and executed.^{FN5} "Search warrant" is defined for purposes of article 18.01 as "a written order, issued by a magistrate and directed to a peace officer." TEX.CODE CRIM.PROC.ANN. art. 18.01(a). Article 2.09 of the Code of Criminal Procedure, Magistrates, lists persons who are "magistrates" within the Code.^{FN6} Only various state and municipal court judges and magistrates are listed. *Id.* at 2.09. Article 2.12, Who are Peace Officers, enumerates persons who are "peace officers" within the meaning of the Code. *Id.* at 2.12. Only state and local officers are included in this list. Article 18.01 does not purport to govern federal search warrants. Accordingly, we hold that a search warrant issued by a federal magistrate and directed to a federal postal inspector is not a "search warrant" governed by article 18.01. We emphasize that our holding in this case does not reflect upon the validity of an anticipatory search warrant under the Texas Constitution, nor does it reflect upon the validity of an anticipatory search warrant which is otherwise governed by article 18.01.

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FN5. Article 18.01 prohibits the issuance of a search warrant in the absence of certain identified conditions. TEX.CODE CRIM.PROC.ANN. art. 18.01(b) (“[n]o search warrant shall issue for any purpose” unless certain conditions are met); *id.* at 18.01(c) (“[a] search warrant may not be issued” unless certain conditions are met”). We note that article 18.01 is a statute of prohibition rather than authorization. In other words, the statute does not grant Texas magistrates the authority to issue search warrants; rather it prohibits Texas magistrates from issuing search warrants unless certain conditions exist.

FN6. Article 2.09 provided at the time the warrant was issued:

Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the District Court, the magistrates appointed by the judges of the district courts of Dallas County or Bexar County that give preference to criminal cases, the magistrates appointed by the judges of the district courts of Lubbock County, and the magistrates appointed by the judges of the criminal district courts of Dallas County, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of the statutory probate courts, the justices of the peace, the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

TEX.CODE CRIM.PROC.ANN. art. 2.09 (West 1990).

Having held that article 38.23 does not exclude the evidence in this case on the grounds that it was obtained “in violation of” article 18.01, we affirm the judgment of the Court of Appeals.^{FN7}

FN7. Because of our disposition, we need not reach the Court of Appeals' alternative holding pertaining to the application of the “reverse silver platter doctrine.”

MILLER, J., concurs in the result.