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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MONIQUE QUINTANA,

Plaintiff and Appellant,

v.

GEORGE VALVERDE, as Director, etc.,

Defendant and Respondent.

E051957

(Super.Ct.No. CIVRS1001525)

OPINION

APPEAL from the Superior Court of San Bernardino County. David A. Williams, Judge. Affirmed.

Bartell & Hensel, Donald J. Hensel and Lara J. Gressley for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Alicia M. B. Fowler, Assistant Attorney General, and Celine M. Cooper and Michael Yi, Deputy Attorneys General, for Defendant and Respondent.

After an administrative hearing, the Department of Motor Vehicles (the Department) suspended Monique Quintana's driver's license, finding that she had driven

a motor vehicle while having a blood alcohol level of 0.08 percent or more. The trial court denied Quintana’s petition challenging the suspension.

Quintana appeals. She argues that the critical blood alcohol report was inadmissible hearsay, because there was no evidence that it was prepared by a qualified person. She also argues that a second document, listing the preparer’s qualifications, was irrelevant, because it was dated 2008, whereas the blood alcohol report was dated 2009.

We will hold that the 2008 document was relevant to prove the preparer’s qualifications in 2009. We will further hold that it showed that the preparer of the blood alcohol report was duly qualified. Hence, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

Quintana was arrested for driving under the influence. She was notified that the Department intended to suspend her driver’s license. She requested an “administrative per se” hearing.¹

At the hearing, exhibit 2 was the only evidence of Quintana’s blood alcohol level. (A copy of exhibit 2 is attached as appendix A, *post*, pp. 11-13.)

Page 1 of exhibit 2 was a “Report” stating that “Analyst” Paulette Saunchez had found Quintana’s blood alcohol level to be 0.11 percent. The report itself was dated June

¹ An “administrative per se” hearing is a summary proceeding to determine whether the Department should suspend a person’s license on the grounds that he or she was driving a motor vehicle while having a blood-alcohol level of 0.08 percent or more. (See generally *Brown v. Valverde* (2010) 183 Cal.App.4th 1531, 1535-1538.)

29, 2009; however, it stated the “Date Analyzed [and] Reported” as June 5, 2009. The report was certified as a true and correct copy by one B. Sauerbrun on June 29, 2009.

Page 2 of exhibit 2 was dated August 1, 2008. It listed certain personnel of the San Bernardino County Sheriff’s Scientific Investigations Division. It stated that Paulette Saunchez’s “DoHS Class” was “Forensic Alcohol Analyst,” and that her “Job Title” was “Criminalist I.” It further defined “DoHS Class” as “listed on the ‘List of Persons Qualified to Perform Forensic Alcohol Analysis.’”

Quintana’s counsel objected to exhibit 2, as follows:

“COUNSEL . . . : The next document I believe is . . . Exhibit 2[,] which is the blood test results, correct?

“HEARING OFFICER . . . : That’s correct.

“COUNSEL . . . : As well as the qualifications. Hearsay, lack of foundation; no personal knowledge; speculation; relevancy, non-compliance with Title 17 and I’d like to state a specific objection pursuant to Downer v. Zolin [(1995)] 34 Cal.App.4th 578 and related authority. If we look at the document it indicates a test was conducted 6/5/2009 by a Paulette Sa[u]nchez. . . . [T]his report is dated June 29, 2009 and certified on June 29, 2009 by B. Sauerbr[u]n It’s clear the person certifying it is not the person who conducted the report So my legal position is that there’s been a delay of 24 days and that the hearsay exception pursuant to Evidence Code [section] 1280 for the official record exception to the hearsay rule is not complied with because the report is not made at or near the time of the test.”

Quintana's counsel went on to elaborate on his contention that the report was inadmissible because it was not made at or near the time of the blood test. (See *Downer v. Zolin, supra*, 34 Cal.App.4th at pp. 581-583.)

The hearing officer admitted exhibit 2 under the official records exception to the hearsay rule. (Evid. Code, § 1280.) The hearing officer then found that Quintana had driven while having a blood alcohol level of 0.08 percent or more and ordered Quintana's license suspended.

Quintana filed a petition for writ of mandate. After hearing argument, the trial court denied the petition. It ruled that Quintana had forfeited her contentions because, at the administrative per se hearing, her counsel had objected exclusively on the ground that page 1 was not made at or near the time of the blood test. It also ruled that page 1 was admissible under Evidence Code section 1280, and that page 2 was relevant and admissible evidence of Sanchez's qualifications.

II

THE ADMISSIBILITY OF EXHIBIT 2

A. *General Legal Background.*

“When a driver is arrested for driving under the influence and is determined to have a prohibited blood-alcohol content (BAC), the arresting officer or the DMV serves the driver with a ‘notice of [an] order of suspension or revocation’ of his or her driver’s license, advising that the suspension will become effective 30 days from the date of service. [Citations.] The notice explains the driver’s right to an administrative hearing

before the effective date of the suspension if the driver requests a hearing

[Citations.]” (*Brown v. Valverde, supra*, 183 Cal.App.4th at pp. 1536-1537.)

“The sole task of the hearing officer is to determine whether the arresting officer had reasonable cause to believe the person was driving, the driver was arrested, and the person was driving with a BAC of 0.08 percent or higher. If the hearing officer determines that the evidence establishes these three facts by a preponderance of the evidence, the license will be suspended. [Citations.]” (*Brown v. Valverde, supra*, 183 Cal.App.4th at pp. 1537-1538, fn. omitted.)

At the administrative hearing, hearsay is admissible. However, hearsay, if objected to, is not sufficient to support a finding, unless it would be admissible in a civil action — in other words, unless it is within an exception to the hearsay rule. (Gov. Code, § 11513, subds. (c), (d); Veh. Code, § 14112; see generally *Lake v. Reed* (1997) 16 Cal.4th 448, 458, 461.)

One such exception is the public records exception, which provides:

“Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered . . . to prove the act, condition, or event if all of the following applies:

“(a) The writing was made by and within the scope of duty of a public employee.

“(b) The writing was made at or near the time of the act, condition, or event.

“(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.” (Evid. Code, § 1280.)

B. *Forfeiture.*

Preliminarily, Quintana does not challenge the trial court’s ruling that she forfeited her present contentions by failing to raise them at the administrative hearing. This ruling alone is sufficient to support the judgment; given Quintana’s failure to challenge it, we could affirm on this ground without even deciding whether it was correct.

In any event, we agree with the trial court. Quintana’s counsel made a shotgun objection based on “[h]earsay, lack of foundation; no personal knowledge; speculation; relevancy, non-compliance with Title 17 and . . . Downer v. Zolin” However, he then proceeded to argue *only* that the report was not made at or near the time of the blood test. This argument could have fit more or less comfortably under any of the rubrics he had just stated. He did nothing to put the hearing officer on notice that he was raising any other arguments — much less the arguments that Quintana is asserting in this appeal.²

Quintana’s statement of facts tries to make it appear otherwise. First, it quotes the objection that her counsel raised to *exhibit 1* (not exhibit 2). This is followed by an ellipsis, which is followed by the words, “As well as the qualifications.” Finally, it quotes his actual objection to exhibit 2. By quoting the words, “As well as the

² In the trial court, after arguing that page 2 was irrelevant, Quintana’s counsel stated: “I’ll concede that I didn’t lay that argument out at the time of the [administrative] hearing.”

qualifications,” and by placing them *after* an objection, this suggests that he objected to *Saunchez’s qualifications*.

But he did not. In context, he was merely *identifying* exhibit 2 as consisting of “the blood test results” (i.e., page 1), “[a]s well as the qualifications” (i.e., page 2). His stated *grounds* for objecting to exhibit 2 were directed exclusively at page 1, and they were restricted to the argument that the report was not made at or near the time of the blood test.³ He never raised any of Quintana’s current arguments. We therefore deem them forfeited for purposes of review in the trial court, as well as on appeal. (See *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894 [“It is axiomatic that judicial review is precluded unless the issue was first presented at the administrative level.”], disapproved on other grounds in *Voices of Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 529.)

Alternatively, however, if only out of an excess of caution, we also consider Quintana’s contentions on the merits.

C. *The Admissibility of Page 1.*

Quintana argues that there was insufficient evidence that Saunchez was acting within the scope of her duty. She relies on *Furman v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 416, which held that a blood alcohol analysis performed by a

³ This argument lacked merit, because the report stated that Saunchez had both “[a]nalyzed and [r]eported” the blood test results on June 5; Sauerbrun had merely retrieved them and certified them on June 29. (*Lee v. Valverde* (2009) 178 Cal.App.4th 1069, 1078-1079 [Fourth Dist., Div. Two].)

person identified only as a “Criminalist” (*id.* at p. 422) was inadmissible under Evidence Code section 1280. *Furman* explained: “The performance of ‘Forensic Alcohol Analysis’ is subjected to strict regulation by title 17 of the California Code of Regulations. . . . [¶] . . . Title 17 expressly rebuts any inference that a ‘Criminalist’ has an ‘official duty’ to perform a ‘Forensic Alcohol Analysis.’ Instead, title 17 expressly specifies those who are authorized to perform forensic alcohol analysis. ‘Forensic alcohol analysis *shall be performed only by persons* who meet the qualifications set forth in these regulations for *forensic alcohol supervisors, forensic alcohol analysts, or forensic alcohol analyst trainees* [working under the supervision of a forensic alcohol supervisor or forensic alcohol analyst].’ [Citation.] . . . Title 17 makes no mention of criminalists.” (*Furman*, at pp. 422-423, fn. omitted.)

Here, however, as the Department points out, page 2 identified Sanchez not only as a criminalist, but also as a “Forensic Alcohol Analyst” within the meaning of the “‘List of Persons Qualified to Perform Forensic Alcohol Analysis.’” At the risk of seeming tautological, we note that forensic alcohol analysts are authorized to perform forensic alcohol analysis. (Cal. Code Regs., tit. 17, § 1216, subd. (a)(1).) Accordingly, the hearing officer could properly find that Sanchez was acting within the scope of her official duty.

D. *The Admissibility of Page 2.*

Quintana also argues, however, that page 2 was irrelevant as evidence of Sanchez’s qualifications because it was dated August 1, 2008, whereas Sanchez

analyzed Quintana's blood on June 5, 2009. "[I]t is a well-known disputable presumption of law that a status once established is presumed to remain until the contrary appears." (*S.F. Breweries, Ltd. v. Superior Court* (1926) 80 Cal.App. 433, 440; see Civ. Code, § 3547 ["[a] thing continues to exist as long as is usual with things of that nature"]; see, e.g., *People v. Huntley* (1928) 93 Cal.App. 504, 505-506 [from evidence that defendant was married in 1914, it was inferable that he was still married in 1927]; *People v. Velasquez* (1924) 70 Cal.App. 362, 364, 366 [from evidence that defendant was born in Mexico, it was inferable that he was still an alien at the age of 21].)

A forensic alcohol analyst qualifies as such by successfully completing the required training and examinations. (Cal. Code Regs., tit. 17, § 1216.1, subd. (f).) Thus, at least in general, once a forensic alcohol analyst, always a forensic alcohol analyst. While there may be ways that one can lose that status, it is appropriate to presume that it continues.

Finally, even assuming additional evidence was required, page 1 showed that in June 2009, Saunchez was still working for the Scientific Investigation Division and still performing forensic alcohol analyses. This was substantial evidence that she had not ceased to be a forensic alcohol analyst.

In her reply brief, Quintana argues that page 2 was inadmissible under the official records exception because it was not "'made at or near the time' of the event" within the meaning of Evidence Code section 1280, subdivision (b). She forfeited this contention by failing to raise it in her opening brief. (*Inyo Citizens for Better Planning v. Inyo*

County Bd. of Supervisors (2009) 180 Cal.App.4th 1, 14, fn. 2 [Fourth Dist., Div. Two].)

In any event, it lacks merit. Page 2 was made on August 1, 2008; it was offered to prove that Saunchez was a forensic alcohol analyst on August 1, 2008. Thus, it was made at the time of the “event” (or better, the “condition”). Once that was shown, however, it was a reasonable *inference* that Saunchez was *still* a forensic alcohol analyst on June 5, 2009.

III

DISPOSITION

The judgment is affirmed. The Department is awarded costs on appeal against Quintana.

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RICHLI
Acting P.J.

We concur:

KING
J.

MILLER
J.



**San Bernardino County Sheriff's Department
Scientific Investigation Division**

Monday, June 29, 2009

Report on the Receipt and Examination for Ethyl Alcohol

Agency : CHINO HILLS CITY

Name	D.O.B.	Kit #	LRB #	Blood Analyst	Inc. Date / Offense
DR Number	Description			Alcohol Date Analyzed & Reported	Agency

QUINTANA, MONIQUE 090188122	12/23/1967	B218966	09050221	0.11% Sanchez, Paulette 6/5/2009	5/2/2009 / D.U.I. CHINO HILLS CITY
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DEPARTMENT OF MOTOR VEHICLES	
Dept.	
License #	
Date:	<u>01/20/10</u>
Identification <input checked="" type="checkbox"/>	Evidence <input checked="" type="checkbox"/>
No Objection <input type="checkbox"/>	Objection <input checked="" type="checkbox"/>

I hereby certify that this is a true and correct copy of a document on file with the San Bernardino County Sheriff's Regional Forensic Science Laboratory under Laboratory number.

DATE 6/29/09
 NAME R. Bauer
 TITLE SIB asst II



GARY PENROD, SHERIFF-CORONER

Scientific Investigations Division
 200 South Lena Road
 San Bernardino, CA 92415-0056
 August 1, 2008

The San Bernardino County Sheriff's Scientific Investigations Division is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB).

Name	DoHS Class	Job Title	Assignment
BLACKBURN, David P.	Forensic Alcohol Analyst 06/06/07	Criminalist I	Controlled Substance Analysis
BONAR, Christi	Forensic Alcohol Analyst 06/27/07	Criminalist I	Firearms (IBIS) Analysis
EVANS, Hiram K. ¹	Forensic Alcohol Supervisor 07/17/92	Deputy Sheriff/ Criminalist III	"Person Responsible for Forensic Alcohol Analysis" as of August 1, 2008 ⁴ .
FOREMAN, Regina	Forensic Alcohol Supervisor 10/17/06	Criminalist I	Forensic Biology Unit; occasionally assigned blood alcohol analyses / breath alcohol analyses.
JERMAIN, John	Forensic Alcohol Analyst 06/21/07	Criminalist I ²	Controlled Substance Analysis
JOHNSON, John L.	Forensic Alcohol Supervisor 05/26/04	Deputy Sheriff/ Criminalist II	Occasionally assigned alcohol-related duties
JONES, Donald T.	Forensic Alcohol Analyst 12/16/80	Supervising Criminalist	Supervisor of Forensic Alcohol/Controlled Substance Analysis Sections as of 6/1/08.
KELLER, Christy J.	Forensic Alcohol Supervisor 05/19/04	Criminalist I	Blood alcohol analyses / breath alcohol analyses; controlled substance analysis.
RISTOW, Robert E.	Forensic Alcohol Supervisor 10/29/01	Criminalist II	Occasionally assigned alcohol-related duties
ROSENBAUM, Nessa	Forensic Alcohol Analyst 08/22/00	Criminalist I	Occasionally assigned alcohol-related duties
SAUNCHEZ, Paulette	Forensic Alcohol Analyst 06/06/07	Criminalist I	Blood and breath alcohol analyses and effects; controlled substance analysis.
VAUGHN, James	Forensic Alcohol Analyst 06/06/97	Criminalist I	Rarely assigned alcohol-related duties
WHITE, Beverly T. ²	Forensic Alcohol Supervisor 12/03/98	Criminalist I	Blood alcohol analyses / breath alcohol analyses; controlled substance analysis.
WOJCIK, Catherine M.	Forensic Alcohol Analyst 02/09/87	Supervising Criminalist	Rarely assigned alcohol-related duties
WOODS, Michelle T.	Forensic Alcohol Analyst 06/21/07	Criminalist I	Blood and breath alcohol analyses and effects; controlled substance analysis.

I hereby certify the above to be true and correct under penalty of perjury as of August 1, 2008.

Hiram K. Evans, M.Sc., F-AAFS, F-ABC
 Deputy Sheriff/Criminalist III

DoHS³ Class is listed on the "List of Persons Qualified to Perform Forensic Alcohol Analysis" of 01/01/08 or as most recently updated⁴.

Job Title is the San Bernardino County Civil Service title held by the employee, i.e. "rank."

Assignment is the post, position, or office held by an employee, the position to which one is assigned. This is freely changeable depending on the needs of the organization.

¹ Fellow-American Board of Criminalistics

² Diplomate-Forensic Toxicology of Alcohol; Forensic Toxicology Certification Board and Diplomate-American Board of Criminalistics.

³ The California Department of Health Services (DOHS) is undergoing a reorganization; for brevity the term DoHS will be used to refer to the forensic alcohol regulatory body.

⁴ Duties revised for Evans; Ogino deleted.

