# the Jasuta / Schulman report

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# TIBA's Case of the Week

## San Antonio Court of Appeals

**Case Name**: ***Christopher Luis Del Toro v. The State of Texas***

- **OFFENSE**: Intoxication Manslaughter
- **COUNTY**: Bexar
- **C/A CASE No**. 04-24-00152-CR
- **DATE OF OPINION**: July 23, 2025 **OPINION**: Justice Lori Valenzuela
- **DISPOSITION**: Conviction Affirmed
- **TRIAL COURT**: 226th D/C; Hon. Raymond Angelini
- **LAWYERS**: David L. McLane (Defense); Andrew Warthen (State)

(**Background Facts**): On March 27, 2022, Jessica Brill was driving in South San Antonio shortly before midnight with her daughter, Megan Gonzales, in the passenger seat. Appellant was driving his Chevy SUV on the opposite side of the same street. The two vehicles collided head-on, ejecting Brill from her vehicle. Gonzales suffered minor physical injuries; however, Brill died from her injuries. The Jaws of Life were used to cut Appellant from his vehicle, and he was rushed to the hospital by ambulance. San Antonio Police ("SAPD") Officer Alexander Mena, who was also at the crash scene, followed the ambulance to the hospital and testified that it was there that he first smelled intoxicants emanating from Appellant. Mena approached Appellant to speak with him and request consent for a blood draw. According to Mena, Appellant was awake but in pain and not focused on his questions.

**Ed Note** (**The Search Warrant**): Because Appellant did not answer Mena's questions, Mena drafted a probable cause affidavit and prepared to seek a warrant to draw Mena's blood. Mena used a form provided by SAPD to draft his affidavit. In his affidavit, Mena, among other things, attested to two paragraphs ("C" and "H") at issue in this appeal:

> C. During my encounter with the suspect, I requested performance of field sobriety tests by the suspect and recorded the results and my observations of the suspect's performance of field sobriety tests and signs of intoxication in the SPST SCORING SHEET prepared in connection with the report filed in Agency Number SAPD33063062.

> H. Additionally, after placing the suspect under arrest for Driving While Intoxicated, I requested a sample of the suspect's breath and/or blood, which the suspect refused to provide a sample in violation of the Texas Implied Consent law. This is an indication to me that suspect is attempting to hid evidence of his/her intoxication.

Based on Mena's affidavit, a warrant was issued to draw Appellant's blood. Approximately four and a half hours after the crash, Appellant's blood alcohol concentration was 0.188.

[ **31.01 Search & Seizure / Search Warrants (Omissions & Misrepresentations)**]: Appellant was indicted on one count of intoxication manslaughter, one count of manslaughter, and one count of aggravated assault with a deadly weapon. The indictment also included a repeat offender allegation. Due to discrepancies between Mena's probable cause affidavit and his testimony at trial, the trial court held a hearing pursuant to ***Franks v. Delaware***, 438 U.S. 154 (1978), outside the jury's presence. In addition to Mena's affidavit, Appellant also objected to an "Affidavit of Person Who Withdrew Blood and Nurse's Checklist" (the "Nurse's affidavit") attached to the executed warrant on the basis that it was not properly notarized, which, Appellant asserted, was necessary to prove the person who drew his blood was a registered nurse. Because of the Nurse's affidavit's deficiencies, Appellant concluded that the blood draw failed to comply with section 724.017(a) of the Transportation Code (listing the persons qualified to take a blood specimen pursuant to implied consent). At the conclusion of the ***Franks*** hearing denied the motion to suppress the fruits of the search warrant, but also refused to let the State discuss Appellant's refusal to submit a blood or breath sample.

**Ed Note**: The State argued that the issue was not preserved for our review because Appellant failed to satisfy his initial burden to be entitled to a ***Franks*** hearing. "Assuming without deciding that Appellant properly preserved this issue," the Court of Appeals proceeded to resolution.

**Sidebars**

(**David A. Schulman**) The opinion does not tell us whether Appellant even filed a motion to suppress and/or a ***Franks*** motion or the trial court took up the issue outside the presence of the jury *sua sponte*. The lack of such explanation certainly implies that there was no such motion. Although it doesn't bear on the veracity of the trial court's order or the outcome of the case, it suggests that Appellate counsel may not have had much with which to work.

(**John G. Jasuta**) I don't think he had any cards to play.

**Holding** (**What Did the Trial Court Suppress**): On appeal, the parties dispute whether the trial court struck the entire affidavit except for paragraph D., or if the trial court only struck paragraphs C. and H. [Appellant] argues we should explicitly read the trial court's statement that it struck every item in the affidavit except for paragraph D., including the portions of the affidavit not challenged at trial. On the other hand, the State argues that in context, the trial court only intended to strike paragraphs C. and H. Based on the record, we agree with the State. *** Only

paragraphs C. and H. were challenged by [Appellant] during trial, and Mena's trial testimony only supports a falsity finding in these two paragraphs.

**Holding** (**Probable Cause**): Now that we have determined the proper scope of Mena's reformed affidavit, we must next decide whether the reformed affidavit provided sufficient probable cause to issue the warrant to draw [Appellant]'s blood. *** In reaching our disposition on this issue, we are guided by the Texas Court of Criminal Appeals's analysis in ***Hyland v. State***, 574 S.W.3d 904 (Tex.Cr.App. 2019)(see ☙, Vol. 27, No. 45; 11/25/2019), a case that has substantial factual similarities to this case. *** With ***Hyland*** in focus, and after reviewing the four corners of Mena's affidavit under a totality of the circumstances, drawing reasonable inferences drawn therefrom, we conclude that Mena's reformed affidavit leads to a reasonable conclusion that a blood-alcohol test had a fair probability to uncover evidence that [Appellant] had been driving in a public place while intoxicated. Because we hold Mena's probable cause affidavit sufficient to procure the warrant to draw [Appellant]'s blood, it is unnecessary for us to reach [Appellant]'s second issue, as Texas's implied consent laws are inapplicable where a blood draw was executed pursuant to a valid warrant. See ***State v. Johnston***, 336 S.W.3d 649 (Tex.Cr.App. 2011)(see ☙, Vol. 19, No. 11; 03/21/2011).

[☙ **290.01 Hearsay & Confrontation / Predicate for Admission (Expert Testimony and Underlying Scientific Technology**]: Appellant argues the trial court erred in admitting the Black Box data "without providing the proper predicate to support the underlying scientific theory for the data stored therein" and that such error violated his rights under the Confrontation Clause. That is, Appellant asserts that Coronado was an incompetent witness because he was not trained in interpreting the data procured from the Black Box. Appellant concludes that to properly introduce the data into evidence, the State was required to present a witness from the manufacturer of the Black Box. Addressing his credentials, Coronado testified that he was assigned to the traffic investigations unit at the time of the crash. As a member of the traffic investigations unit, Coronado testified that he had received specialized training, including a 40-hour crash data retrieval class, and was a certified crash retrieval analyst. As part of the 40-hour class, Coronado explained that he learned how to use the tools to download a vehicle's Black Box data and decipher the information. In order to use his knowledge to retrieve the Black Box data from Appellant's vehicle, Coronado told the court he applied for and obtained a warrant. Coronado explained that the data captured from a Black Box includes speed, whether the person was wearing a seatbelt, and the vehicle's ignition cycles. Using the tools from the requisite class, Coronado attested that he was able to transmit the data from a vehicle's Black Box into a PDF file. Specifically addressing the data obtained from Appellant's Black Box, Coronado testified that Appellant was traveling sixty-five miles per hour, was not wearing a seatbelt, and did not apply his brakes before the crash.

**Ed Note**: As with the first issue, the State claimed that Appellant failed to preserve this issue with a proper objection. Also as with Appellant's first issue, "assuming without deciding that [Appellant] raised a proper objection," the Court addressed the merits of the claim.

**Holding**: In ***Trejo v. State***, 683 S.W.3d 815 (Tex.App. - San Antonio 2023)(see ☙, Vol. 31, No. 44; 12/11/2023), the Appellant made an argument like [Appellant]'s. See 683 S.W.3d 815. Appellant argued that his rights under the Confrontation Clause were violated when the trial court allowed an officer who had downloaded data from his vehicle's Black Box to testify, although the officer was unable to testify to the truth of the data's statements. In ***Trejo***, relying on ***Bullcoming v. New Mexico***, 564 U.S. 647 (2011), we held the trial court did not err because "the State called the analyst who generated the collision data report to testify to the truth of its contents and to be available for cross-examination, thereby satisfying the requirements of the Sixth Amendment right to confront adverse witnesses." ***Boutang v. State***, 402 S.W.3d 782 (Tex.App. - San Antonio 2013)(see ☙, Vol. 21, No. 9; 03/04/2013). *** Just like in ***Trejo***, Coronado, who generated the report from the Black Box, was available at trial and subject to cross-examination by [Appellant]'s counsel. Coronado admittedly did not testify to the veracity of the data's conclusions, only to what the report stated, and the trial court admonished him accordingly.

**Sidebars**

(**John G. Jasuta**) This guy had the credentials. Nice try.

(**David A. Schulman**) "Black box" issues have been with us for quite a few years now. I believe that, if you're going to challenge this type of scientific evidence, merely attacking the experts credentials won't get you anywhere.