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⚖ Vol. 22, No. 18 - May 5, 2014

TIBA's Case of the Week

Case Name: [Clayton Dean Reeder v. The State of Texas](#)

- OFFENSE: Driving While Intoxicated / Felony
- COUNTY: Rusk
- C/A CASE No. 06-13-00126-CR
- DATE OF OPINION: April 29, 2014
- DISPOSITION: Trial Court Reversed OPINION: [Morris, CJ.](#)
- TRIAL COURT: 4th D/C; Hon. Clay Gossett
- LAWYERS: [Jon Hyatt](#) (Defense); [Michael Jimerson](#) & [Richard Kennedy](#) (State)

Ed Note: The Court of Appeals originally affirmed this conviction, relying on [Smith v. State](#), No. 13-11-0694 (Tex.App. - Corpus Christi 10/31/2013)(see [⚖](#), [Vol. 22, No. 2](#); 01/13/2014). [Smith](#), however, had already been withdrawn.

[⚖](#) **31.111 Search & Seizure / Medical Records / Mandatory Blood Draws:** While investigating this accident, DPS Officer Zach Mills spoke with Appellant and noticed signs of intoxication. Mills followed the ambulance transporting Appellant to a local hospital where he continued to speak with Appellant concerning the accident. During the interview, Mills noticed that Appellant's speech was slurred, the odor of alcohol was on his breath, and his eyes were glassy and bloodshot. Appellant indicated that he had consumed only "two beers," but then stated that he could not recall exactly how much he drank and that he consumed a mixed alcoholic beverage before driving. Based on this interview, Mills determined that Appellant did not have the normal use of his mental or physical faculties due to the introduction of alcohol into his system. Appellant was informed of the DWI statutory warning contained in the DIC-24 form,⁴ but refused to provide a blood specimen. Because Appellant had two previous DWI convictions, a mandatory blood specimen was obtained in accordance with Section 724.012(b)(3)(B) of the Transportation Code. On his release from the hospital, Appellant was taken to the Rusk County Jail and charged with the third degree felony offense of DWI. Appellant filed a motion to suppress any evidence pertaining to the blood specimen, claiming, among other things, that the specimen was unconstitutionally seized without a warrant. The trial court denied Appellant's motion to suppress evidence. On appeal, Appellant claims that, pursuant to [Missouri v. McNeely](#), No. 11-1425 (see [⚖](#), [Vol. 21, No. 16](#); 04/22/2013), a warrant for the extraction of his blood was required.

Holding: In light of the United States Supreme Court's remand of [Aviles v. Texas](#), (No. 13-6353; 01/13/ 2014)(see [⚖](#), [Vol. 22, No. 3](#); 01/20/2014), and in light of the reasoning in [State v. Villarreal](#), No. 13-13-00253-CR; 01/23/2014)(see [⚖](#), [Vol. 22, No. 5](#); 02/03/2014), and [Sutherland v. State](#), No. 04/07/ 2014)(see [⚖](#), [Vol. 22, No. 15](#); 04/14/2014), we conclude that, in the absence of a warrant or

exigent circumstances, taking [Appellant]'s blood pursuant to Section 724.012(b)(3)(B) of the Texas Transportation Code violated his Fourth Amendment rights.