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Case Name: [Daniel James Weems v. The State of Texas](#)

- OFFENSE: Driving While Intoxicated Felony
- COUNTY: Bexar
- C/A CASE No. 04-13-0366-CR
- DATE OF OPINION: May 14, 2014
- DISPOSITION: Trial Court Reversed OPINION: [Angelini, J.](#)
- TRIAL COURT: 226th D/C; Hon. Sid Harle
- LAWYERS: [Justin Fischer](#) (Defense); [Bobby Mims](#), [Gena Bunn](#), [Angela Moore](#) & [David Schulman](#) (Amicus Curiae); [Nathan Morey](#) (State)

(Background Facts) On June 4, 2011, around midnight, Jimmy Bustamante of the Bexar County Sheriff’s Office, was dispatched for a major automobile crash. A vehicle had hit a telephone pole and was turned upside down on its roof. Witnesses reported that the driver, who was wearing a Harley Davidson shirt and tan pants, ran from the scene. The passenger of the vehicle had been transported to the hospital by ambulance. The driver, Appellant, was found about a quarter mile east from the crash site hiding underneath a car.

 **32.08 Search & Seizure / Exigent Circumstances:** Appellant had cuts, scrapes, and bruises consistent with the crash. Bustamante testified that a strong odor of alcohol emanated from his breath, and Appellant had bloodshot eyes. Appellant was unsteady and swaying, and had slurred speech. The officer handcuffed Appellant and read the DIC-24 form requesting a breath or blood specimen. Appellant refused to provide a specimen. According to Bustamante, no field sobriety tests were performed because Appellant had been involved in a car crash and was complaining of back and neck pains. Because of his medical complaints, Appellant was transported to the hospital, and a mandatory blood draw was taken there, instead of at the San Antonio Magistrate’s Office. No warrant was procured for the blood draw. Bustamante testified that a mandatory blood draw was taken because Appellant was driving a car involved in a crash and the passenger was injured. According to Officer Bustamante, two to three hours passed between the time of the crash and the time a specimen of Appellant’s blood was taken. Bustamante testified that the blood draw was administered because a person other than Appellant suffered bodily injury and was transported to a hospital for medical attention. The “THP-51 form,” which was admitted in evidence, indicates that the blood draw was also ordered because Appellant had two prior DWI convictions. On appeal, Appellant argues the trial court erred in failing to suppress the results of the warrantless blood draw.

Holding: (Exigent Circumstances Exception) The Supreme Court has held that a warrantless search of the person is reasonable only if it falls within a recognized exception. *** Exigent circumstances is one such well-recognized exception. *** The State argues in this case that the

statutory scheme found in the Texas Transportation Code, which implies consent of a driver and mandates blood draws under certain scenarios, is “a reasonable substitute” for the Fourth Amendment’s warrant requirement. In other words, it argues that this statutory scheme should be considered an exception to the warrant requirement. We hold that it is not. *** Thus, we hold that the implied consent and mandatory blood draw statutory scheme found in the Transportation Code are not exceptions to the warrant requirement under the Fourth Amendment.

Holding: (Existence of Exigent Circumstances) To be authorized, the State’s warrantless blood draw of [Appellant] must be based on a well-recognized exception to the Fourth Amendment. *** The officer testified that because the hospital was busy with accident victims that night, it took three hours for blood to be drawn from [Appellant]. The record also reflects that [Appellant] was arrested in San Antonio, a large city. The record, however, does not reflect other factors that would be relevant under the totality of the circumstances, including “procedures in place for obtaining a warrant or the availability of a magistrate judge” and “the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence.” *** Therefore, this record does not show that under the totality of the circumstances, the warrantless blood draw was justified by the exigency circumstances exception to the Fourth Amendment’s warrant requirement.