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TIBA's Case of the Week

Case Name: William Smith aka Bill Smith v. The State of Texas

- OFFENSE: Driving While Intoxicated
- COUNTY: Nueces
- C/A CASE No. 13-11-00694-CR
- DATE OF OPINION: November 13, 2014
- DISPOSITION: Conviction Reversed OPINION: Perkes, J.
- TRIAL COURT: 94th D/C; Hon. Bobby Galvan
- LAWYERS: Donald Edwards (Defense); Doug Norman (State)

Ed Note: The unpublished opinion of October 13, 2014, is withdrawn and replaced with this one.

> (Background Facts) State trooper David Anguiano stopped appellant for driving without wearing a seat belt. Upon approaching appellant's car, Anguiano "smelled the strong odor of some sort of alcoholic beverage coming from him" and saw numerous open alcoholic beverages spread throughout the vehicle. Anguiano observed that appellant's movements were slow and that he had glassy, blood-shot eyes. After further investigation, including administering the standardized field sobriety tests, Anguiano arrested appellant for driving while intoxicated. Anguiano testified that appellant made "a statement to the fact that it was a felony D.W.I. for him." Anguiano then "ran [appellant's] information" with his in-car computer and verified appellant's criminal history with the communications operator who informed Anguiano that appellant had two prior DWI convictions. Due to appellant's allegedly belligerent behavior, a different officer transported appellant to the hospital while Anguiano followed. At the hospital, Anguiano tried to obtain appellant's consent to take a blood specimen. When consent was not forthcoming, Anguiano informed appellant the blood draw was mandatory. Approximately one hour after the initial traffic stop, a certified medical technologist took a sample of appellant's blood.

31.111 Search & Seizure / Warrantless Searches / Mandatory Blood Draws (Implied Consent): Anguiano did not obtain a search warrant to collect appellant's blood sample. Instead, Anguiano relied solely on Texas Transportation Code section 724.012(b)(3)(B), which he interpreted to mean "you're authorized to conduct a mandatory blood draw on—if we have probable cause to believe that the person has two previous convictions . . . for D.W.I. . . ." After the blood was drawn and

delivered to the Texas Department of Public Safety lab, Emily Bonvino, a forensic scientist, performed a chemical analysis of appellant's blood. During trial, she testified that appellant's blood sample contained .21 grams of alcohol per 100 milliliters of blood. Over appellant's objection on constitutional grounds, the trial court admitted the blood evidence. On appeal, Appellant complains that the results of the blood test should have been excluded because his blood sample was taken in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. The State argues that appellant's blood was seized pursuant to the Fourth Amendment exception of consent because section 724.012(b) of the Texas Transportation Code implies a person's consent to a blood draw.

Holding: The implied consent law does just that—it implies a suspect's consent to a search in certain limited instances. Beeman v. State, 86 S.W.3d 613 (Tex.Cr.App. 2002)(see 66, Vol. 10, No. 41; 10/14/2002). While Missouri v. McNeely, No. 11-1425 (see 66, Vol. 21, No. 16; 04/22/2013), positively references the implied consent laws of various States, it also points out that the consequences associated with implied consent laws -- typically loss of driving privileges and use of refusal as evidence—are triggered when the driver withdraws consent. *** In Aviles v. State, 385 S.W.3d 110 (Tex.App. - San Antonio 2012)(see 66, Vol. 20, No. 40; 10/08/2012)("Aviles I"), our sister court in San Antonio held that the Texas Transportation Code expands the State's ability to search and seize without a warrant, providing implied consent to obtain blood samples from persons suspected of driving while intoxicated, in certain circumstances, even without a search warrant. *** As recognized by both parties, the facts in Aviles I are similar to the instant case: no accident, no injuries, no consent, no warrant, and a blood draw based solely on section 724.012(b)(3)(B). *** The United States Supreme Court, however, subsequently vacated and remanded Aviles v. State for consideration in light of McNeely in Aviles v. Texas, (No. 13-6353; 01/13/ 2014)("Aviles II"). After reviewing the denial of the motion to suppress in light of McNeely, the San Antonio Court of Appeals reversed the trial court's judgment and remanded the matter to the trial court for a new trial. See Aviles v. State; No. 04-11-00877 (see 66, Vol. 22, No. 32; 08/11/2014)("Aviles III"). *** The record in this case does not support a finding of exigent circumstances. Anguiano did not respond to an accident or a medical emergency. *** His sole reason for transporting appellant to the hospital was to obtain a blood sample for the DWI investigation. Additionally, there was no testimony to show that Anguiano would have been delayed had he attempted to obtain a search warrant or that he faced any exigent circumstances beyond those found in a normal DWI investigation. The facts in this case are similar to the hypothetical scenario contemplated in McNeely. Anguiano could have taken steps to secure a search warrant while appellant was transported to the hospital by a different officer. Anguiano's warrantless and nonconsensual blood draw is not justified by exigent circumstances.

66 31.02 Search & Seizure / Warrantless Searches (Automobile Exception): The State argues that the warrantless blood draw is justified by the automobile exception. The State relies on California v. Carney, 471 U.S. 386 (1985); and Carroll v. United States, 267 U.S. 132 (1925).

Holding: The State has provided no authority that applies the automobile exception to DWI blood draws. Instead, we find contrary authority. A compelled physical intrusion beneath a defendant's skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation is such an invasion of bodily integrity that it implicates an individual's "most personal and deep-rooted expectations of privacy." *** While we agree with the State that a driver has a reduced expectation of privacy, this reduced expectation extends to items within the car that person is driving, not inside the person's body. *** A warrantless blood draw is not justified by the automobile exception.

66 31.041 Search & Seizure / Warrantless Searches / Search Incident to Arrest: The State argues that the blood draw is valid because it was conducted pursuant to the search-incident-to-arrest exception to the Fourth Amendment. The State cites to Cupp v. Murphey, 412 U.S. 291, 295 (1973), to say that when an arrest is made, it is reasonable for a police officer to expect the arrestee to use any weapons he may have and to attempt to destroy any incriminating evidence then in his possession.

Holding: A search of a person's fingernail scrapings is different than a search of a person's blood. Blood testing differs in critical respects from other destruction-of-evidence cases in which the police are truly confronted with a now or never situation. *** For example, unlike circumstances in which the suspect has control over easily disposable evidence . . . blood alcohol content evidence from a drunk-driving suspect naturally dissipates over time in a gradual and relatively predictable manner. *** Because a police officer must typically transport a drunk-driving suspect to a medical facility and obtain the assistance of someone with appropriate medical training before conducting a blood draw, some delay between the time of the arrest or accident and the time of the draw is inevitable, regardless of whether police officers are required to obtain a warrant. *** While we agree with the State that blood testing is relatively common, routine, and safe, we find that the important consideration in justifying a search-incident-to-arrest is the destructibility of the evidence. *** A warrantless blood draw is not necessarily supported by the natural dissipation of blood in the body, and we are unpersuaded that the search-incident-to-arrest exception applies in such cases.

31.02 Search & Seizure / Warrantless Searches / ("Special Needs" Doctrine): The State argues that the warrantless blood draw is justified under the "special needs" exception to the Fourth Amendment, which applies where a State's operation of a probation system, like its operation of a school, government office, or prison, or its supervision of a regulated industry, presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements. Griffin v. Wisconsin, 483 U.S. 868 (1987).

Holding: The State cites Skinner v. Railway Labor Executives' Association, 489 U.S. 602 (1989). Despite the State's claims that Skinner authorized warrantless, suspicion-less blood draws, the testing scheme in Skinner mandates testing railroad workers following railway accidents or incidents of rule violations, and it authorizes testing upon reasonable suspicion that an employee is under the influence of alcohol. *** The facts in the present case are different than those in Skinner. While the government has a significant interest in protecting the public from drunk drivers, the purpose of blood and breath testing in DWI investigations is to collect evidence for criminal prosecution. The State does not argue that applying for and obtaining a search warrant would have frustrated Anguiano's search of appellant's blood. Inasmuch as the State did not perform the blood draw in the context of safety and administrative regulations, the special needs exception does not apply.