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⚖ Vol. 23, No. 1 - January 5, 2015

Case Name: [Steven Cole v. The State of Texas](#)

- OFFENSE: Intoxication Manslaughter
- COUNTY: Gregg
- C/A CASE No. 06-13-00179
- DATE OF OPINION: December 18, 2014
- DISPOSITION: Conviction Reversed OPINION: [Carter, J.](#)
- TRIAL COURT: 124th D/C; Hon. Alfonso Charles
- LAWYERS: [Ebb Mobley](#) (Defense); [Zan Brown](#) (State)

(Background Facts) Appellant drove a Ford F-250 through downtown Longview, Texas, at 10:20 p.m., ran a red light, and collided with a Toyota Tundra driven by Jim Hightower. Witnesses described the collision as an explosion. Hightower died instantly, and the Toyota caught fire and burned.

⚖ **32.08 Search & Seizure / Warrantless Searches / Exigent Circumstances:** Appellant admitted that he had taken methamphetamine that night. Police attempted to obtain a voluntary blood sample from Appellant, but he refused. Officer Wright accompanied Appellant to the hospital, and she communicated, both directly and through another officer, with Officer Higginbotham and told him that Appellant had admitted taking methamphetamine and that he was “tweaking,” making involuntary movements, mumbling to himself, and not making any sense. Wright was told to read the DIC-24 form, give Appellant his statutory warnings, and obtain a blood sample. Wright gave Appellant the warnings, and Appellant was arrested at 11:38 p.m. Appellant did not consent to having his blood drawn, and at 12:20 a.m., his blood was drawn involuntarily, pursuant to the mandatory blood-draw statute. Wright testified that, while she was reading him the warnings, he repeatedly interrupted her saying that he was not drunk but rather that he had taken methamphetamine. A nurse obtained a sample of Appellant’s blood, which contained methamphetamine and amphetamine. Appellant moved to suppress evidence pertaining to the blood specimen claiming that the specimen was seized without a warrant, consent, or exigent circumstances. At the suppression hearing, Higginbotham testified that about a dozen officers were working the accident scene and the surrounding area. Due to the accident, the officers on the scene had to block traffic at the intersection where the accident occurred as well as nearby intersections. The fire department was also on the scene to deal with the burning Toyota. Higginbotham testified that all available officers

were performing necessary functions either at the scene or at the hospital with Appellant and that there was not an officer available to pursue a warrant for Appellant's blood. Higginbotham admitted that, on occasion, in the middle of a traffic accident investigation, he had taken time out of working the accident to obtain a warrant. Even though he knew that there was a rotation of judges "on call" and available at any time of day to make a probable cause determination for purposes of issuing a warrant, he admitted that at no time during this investigation did he discuss with any other police personnel the possibility of getting a warrant to draw Appellant's blood. Appellant contends that the trial court erred in denying his motion to suppress because the State failed to sufficiently "establish exigent circumstances to justify a warrantless, non-consensual blood draw."

**Holding:** Here, while Higginbotham testified that [Appellant]'s body was metabolizing the methamphetamine in his system, there is no evidence whatsoever of the dissipation rate for methamphetamine levels in a person's blood. \*\*\* [The] accident occurred around 10:20 p.m. [Appellant] was already on the way to the hospital at the time Higginbotham arrived at the scene around 11:00 p.m. At 11:38 p.m., after speaking with her sergeant, Wright arrested [Appellant], read him the statutory warnings (DIC-24), and ordered his blood drawn. [Appellant]'s blood was drawn at 12:20 a.m., forty-two minutes after Wright spoke to Higginbotham, about an hour and a half after Higginbotham was called to the accident scene, and about two hours after the accident itself. \*\*\* As a warrant could have been obtained in an hour and a half, if Wright's call at 11:38 p.m. had spurred the warrant process, then a warrant could have been in hand by 1:08 a.m. Assuming the same forty-minute delay in drawing his blood, [Appellant]'s blood could have been drawn pursuant to a warrant before 2:00 a.m., only an hour and forty minutes after it was actually drawn. Therefore, this fails to reach the "now or never" level contemplated by exigent circumstances precedent. (Harm Analysis) the results of the blood test were introduced through the testimony of an expert witness, Schwane, a toxicological chemist. He characterized the methamphetamine level in [Appellant]'s blood sample as being at "the very high end of a therapeutic range" and testified that such a level could cause intoxication. We are unable to find beyond a reasonable doubt that this evidence did not contribute to the verdict. While there is testimony that [Appellant] was driving erratically and giving incoherent answers after the accident, and [Appellant] admitted to taking methamphetamine that day, there is no evidence of how much he took, when it was ingested, the method of ingestion, or the rate at which it dissipated from his body. The testimony as to the precise amount of methamphetamine in his bloodstream was very important. Accordingly, we reverse the trial court's judgment and remand the case for a new trial.

**Concurring / Dissenting Opinions:** Justice Moseley (P. 22 of PDF File) filed a concurring opinion in which he explained why the police could not rely on their "apparently good-faith belief that no search warrant was required." The majority did not address the State's "good faith" claim because it had not been raised in the trial court.