TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-850-6544

Web Site: www.texindbar.org

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TIBA's Case of the Week

Court of Criminal Appeals

Case Name: ***Jose Ruiz v. The State of Texas***

- **OFFENSE**: Driving While Intoxicated
- **COUNTY**: Gonzales
- **COURT OF APPEALS**: Corpus Christi 2018
- **C/A CITATION**: 545 SW 3d 687
- **C/A RESULT**: Trial Court Affirmed
- **CCA. CASE No**. PD-0176-18 **DATE OF OPINION**: September 11, 2019
- **DISPOSITION**: Court of Appeals Reversed
- **OPINION**: Judge Keel **VOTE**: 6-2
- **TRIAL COURT**: 25th D/C; Hon. William Old
- **LAWYERS**: Larry Iles (Defense); Keri Miller (State)

(**Background Facts**): Appellee fled the scene of a car wreck under circumstances demonstrating that he had been driving while intoxicated. Officers found him unresponsive in a nearby field and carried him to a patrol car. Emergency medical responders tried to revive him, but he remained unresponsive, and they took him to the hospital. Sergeant Bethany McBride arrested Appellee at the hospital and, although Appellee was unconscious, she read the DWI statutory warnings to him and then ordered a warrantless blood draw pursuant to sections 724.011 and 724.01 of the Transportation Code.

32.08 Search & Seizure / Exigent Circumstances: Charged with driving while intoxicated, Appellee filed a motion to suppress evidence because, while he was unconscious, the police performed a warrantless blood draw on him. Finding that no exigent circumstances existed to justify a warrantless search, the trial court suppressed the evidence and the Court of Appeals

affirmed. ***State v. Ruiz***, No. 13-13-00507-CR (see ☙, Vol. 23, No. 35; 08/31/2015). In February of 2017, in an unpublished per curiam opinion, the Court of Criminal Appeals vacated the Court of Appeals' opinion and remanded the case for reconsideration in light of ***Cole v. State***, 490 S.W.3d 918 (Tex.Cr.App. 2016)(see ☙, Vol. 24, No. 22; 05/30/2016)(**TIBA's Case of the Week**); and ***Weems v. State***, 493 S.W.3d 574 (Tex.Cr.App. 2016)(see ☙, Vol. 24, No. 22; 05/30/2016), two cases "analyzing the issue of exigent circumstances in this context" (see ☙, Vol. 25, No. 4; 02/06/2017). On remand, the Court of Appeals reconsidered its previous decision and once again held that the State failed to demonstrate that exigent circumstances existed to satisfy the Fourth Amendment's reasonableness standard (see ☙, Vol. 26, No. 2; 01/15/2019).

Holding: [We] grant the State's second ground for review asking whether exigent circumstances justified the blood draw in this case. We vacate the lower court's opinion on that issue and remand the case to the court of appeals for reconsideration in light of ***Mitchell v. Wisconsin***; No. 18-6210 (06/27/2019)(see ☙, Vol. 27, No. 24; 07/01/2019).

☙ **31.111 Search & Seizure / Medical Records / Mandatory Blood Draws (The Warrant Requirement)**: The Court of Criminal Appeals granted discretionary review to decide whether implied consent under Section 724.014 is equivalent to voluntary consent as a recognized exception to the warrant requirement. The State argues that the warrantless blood draw was reasonable in this case because it was authorized by the Transportation Code. The State also argues that Appellee gave his implied consent to alcohol testing when he drove on Texas roadways, and because that consent was never limited, withdrawn, or revoked, his consent remained in full effect at the time of the blood draw.

Holding: Is it unreasonable under the Fourth Amendment for an officer to rely on an unconscious driver's implied consent for a blood draw when the unconsciousness prevents the officer from seeking actual consent? We hold that irrevocable implied consent is not free and voluntary and does not satisfy the consent exception to the warrant requirement of the Fourth Amendment. *** Under the Fourth Amendment a search of a person pursuant to a criminal investigation "requires a search warrant or a recognized exception to the warrant requirement. ***State v. Villarreal***, 475 S.W.3d 800 (Tex.Cr.App. 2014)(see ☙, Vol. 22, No. 48; 12/01/2014; Vol. 23, No. 51; 12/21/2015). The totality of the circumstances dictates whether a warrantless search is reasonable. ***Missouri v. McNeely***, 569 U. S. 141 (2013)(see ☙, Vol. 21, No. 16; 04/22/2013). A warrantless search may be reasonable "if the police obtain consent." ***Beeman v. State***, 86 S.W.3d 613 (Tex.Cr.App. 2002)(see ☙, Vol. 10, No. 41; 10/14/2002). When the State relies on consent to justify a search, it must prove that the consent was freely and voluntarily given. ***Bumper v. North Carolina***, 391 U.S. 543, 548 (1968). Voluntariness depends on the totality of the circumstances. ***Schneckloth v. Bustamonte***, 412 U.S. 218, 233 (1973). It means more than a knowing choice. *** "The ultimate question is whether the person's will has been overborne and his capacity for self-determination critically impaired, such that his consent to search must have been involuntary." ***Meekins v. State***, 340 S.W.3d 454 (Tex.Cr.App. 2011)(see ☙, Vol. 19, No. 18; 05/09/2011). *** The State suggests that since it did not cause Appellee's condition, his unconsciousness should not be held against the prosecution in assessing the voluntariness of his

consent. It quotes ***Fienen v. State***, 390 S.W.3d 328 (Tex.Cr.App. 2012)(see ☙, Vol. 20, No. 47; 11/26/2012), for the proposition that consent "must not be the result of physical or psychological pressures brought to bear by law enforcement" and emphasizes the last phrase, i.e., "brought to bear by law enforcement." ***Fienen***, however, relied on ***Schneckloth*** which turned to cases assessing the voluntariness of confessions and described the totality of the circumstances as including "both the characteristics of the accused and the details of the interrogation. *** In this case Appellee was unconscious throughout his encounter with law enforcement and had no capacity for self-determination; he could not make a choice; he could not hear Sgt. McBride read warnings to him; and he could not limit or revoke his consent. Under these circumstances drawing his blood was an unreasonable application of the consent exception to the Fourth Amendment warrant requirement.

Concurring / Dissenting Opinions: Presiding Judge Keller filed a concurring and dissenting opinion in which **Judge Slaughter** joined. She doesn't think the Court should have addressed the implied consent issue, but should have remanded that issue for reconsideration in light of ***Mitchell***. Moreover, she argued that the Court's holding on implied consent "would give the unconscious person an arguably unwarranted advantage that the conscious person does not have -- the withdrawal of consent without consequences."

(**David A. Schulman**) I think the issue of whether "implied consent" equals an exception to the warrant requirement is a dead one. However, as you might notice from my sidebar to the SCOTUS' opinion in ***Mitchell***, I think that exigent circumstances will exist for unconscious drivers no less than $99^{44/100}$% of the time.

(**John G. Jasuta**) I hope that the fact that the police wasted their time reading statutory DWI warnings to an unconscious person, instead of looking for a judge, is considered when determining if exigent circumstances existed. Keep in mind that a "period of time" had been allowed by the officer to elapse after the defendant was transported, obviously drunk to the point of unresponsiveness, from her custody to the hospital and that the officer made no attempt whatsoever to obtain a warrant in that "period of time," choosing, instead, to take it upon herself to go to the hospital and get the blood. This one shouldn't even be close.