



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS. PD-1118-15 & PD-1119-15

PAUL ANTHONY GARCIA, Appellant

v.

THE STATE OF TEXAS

ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH COURT OF APPEALS
KENDALL COUNTY

Per curiam.

OPINION

A jury convicted appellant of reckless bodily injury to a child and intoxication manslaughter. Pursuant to the jury's recommendations, the trial court imposed sentences of ten years' confinement, probated, for the bodily injury conviction, and fifteen years' confinement for the manslaughter conviction.

On appeal, appellant argued in part that the trial court erred in denying his motion to suppress evidence obtained in a warrantless blood draw pursuant to Texas

Transportation Code provisions. The Court of Appeals reversed the trial court's ruling and held, under its own precedent and this Court's opinion in *State v. Villarreal*, 475 S.W.3d 784 (Tex. Crim. App. 2015), that the Transportation Code provisions are not a valid exception to the Fourth Amendment's warrant requirement, that the trial court therefore erred in denying appellant's motion to suppress, and that appellant was harmed. *Garcia v. State*, Nos. 04-14-00389-CR & 04-14-00390-CR slip op. (Tex. App.–San Antonio August 25, 2015)(not designated for publication). The State filed a petition for discretionary review.

In ground four of its petition, the State contends that the Court of Appeals erred by reversing the trial court without considering whether there were exigent circumstances which justified the warrantless blood draw. As the prevailing party at trial, the State was not required to argue exigent circumstances on appeal, and is permitted to raise this issue for the first time on discretionary review as a ground for reinstating the trial court's ruling. *See Leming v. State*, PD-0072-15 slip op. at 7 (Tex. Crim. App. April 13, 2016); *McClintock v. State*, 444 S.W.3d 15, 20-21 (Tex. Crim. App. 2014). Further, the Court of Appeals may now be guided in its consideration of exigent circumstances by the Court's recent opinions addressing that issue, *Cole v. State*, PD-0077-15, 2016 WL 3018203 (Tex. Crim. App. May 25, 2016) and *Weems v. State*, PD-0635-14, 2016 WL 2997333 (Tex. Crim. App. May 25, 2016).

Therefore, we grant ground four of the State's petition for discretionary review and

remand the case to the Court of Appeals for consideration of the State's argument. The State's remaining grounds for review are refused with prejudice.

DELIVERED AUGUST 24, 2016
DO NOT PUBLISH