



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

No. PD-1118-11

JEROMY GADDY, Appellant

v.

THE STATE OF TEXAS

**ON STATE'S PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND COURT OF APPEALS
DENTON COUNTY**

Per curiam.

O P I N I O N

Appellant was convicted of felony driving while intoxicated and sentenced to 3 years confinement. On appeal, Appellant claimed that the prior DWI convictions from New Mexico were insufficient to elevate his offense to a felony under Texas Penal Code §49.09(b)(2). The Court of Appeals reversed. Because an instruction on the lesser offense of misdemeanor DWI was neither requested nor given by the trial court, the court reversed the trial court's judgment and rendered a judgment of acquittal. *Gaddy v. State*, No.

02-09-00347-CR (Tex. App.–Ft. Worth, May 19, 2011). The State petitioned this Court for discretionary review

When the Court of Appeals issued its opinion in this case, it did so without the benefit of this Court's recent opinion in *Bowen v. State*, ___ S.W.3d ___; No. PD-1607-10 (Tex. Crim. App. June 20, 2012). Therefore, we vacate the judgment of the Court of Appeals and remand for that court to consider the effect of *Bowen*, if any, on its reasoning and analysis in this case.

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