

**Court of Criminal Appeals**  
**March 25, 2015**

***Leal v. State***

No. PD-1638-14

Case Summary written by Brittany Dumas, Staff Member.

The opinion was issued per curiam with Justice Alcala dissenting. Leal was stopped initially for a traffic violation, but was arrested for driving while intoxicated. The arresting officer discovered Leal had two prior DWI convictions and took him to receive a warrantless blood draw pursuant to Texas Transportation Code § 724.012(b)(3)(B) at the hospital.

Appellant, Leal, made two motions to suppress evidence. The first motion was to challenge the legality of the stop and the second motion was to challenge the warrantless blood draw under the Fourth Amendment. The trial court denied the motion to suppress based on the illegal stop. At trial, the DPS chemist who analyzed the blood testified that Leal's blood-alcohol content was almost three times over the legal limit. The appellant was convicted and sentenced and then he moved for a new trial based on error by the trial court's "declining to suppress the results of the mandatory blood draw." The trial court denied this motion as well.

The court of appeals reversed and remanded when it found that the trial court erred in denying appellant's motion. In holding that the trial court erred, the court of appeals found that in the absence of urgent circumstances in combination with no consent, it was not reasonable to perform a warrantless blood draw under the Fourth Amendment or an exception to the warrant requirement.

The State then filed a petition for discretionary review to challenge the court of appeals' holding "that the implied consent and mandatory blood draw provisions in the Texas Transportation Code do not amount to a recognized exception to the warrant requirement under the Fourth Amendment." While reviewing the petition, the Court of Criminal Appeals found that there was still a question over whether the appellant preserved his Fourth Amendment complaint regarding the warrantless blood draw. Under Texas Rules of Appellate Procedure Rule 47.1, the court of appeals must write its opinion so that every issue that is raised and necessary to final disposition of the appeal is addressed. In order to reverse a conviction, an appellate court has to address error preservation first. Therefore, the Court of Criminal Appeals reviewed the court of appeals' decision on its own motion, then vacated the court of appeals' decision and remanded to determine whether the warrantless blood draw violating his Fourth Amendment claim was adequately preserved for review.