

In The
SUPREME COURT OF THE UNITED STATES
October term, 2018

No. 20170185

JAMES G. YAHNKE,

Petitioner,

v.

CHAD PRINGLE, WARDEN, aka NORTH DAKOTA

Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Jim Yahnke / Chuck Yahnke P.O.A

James G. Yahnke, Pro se

James River Correctional Center

Inmate #140821

2521 Circle Drive

Jamestown, ND 58401

TABLE OF CONTENTS

<u>Document:</u>	<u>Page:</u>
Table of Contents	2
Table of Authorities	3
Questions Presented	4
Petition For Writ of Certiorari	5
Opinions Below	5
Jurisdiction	5
Constitutional and Statutory Provisions Involved	6
Statement	6
Reasons for Granting Petition	8

THE NORTH DAKOTA COURTS REASONING IS FLAWED BECAUSE THE SUPREME COURT OF THE UNITED STATES IN BIRCHFIELD V. NORTH DAKOTA HELD THAT: (1) THE FOURTH AMENDMENT DOES NOT PERMIT WARRANTLESS BLOOD TESTS INCIDENT TO ARRESTS FOR DRUNK DRIVING AND THAT, (2) MOTORISTS CANNOT BE DEEMED TO HAVE CONSENTED TO SUBMIT TO A BLOOD TEST ON PAIN OF COMMITTING A CRIMINAL OFFENSE.

8

Conclusion

11

TABLE OF AUTHORITIES

United States Supreme Court Case:

Page No.

Birchfield v. North Dakota

2, 8, 9, 11

North Dakota Case:

State v. Smith, 849 N.W.2d 599

9

United States Amendment:

Fourth Amendment

4, 5, 6

8, 9, 10

United States Code:

U.S.C. Section 1257

5

North Dakota Century Code:

N.D.C.C. § 39-08-01

10

QUESTIONS PRESENTED

1. Where Petitioner was informed that if he did not submit to a blood test he would be charged with committing a criminal act, which violated Petitioner's Fourth Amendment protections guaranteed under the United States Constitution, where, North Dakota State Trooper informed Petitioner of the Implied Consent Advisory and requested a blood test, and Petitioner agreed because of the Advisory.

PETITION FOR WRIT OF HABEAS CORPUS

James G. Yahnke, the above-named Petitioner, petitions for a Writ of Habeas Corpus to review the Judgment of the North Dakota Supreme Court, which Judgment affirmed the denial by the state district court of Petitioner's request for post-conviction relief.

OPINIONS BELOW

The Opinion of the North Dakota Supreme Court (Appendix #1a-#1b) is reported. The state district court's Opinion And Order Denying Petitioner's Application For Post-Conviction Relief (Appendix #2a-#2p) is also reported.

JURISDICTION

The Judgment of the North Dakota Supreme Court was entered on March 8, 2018. (Appendix #1 and #2). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257. This Petition is timely filed pursuant to the Rules of the Supreme Court.

CONSTITUTION AND STATUTORY

PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides that ⁽⁵⁾unreasonable searches and

the taking of a blood sample is a search and prohibited. The state of North Dakota violated this guarantee by taking away Petitioner's liberty with an implied consent advisory so standardless that it involved arbitrary enforcement. The prohibition of vagueness in criminal law and statutes is well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law, and a law, offense, statute or advisory that flouts it violates the first essential of the Fourth Amendment.

Petitioner's conviction violates the Fourth Amendment of the United States Constitution and recent case law by this Court.

STATEMENT

Petitioner pleaded guilty to two counts of Vehicular Homicide, a Class A Felony with a mandatory ten (10) year term of imprisonment, on January 15, 2015. On January 28, 2015, Petitioner was sentenced to twenty (20) years incarceration with five (5) years suspended

Petitioner was the driver in a vehicle crash on May 17, 2014 that occurred on County Road 17 in Hillsboro, North Dakota. Petitioner hit an approach at a very high rate of speed and the car rolled. Both women were ejected from the car

and died as a result of the accident.

Petitioner was questioned by Officers prior to being advised of his Miranda warnings, and was placed under arrest for possible driving under the influence. (See, Appendix #3d at lines 13-16).

Petitioner was seriously injured and was taken to Sanford Medical Center by helicopter. Prior to any requests or warrants Petitioner was informed of the North Dakota Implied Consent Advisory by North Dakota State Trooper Erdmann (Appendix #3d at lines 17-18), and a blood test was requested and RN Lance Heald drew Petitioner's blood. (See, Appendix #3d at lines 19-32).

Petitioner filed a timely state application for post-conviction relief, was denied post-conviction relief. (See, Appendix #2a - #2p). Subsequently Petitioner appealed to the state supreme court, which affirmed the state district court's denial, without addressing the blood draw or Fourth Amendment issue. (See, Appendix #16)

REASONS FOR GRANTING THE PETITION

There is a conflict because the state courts have not decided a binding precedent on this vital issue, and such that conflicts with relevant decisions of this Court, and the state supreme court has departed from the accepted and usual course of judicial proceedings, and sanctioned the state district courts departure, as to call for this Court's supervisory power.

I. THE NORTH DAKOTA COURTS REASONING IS FLAWED BECAUSE THE SUPREME COURT OF THE UNITED STATES IN BIRCHFIELD V. NORTH DAKOTA HELD THAT: (1) THE FOURTH AMENDMENT DOES NOT PERMIT WARRANTLESS BLOOD TESTS INCIDENT TO ARRESTS FOR DRUNK DRIVING AND THAT, (2) MOTORISTS CANNOT BE DEEMED TO HAVE CONSENTED TO SUBMIT TO A BLOOD TEST ON PAIN OF COMMITTING A CRIMINAL OFFENSE.

Petitioner was informed by Trooper Erdmann of the North Dakota Implied Consent Advisory. (Appendix #3d at lines 17, 18). Because of the Advisory Petitioner agreed to allow a blood draw and subsequent blood test. (Appendix #3d at lines 19-32).

Prior to Petitioner being informed of the North Dakota Implied Consent Advisory Petitioner had been placed under arrest for DUI. (See Appendix "3d at lines 14-16).

There is no question Petitioner was under arrest for DUI and that Petitioner agreed to a warrantless blood draw after being informed of North Dakota's Implied Consent Advisory

This Court has held in Birchfield v. North Dakota, 136 S. Ct. 2160 (2016), that:

(1.) the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving;

(2.) the Fourth Amendment does not permit warrantless blood tests incident to arrests for drunk driving; and

(3.) motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense, abrogating State v. Smith, 849 N.W.2d 599.

After being arrested ⁽⁹⁾ for driving under the

influence Petitioner agreed to a warrantless chemical blood test after being informed of North Dakota's Implied Consent Advisory, which informed Petitioner he would be charged with a criminal charge in violation of North Dakota Century Code Section 39-08-01, which criminalizes the refusal to submit to a chemical test.

Under the Fourth Amendment this Advisory and a warrantless chemical blood test is unconstitutional and further unconstitutional under North Dakota Constitution, Article I, Section 6.

The search incident-to-arrest exception is particularly ill suited to blood draws, and the exceptions categorical reach makes it even less suitable here. The conditions that require warrantless searches, in short, are highly situational and defy the logical underpinnings of the search-incident-to-arrest exception and its categorical application.

The states Implied Consent Advisory and the state courts interpretation of state laws violates the United States Constitution and federal law, and is untenable or amounts to a subterfuge to avoid federal review of a constitutional violation.

CONCLUSION

The Petition for a Writ of Certiorari should be granted, Judgment vacated and case remanded to the Supreme Court of North Dakota for further consideration in light of this Court's holdings in Birchfield v. North Dakota, 579 U.S. ___, 136 S.Ct. 2160, ___, L. Ed. 2d ___ (2016), and any further holdings in this matter.

Respectfully Submitted,

Jim Yahnke / Carla Yahnke P.D.A.
James G. Yahnke, Pro se

Carla Yahnke
[Signature]

Dated this 2 day of June, 2018

State of North Dakota
County of Stutsman

Subscribed and sworn to before me this 25th day of June 2018
by Cody Morvay
[Signature]

