No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ROBERT BLAKE ADAMS — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROBERT BLAKE ADAMS
(Your Name)

9601 SPUR 591
(Address)

AMARILLO, TEXAS 79107
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

SHOULD THIS COURT'S HOLDING IN MISSOURI V McNEELY, 133 S. Ct. 1552 (2013), BE APPLIED RETROACTIVELY TO STATE CASES WHERE WITHOUT A WARRANT, AND WITHOUT EFFECTIVE CONSENT, A PERSONS BLOOD WAS STILL EXTRACTED?

WITH OR WITHOUT THIS COURT'S HOLDING IN MISSOURI V McNEELY, 133 S. Ct. 1552 (2013), IS IT STILL AN ILLEGAL ACT AND A VIOLATION OF A PERSONS FOURTH AMENDMENT RIGHTS WHEN WITHOUT A WARRANT AND DEVOID OF EXIGENT CIRCUMSTANCES, A PERSONS BLOOD IS DRAWN WITHOUT THEIR CONSENT?

DUE TO THE FACT THAT THE TEXAS COURT OF CRIMINAL APPEALS AS WELL AS THE TEXAS COURTS OF APPEALS HAVE STATED THAT A WARRANT WAS ALWAYS REQUIRED UNDER THE TEXAS TRANSPORTATION CODE IN WHICH PETITIONER WAS CONVICTED, SHOULD PETITIONER'S CONVICTION BE RENDERED VOID BASED ON BOTH A FOURTH AMENDMENT VIOLATION AS WELL AS A DUE PROCESS VIOLATION?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 6/27/2018. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FOURTEENTH AMENDMENT

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Robert Blake Adams, was driving on a farm-to-market road when he crossed over the center stripe and struck another vehicle, which resulted in the death of the driver of that vehicle. Petitioner's blood alcohol content was .33 grams of alcohol per 100 milliliters of blood. Petitioner refused to sign the DIC-24 Statutory Warning Form requesting a specimen of Petitioner's blood by Red Oak Police Officer, F. Caballero.

Despite Petitioner's refusal, Officer Caballero, without a warrant, or exigent circumstances, transported Petitioner to the hospital where his blood was extracted without his further consent by phlebotomist, Heather Canada, at the direction of Red Oak Police Officer, F. Caballero.

During Petitioner's trial and ensuing appeals, neither trial or appellate counsel ever challenged the illegal blood draw. On approximately January 23, 2013, Petitioner's appellate counsel, Gary Udashen, filed an Application for Writ of Habeas Corpus which was denied without written order. That habeas application did not contest the illegal blood draw. (Ex parte Adams, WR-78,873-01).

Petitioner, on March 29, 2018, filed a subsequent application for Writ of Habeas Corpus (pro se) alleging that the warrantless blood draw in his case rendered his conviction void due to a violation of the Fourth Amendment, violation of Due Process, and violation of the Texas Transportation Code.

The State did not contest that the legal basis for the instant writ was unavailable at the time Applicant/Petitioner filed the previous application, citing Tex. Code Crim. Proc. art. 11.07, §4(a)(1), and thus the Application should be considered on the

STATEMENT OF THE CASE (CONTINUED)

merits.

The Texas Court of Criminal Appeals denied this Application for writ of habeas corpus on the findings of the trial court without a hearing. It should be noted that the State provided the **Findings of Fact and Conclusions of Law** which was signed by the court. This order/findings was attached to the State's Response to Application for Writ of Habeas Corpus. (The white card denial appears at Apendix "A" and the State's Response with attached order of Findings of Fact and Conclusions of Law appears at Appendix "B")

Prior to filing the instant habeas application, Petitioner, under the holdings of this Court in the cases of Martinez v Ryan, 132 S.Ct. 1309 and Trevino v Thaler, 133 S.Ct. 1911 (2013), filed a Federal Writ of Habeas Corpus showing that both his trial and appellate counsel were ineffective for failing to challenge the illegal blood draw but the Court held Petitioner was time-barred under the AEDPA.

REASONS FOR GRANTING THE PETITION

The Tenth Circuit Court of Appeals in Sanders v Dowling, 594 Fed. App'x 501, 503 (10th Cir. 2014), and followed by the federal courts in both the Southern and Northern Districts of Texas in Aguilar v Davis, 2017 U.S.Dist. Lexis 128978, at *7 (S.D. Tex. Aug. 14, 2017); Cobb v Davis, 2107 U.S.Dist. Lexis 195902, at *5 (N.D. Tex. Nov. 2, 2017), has decided an important federal question in a way that conflicts with a decision by the Texas Court of Criminal Appeals (court of last resort), and several Texas Courts of Appeals cases on the issue of whether this Court's holding in Missouri v McNeely, 133 S.Ct. 1552 (2013) is being applied retroactively, and further, that McNeely's new rule is merely procedural and not substantive, and therefore fails to meet the Teague test. See Teague v Lane, 109 S.Ct. 1060 (1989). Petitioner will show this Court the following to support the claim he presented to the Texas Court of Criminal Appeals which was denied without written order based on the trial courts findings of facts:

Petitioner's Ground for Review in the Texas Court of Criminal Appeals via a Writ of Habeas Corpus stated the following, verbatim.

NEW RULE/FACTUAL/LEGAL CLAIM

Missouri v McNeely, 133 S.Ct. 1552 (2013)

PETITIONER CONTENDS THAT THE INVOLUNTARY, NONCONSENSUAL EXTRACTION OF HIS BLOOD, WITHOUT A WARRANT, AND DEVOID ON EXIGENT CIRCUMSTANCES, RENDERS HIS CONVICTION VOID DUE TO A VIOLATION OF THE FOURTH AMENDMENT, AND ALSO A DENIAL OF DUE PROCESS AS EMBODIED IN THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; THE INVOLUNTARY, NONCONSENSUAL BLOOD DRAW, WITHOUT A WARRANT, AND DEVOID OF EXIGENT CIRCUMSTANCES, RENDERS HIS CONVICTION VOID DUE TO A VIOLATION OF THE TEXAS TRANSPORTATION CODE §§724.011—— .019, BECAUSE THE WARRANTLESS, NONCONSENSUAL BLOOD DRAW IN THIS CASE VIOLATED PETITIONER'S RIGHTS UNDER THE FOURTH AMENDMENT BECAUSE THE TEXAS TRANSPORTATION

REASONS FOR GRANTING THE PETITION (CONTINUED)

CODE MANDATORY BLOOD DRAW STATUTE IS NOT A PERMISSIBLE EXCEPTION TO THE WARRANT REQUIREMENT, AND THE IMPLIED CONSENT STATUTE IN §724.011(a) IS NOT A PERMISSIBLE EXCEPTION TO THE WARRANT REQUIREMENT IN VIOLATION OF THE UNITED STATES SUPREME COURT CASE OF **MISSOURI V McNEELY**, 133 S.Ct. 1552 (2013) DECIDED ON **APRIL 17TH, 2013**.

The State correctly states that Applicant's claim alleges that his conviction is void because it relied on a mandatory blood draw under Section 724.012 of the Texas Transportation Code that has since been declared unconstitutional. However, the State then goes on to state that: "The Texas Transportation Code provides that an officer may require a breath or blood specimen **without a warrant** if the defendant was the operator of a motor vehicle involved in an accident causing death or serious bodily injury." Citing Texas Transportation Code §724.012(b)(1). The above stated in boldface is a complete misstatement of law. Nowhere in Section 724.012(b)(1) does it state that an officer may require a breath or blood specimen without a warrant. This fact is demonstrated by several cases cited by Petitioner in his "MEMORANDUM BRIEF IN SUPPORT OF SUBSEQUENT APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO T.C.C.P. Ann. art. 11.07, §4(a)(1)," see e.g., Perez v State, 495 S.W.3d 374 (Tex.App.-Houston [14th Dist.] 2016), The Houston Court of Appeals citing Missouri v McNeely, stated that taking of defendant's blood sample without a warrant violated Fourth Amendment rights because State did not show that defendant consented and because Texas Transportation Code Ann. §724.012 **did not require that Officer obtain a blood draw without a warrant**, officer could not have relied in good faith on statute to conclude that no warrant was required. The Court held that the taking of defendant's blood sam-

REASONS FOR GRANTING THE PETITION (CONTINUED)

ple **without a warrant** violated his Fourth Amendment rights because the State did not show that defendant consented, the trial court erred in relying on the federal good-faith exception, **and because Texas Transportation Code Ann. §724.012 did not require that the officer obtain a blood draw without a warrant, the officer could not have relied in good faith on the statute to conclude that no warrant was required.**

In Roop v State, 484 S.W.3d 594 (Tex.App.-Austin, 2016), The Austin Court of Appeals citing Missouri v McNeely, stated that arresting officer who relied on Texas's mandatory blood draw statute, Texas Transportation Code Ann. §724.012(b)(1) to take defendant's blood without her consent following a collision violated defendant's Fourth Amendment expectation of privacy; there was a magistrate on duty but the officer made **no attempt to obtain a warrant.** The statute required an officer to take a blood draw if an individual suffered serious bodily injury as a result of the DWI, **but it did not mandate that he do so without a warrant**; therefore, he did not act in good faith reliance on the statute. See also State v Villarreal, 475 S.W.3d 784 (Tex.Crim.App.2015)(Same); Huff v State, 467 S.W.3d 11 (Tex.App.-San Antonio 2014)(Same); McNeil v State, 443 S.W.3d 295 (Tex.App.-San Antonio 2014)(Same); Weems v State, 434 S.W.3d 655 (Tex.App.-San Antonio 2014)("Regardless of the mandatory tone of the directive to officers in Texas Transportation Code Ann. §724. .012(b)(3)(B), there must still be exigent circumstances that would justify a warrantless search of a suspect's blood").

REASONS FOR GRANTING THE PETITION (CONTINUED)

To be clear, it is Petitioner's claim that the warrantless blood draw administered to Petitioner violated his rights under the Fourth Amendment to the Constitution because Petitioner refused to consent and sign the DIC request by the arresting officer, and, the implied consent and mandatory blood draw statutes do not explicitly provide for a warrantless search. The United States Supreme Court has concluded (1) the warrant requirement applies generally to searches that intrude into the human body, and (2) absent an exception to the warrant requirement, a compelled blood draw is unconstitutional. But moreso, Petitioner would point out that even without this Court's holding in Missouri v McNeely, supra, that the Texas Transportation Code had **always required a warrant,** and therefore, the mandatory blood draw statute does not address or purport to dispense with the Fourth Amendment's warrant requirement for blood draws. U.S. Constitution Amendment IV. Neither this Court (Supreme Court) nor the Texas Court of Criminal Appeals has recognized the repeat offender provision of the mandatory blood draw as a **new exception to the Fourth Amendments's warrant requirement** separate and apart from the consent exception and the exception for exigent circumstances. Therefore, the constitutionality of the repeat offender provision of the mandatory blood draw law must be based on the previously exceptions to the Fourth Amendment's warrant requirement. That being Texas Code Criminal Procedure Ann. art. 38.23 provides for an exception to the exclusionary rule **only** when an officer relies in good faith **upon a warrant issued by**

REASONS FOR GRANTING THE PETITION (CONTINUED)

a neutral magistrate based on probable cause.

The State further claims that Applicant's blood draw was conducted according to the mandatory blood draw statute. As Petitioner has demonstrated above, the mandatory blood draw statute did not dispense with the warrant requirement. Therefore, with or without this Court's McNeely, decision, Petitioner's blood draw without a warrant was unconstitutional and in violation of his Fourth Amendment rights.

After stating that Applicant's blood draw was conducted according to the mandatory blood draw statute. The State stated: "However, McNeely was issued only after Applicant's appeal became final. Thus, in order to be applied retroactively in Applicant's case, the McNeely rule must meet the strict rules under Teague v Lane, 489 U.S. 288 (1989)."

Petitioner argued that under Teague v Lane, 109 S.Ct. 1060, a new rule of criminal procedure may not be applied or announced in a habeas corpus unless the rule falls within one of the two narrow exceptions. Penry v Lynaugh, 109 S.Ct. 2934, 2943-44 (1989). **A "new rule," as contemplated by Teague, is one which "breaks new ground," "imposes a new obligation on the States or Federal Government," "was not dictated by precedent existing at the time the defendant's conviction became final."** Teague, 109 S.Ct. at 1070. The first exception is for new rules that either decriminalize a class of conduct or that prohibit punishment for a particular class of defendant's. Saffle v Parks, 110 S.Ct. 1257, 1263-84 (1990). The second exception allows for the announcement and retroactive application of a

REASONS FOR GRANTING THE PETITION (CONTINUED)

new rule if the new rule is a "watershed rule" of criminal procedure. A watershed rule is a rule that "requires the observance of those procedures that...are implicit in the concept of ordered liberty." Teague, 109 S.Ct. at 1073.

Petitioner then stated: Petitioner, although not confining his argument solely on the basis of the holding of Teague, supra, nonetheless, Petitioner's involuntary, warrantless, nonconsensual blood draw requires reversal, because Missouri v McNeely, supra, did "break new ground," and did "impose a new obligation on the State that was not dictated by precedent existing at the time Petitioner's conviction became final." Due to the holdings of Missouri v McNeely, supra, Texas peace officers are now required to obtain a warrant for a blood draw (breaks new ground)(imposes a new obligation), exigency for the warrant, must be determined case by case based on the totality of the circumstances, rather than just certain facts. Clearly, this was not dictated precedent at the time Petitioner's conviction became final. See Weems; McNeil; Villarreal; Perez, all supra's.

Petitioner would again argue, that the Huff opinion, supports Petitioner's claim that McNeely, whether considered a new rule of constitutional law, or not, still "breaks new ground," and as further demonstrated, "imposes new obligations" upon the State. McNeely clearly states, or, has articulated a constitutional principle (i.e., warrant requirement; exigent circumstances; Tex.Trans.Code Ann. §724.012(b), and §724.011(a) are not valid exceptions to the

REASONS FOR GRANTING THE PETITION (CONTINUED)

Fourth Amendment's warrant requirement because they are based only on certain facts when the warrant requirement is based on a case to case basis on the totality of facts and circumstances of each case) that has not been previously recognized (which was the basis of the direct appeals of McNeil; Weems; Roop; Huff) but which has been held to have retractive application.

The State claims that McNeely represents a new rule for purposes of Teague v Lane, but then states that the new rule does not apply retroactively on collateral review.

Petitioner would argue as stated in Teague v Lane, that the State is incorrect as follows: In Teague, the Supreme Court stated that in their view, the question "whether a decision [announcing a new rule should] be given prospective or retroactive effect should be faced at the time of [that] decision." Mishkin, Forward: the High Court, the Great Writ, and the Due Process of Time and Law, 79 Harv. L. Review 56, 64 (1965). Cf. Bowen v United States, 95 S.Ct. 2569, 2573 (1975)(when "issues of both retroactivity and application of constitutional doctrine are raised," the retroactivity issue should be decided first). Retroactivity is properly treated as a threshold question, for, once a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated.

The question then becomes that before deciding whether McNeely should be extended to Texas State cases, the Court should ask itself whether such a rule would be applied retroactively to the case

REASONS FOR GRANTING THE PETITION (CONTINUED)

at issue here. The Court went on to state that it is admittedly often difficult to determine when a case announces a new rule, and we do not attempt to define the spectrum of what may or may not constitute a new rule for retroactivity purposes. In general, however, a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government... To put it differently, a case announces a new rule if the result was not **dictated** by precedent existing at the time the defendant's conviction became final. Petitioner would remind this Court that prior to this Court's decision in McNeely, there was not a set precedent case holding that a warrant must issue before a defendant's blood is drawn without his/her consent. Petitioner argued that his ground for relief was not available when he filed the initial writ of habeas corpus. Texas case law required that the facts Petitioner allege must at least be minimally sufficient to bring him within the ambit of that new legal basis for relief. See Ex parte Chavez, 371 S.W.3d 200, 220 & n.9 (Tex.Crim.App.2012). Petitioner has met that burden. The holding of Sanders v Dowling, supra, and followed by Aguilar & Cobb are in direct conflict with the holdings of several Texas Courts of Appeals and, the Texas Court of Criminal Appeals. Petitioner asserts that due to this conflict, this Court should exercise its supervisory powers and hear this case by granting certiorari and order the issue fully briefed by appointing Petitioner counsel.

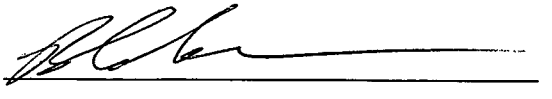
Respectfully submitted,

Robert Blake Adams

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Sept. 6th 2018