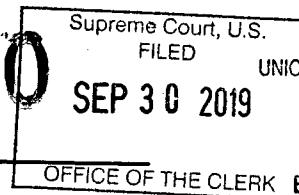


20-7260
No. _____



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IN THE
SUPREME COURT OF THE UNITED STATES

AL RUE HOPKINS – PETITIONER

vs.

FLORIDA – RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

THE FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

AL RUE HOPKINS, DC# V09306

110 MELALEUCA DRIVE

CRAWFORDVILLE, FL 32327

ORIGINAL

QUESTION(S) PRESENTED

Whether Florida statutes 316.1933(1)(a) violates Petitioner's right to be free from unreasonable searches and seizures where it creates a categorical exigency exception to the warrant requirement of the Fourth Amendment by requiring law enforcement, who determine probable cause exists, to compel a blood draw of any DUI suspect where death or great bodily injury has resulted from that suspect's operation of a motor vehicle?

LIST OF PARTIES

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

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TABLE OF AUTHORITIES CITED

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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

The opinion of the highest state court to review the merits appears at Appendix A 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 is unpublished.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 Volusia County, Florida Circuit court appears at Appendix B to the petition and is

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 is unpublished.

JURISDICTION

The date on which the highest state court decided my case was July 9, 2019. A copy of that decision appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides that “[t]he 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 warrant shall issue, but upon probable cause.”

Section 316.1933(1)(a), Florida Statutes provides:

“If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury to a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person’s blood for the purpose of determining the alcoholic content thereof.”

STATEMENT OF THE CASE

The Petitioner was charged by information on November 2, 2011 with two count of DUI Manslaughter and one count of Prior Refusal to Submit to Testing.

On April 28, 2013, after hearing all evidence, argument, and instructions, the jury returned a verdict finding Petitioner guilty of two counts of DUI Manslaughter charged and the State Loll Prossed the Prior Refusal count.

On that same date Petitioner was sentenced to 15 years in the Florida Department of Correction, consecutive on each count for a total sentence of 30 years.

Petitioner filed a Notice of Appeal, and on November 18, 2014, the Fifth District Court of Appeal of the State of Florida entered a per curiam affirmed opinion with a mandate being issued on January 6, 2015.

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to Fla. R. App. P. 3.850 on May 11, 2016 in which he alleged Ineffective Assistance of Trial Counsel. Petitioner's motion was denied after an evidentiary hearing on May 17, 2018.

Petitioner filed an Appeal of that order on June 13, 2018 and on July 20, 2019, the Florida Fifth District Court of Appeal entered a per curiam affirmed opinion.

Petitioner filed a Second Motion for Postconviction Relief pursuant to Fla. R. Crim. P. 3.850 on March 27, 2019 in which he asserted that Florida Statute 316.1933(1)(a) was unconstitutional and sought retroactive application of the holdings in Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013) and Birchfield v. North Dakota, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). Petitioner's motion was summarily denied on April 2, 2019.

Petitioner filed an appeal on that order on April 30, 2019 and on July 9, 2019 the Florida Fifth District Court of Appeal entered a per curiam affirmed opinion with a Mandate being issued on August 2, 2019.

This Petition for Writ of Certiorari follows.

REASON FOR GRANTING THE PETITION

This Court has not previously addressed the categorical exigency circumstances provisions of state statutes such as Fla. Stat. §316.1933(1)(a). The provision of constitutional concern is whether bodily injury, harm or death may, without more, serve as categorical exigency exceptions to justify a warrantless blood draw to determine Blood Alcohol Content (BAC)?

It appears that Florida's legislature in creating §316.1933(1)(a) may have derived its reasoning for the use of death or serious bodily injury of a human being as a categorical exigency exception to the Fourth Amendment's warrant requirement from some of this Court's decisions.

In Schmernber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966), this Court determined that an exigency exists when:¹ Blood Alcohol Content is dissipating and some other factor created pressing health, safety, or law enforcement needs that would take priority over a warrant application.

In Illinois v. McArthur, 531 U.S. 326, 330 (2001) this Court made clear that "there are exceptions to the warrant requirement."

This Court² has also determined that the warrant requirement of the Fourth Amendment is subject to certain "reasonable exceptions" to the warrant

¹ See n.[1] of Justice Alito's opinion in Mitchell v. Wisconsin, 27 Fla. L. Weekly Fed. S1109a, (June 27, 2019)

² Kentucky v. King, 436 U.S. 499, 509 (1978); see also Michigan v. Tyler, 436 U.S. 499, 509 (1978) allowing a state to demonstrate a "compelling need for official action and no time to secure a warrant."

requirement. Exigent circumstances exception applies when “the needs of law enforcement are so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.”

However, this Court has also determined³ that “[s]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions.”

Additionally, this court determined that “in the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” Riley v. California, 573 U.S. 373, 382 (2014).

This Court has also determined that exigency “must be determined case by case based on totality of circumstances.” Missouri v. McNeely, 569 U.S. 141, 148, 133 S. Ct. 1552, 1558, 185 L. Ed. 2d 696 (2013) (emphasis added).

In McNeely this Court also determined that if officers “can reasonably obtain a warrant before the efficacy of the sample... the Fourth Amendment mandates that they should do so.” Id. 152 (emphasis added).

This Court should grant this Petition to answer the question of whether Florida Statute 316.1933(1)(a) and others like it requiring (mandating) law enforcement officers to compel blood draws of all DUI suspects, without a

³ Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 513, 19 L. Ed. 2d 573 (1967).

warrant, for BAC testing based upon predetermined categorical exigent circumstances, results in a violation of the warrant requirement of the Fourth Amendment.

Petitioner further asserts that this Court should grant the Petition to review whether the constitutional Separation of Powers provisions⁴ are violated when state legislatures enact laws which require law enforcement officers to order compulsory warrantless blood draws thereby completely eliminating a review by neutral and detached magistrate. Finally, this Court should grant this Petition to decide whether the rule⁵ established by it in Mitchell, should extend to conscious drivers where exigent circumstance, mandated or not, are used to justify the warrantless blood draw from a DUI suspect for the purpose of BAC testing.

⁴ Both the Florida and United States Constitutions.

⁵ The rule appears to have established a two-part test: (1) whether the suspect's blood would have not been drawn if police had not been seeking BAC information, and (2) that police would not have reasonably judged that a warrant application would interfere with other pressing needs or duties. It is noteworthy in this case that Petitioner can meet both these criteria, based upon the record testimony of law enforcement officers, however, this rule/test is rendered moot in this case by §316.1933(1)(a) because an officer would violate the statute by not ordering a blood draw regardless of a judicial determination to the contrary.

CONCLUSION

In view of the facts, law, and argument provided, Petitioner submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Al Rue Hopkins
Al Rue Hopkins, DC#V09306

Date: Sept 30 2019