

21-5490  
No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
JUN 29 2021  
OFFICE OF THE CLERK

JOSEPH BOURGEOIS — PETITIONER  
(Your Name)

vs.

BOBBY LUMPKIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOSEPH MONTREL BOURGEOIS  
(Your Name)

JESTER III UNIT 3 JESTER ROAD  
(Address)

RICHMOND, TEXAS 77406  
(City, State, Zip Code)

(Phone Number)

RECEIVED  
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- ① CAN A TRIAL COURT ENTER A FINDING OF A DEADLY WEAPON? THAT WAS NOT STIPULATED IN THE PLEA AGREEMENT?
- ② DID THE TRIAL COURT AND CRIMINAL COURT OF APPEALS OF TEXAS VIOLATE ESTABLISHED FEDERAL LAW AS DETERMINED BY THE UNITED STATES SUPREME COURT.
- ③ ARE INTOXICATION MANSLAUGHTER AND INTOXICATION ASSAULT THE SAME CHARGE?
- ④ CAN A STATE COURT REFUSE TO HONOR A UNITED STATES SUPREME COURT RULING?
- ⑤ WAS TRIAL COUNSEL INEFFECTIVE? FOR FAILING TO FILE A MOTION TO SUPPRESS THE EVIDENCE FROM A WARRANTLESS BLOOD DRAW?
- ⑥ DOES THE RETRO ACTIVE APPLICATION OF BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 2160 [2016] APPLY TO MY CASE? A WARRANTLESS BLOOD DRAW?

I WAS IN DIRECT APPEAL WHEN THE RULING FIRST CAME OUT. JUDGEMENT ENTERED IN THIS CASE WAS ON JANUARY 25, 2016

## **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:

## **RELATED CASES**

TRIAL CT. NO. 14-CR-2877

STATE OF TEXAS VS. JOSEPH BOURGEOIS, IN THE DISTRICT  
COURT OF GALVESTON COUNTY, TEXAS 56<sup>TH</sup> JUDICIAL DISTRICT.  
JUDGEMENT ENTERED JANUARY 25, 2016 [ PLEA AGREEMENT ]  
ON SEPTEMBER 21, 2016, C.C.A. DENIED THE ARTICLE 11:07 ]

UNITED STATES DISTRICT COURT GALVESTON DIVISION  
[PETITIONER] JOSEPH M. BOURGEOIS VS. [RESPONDENT]  
LORIE DAVIS JUDGEMENT ENTERED MARCH 30, 2020  
NUMBER 3:17-CU-0071] PETITION WAS DISMISSED] REQUEST  
FOR A C.O.A. WAS ALSO DENIED,  
FEDERAL APPELLATE COURT

FOR A C.O.H, WAS ALSO ~~RE~~  
STATE OF TEXAS VS. JOSEPH M. BOURGEOIS CRIMINAL COURT  
OF APPEALS OF TEXAS TRIAL COURT NUMBER 14-CR-2877-83-2  
WR.-85, 655-03]. ARTICLE -11:07], ON -06-02-2021 WRIT  
WAS DISMISSED,

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JUDGEMENT ON 06-02-2022

APPENDIX A COURT OF CRIMINAL APPEALS OF TEXAS [DISMISSED]  
PETITION WITHOUT WRITTEN ORDER [SUBSEQUENT WRIT OF  
HABEAS CORPUS, TEX. CODE CRIM. PROC. ART. 11.07 SEC. 41A)-(C)

APPENDIX B 56TH JUDICIAL DISTRICT COURT GALVESTON COUNTY, TEXAS  
GENERAL DENIAL. DID NOT PROVE BY PROPONDERANCE EVIDENCE

APPENDIX C

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
APPRENDI VS. NEW JERSEY, 530 U.S. 466 [2000]	4
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BLOCKBURGER VS. UNITED STATES, 284 U.S. 299 [1932]	4
MASSARO VS. UNITED STATES, 538 U.S. 500 [2003]	4
MITCHELL VS. UNITED STATES, 526 U.S. 314 [1999]	4
STRICKLAND VS. WASHINGTON, 466 U.S. 668 [1984]	4
WILLIAMS (TERRY) VS. TAYLOR, 529 U.S. 362 [2000]	4

### STATUTES AND RULES

28 U.S.C. 2244 (A) RETROACTIVE APPLICATION (b)(2)(i) A NEW RULE OF CONSTITUTIONAL LAW MADE RETROACTIVE TO CASES ON COLLATERAL REVIEW BY THE UNITED STATES SUPREME COURT, THAT WAS PREVIOUSLY UNAVAILABLE.
28 U.S.C. 2241 [POWERS TO GRANT WRIT]
28 U.S.C. 2247 [DOCUMENTARY EVIDENCE]
28 U.S.C. 2253 [APPEAL]
28 U.S.C. 2254 (d)(1)(2)(A)(i)(ii)(B)

### 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 A to the petition and is

reported at APPENDIX-A; 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 06-02-2021.  
A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on N/A (date) in Application No. \_\_\_ A N/A.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[FOURTH AMENDMENT] UNITED STATES CONSTITUTION  
UNREASONABLE SEARCH AND SEIZURE. PAGE-4  
BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 2160 [2016]

[FIFTH AMENDMENT] UNITED STATES CONSTITUTION  
BLOCK BURGER VS. UNITED STATES 284 U.S. 299 [1932]  
DOUBLE JEOPARDY PROTECT. CLAUSE.

[SIXTH AMENDMENT] UNITED STATES CONSTITUTION  
EFFECTIVE ASSISTANCE OF COUNSEL  
STRICKLAND VS. WASHINGTON, 466 U.S. 668 [1984]

[FOURTEENTH AMENDMENT] UNITED STATES CONSTITUTION  
DUE-PROCESS OF LAWS AND EQUAL PROTECTION OF  
LAWS. [TERRY WILLIAMS] WILLIAMS (TERRY WILLIAMS), TAYLOR, 529  
U.S. 362 [2000] [CONTRARY TO CLAUSE.

MASSARO VS. UNITED STATES, 538 U.S. 500 [2003]  
AN INEFFECTIVE ASSISTANCE CLAIM BY-A STATE  
PRISONER MAY BE BROUGHT IN A COLLATERAL PROCEEDING  
UNDER 28 U.S.C 2254 WHETHER OR NOT ISSUE COULD HAVE  
BEEN RAISED ON DIRECT APPEAL.

STATEMENT OF THE CASE

[ON JANUARY 25, 2016] APPLICANT PLED GUILTY TO-TWO CHARGES. ① IN CAUSE NUMBER-14-COURT RECORD -2877-8 -2 [COUNT-2] IN CAUSE NUMBER-15-COURT RECORD-1476 ① COUNT ONE-INTOXICATION MAN SLAUGHTER ② COUNT TWO-INTOXICATION ASSAULT] ACCORDING TO-THE ESTABLISHED FEDERAL LAW THESE TWO COUNTS ARE THE SAME CHARGE UNDER BLOCK BURGER VS. UNITED STATES, 284 U.S. 299 [1932] ARE THEY NOT? DOUBLE JEOPARDY

WHITE ON THE FIRST ARTICLE 11:07, THE SUPREME COURT OF THE UNITED STATES [HELD] IN BIRCHFIELD VS. UNITED STATES, [HELD] IN BIRCHFIELD VS. NORTH DAKOTA 136 U.S. 2160 [2016] RETROACTIVE APPLICATION ON WARRANTLESS [BLOOD] AND [URINE]. BLOOD-DRAWS AFTER READING THE BIRCHFIELD RULING, I WAS AWARE THEN-THAT IT APPLIES TO MY CASE AS WELL.

IN MARCH 2021 I READ THIS CITATION AND THE VERY NEXT DAY I FILED ANOTHER ARTICLE 11:07 ON THE RULINGS OF BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 2160 [2016]. THE TEXAS STATE COURTS REFUSED TO - HONOR A UNITED STATES SUPREME COURT RULING THE TEXAS COURT OF CRIMINAL APPEALS DISMISSED MY ARTICLE 11:07 ON THE DATE 06-02-2021] WITHOUT WRITTEN ORDER. FOR SUBSEQUENT APPLICATION FOR A WRIT OF HABEAS CORPUS, I CLAIMED BIRCHFIELD APPLIED TO ME AND MY CASE, ON THE ARTICLE 11:07.

REASONS FOR GRANTING THE PETITION

IN-BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 2260 [2016]. THE UNITED STATES SUPREME COURT [HELD] THAT IF POLICE TOOK A PERSON'S BLOOD WITHOUT A "SEARCH WARRANT THAT IS A NO-PROCEDURE NON-EXISTENT CRIME.

THE POLICE VIOLATED THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND MY BODY AND MY CIVIL RIGHTS.

THE POLICE TOOK MY BLOOD WITHOUT A SEARCH WARRANT! I'M INNOCENT OF THESE CRIMES.

I ALSO GOT CONVICTED TWICE FOR THE SAME CHARGE VIOLATING THE DOUBLE JEOPARDY CLAUSE OF THE [FIFTH-AMENDMENT] TO THE UNITED STATES CONSTITUTION.

THIS CONVICTION VIOLATED THE BLOCKBURGER RULE BLOCKBURGER VS. UNITED STATES, 284 U.S. 299 [1932] BARS CONVICTION FOR BOTH OFFENSES NOW.

- ① INTOXICATION MANSLAUGHTER
- ② INTOXICATION ASSAULT

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REQUIRE THE SAME ELEMENTS OR EVIDENCE  
THEY'RE NOT SEPARATE OFFENSES.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph M. Bourgeois

Date: 7-12-21