

No. 22-505

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**In the Supreme Court of the United States**



Tamika J. Pledger

*Petitioner,*

vs.

State of Kansas

*Respondent.*

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Supreme Court, U.S.  
FILED

**AUG 03 2022**

OFFICE OF THE CLERK

On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Tenth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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### **QUESTIONS PRESENTED FOR REVIEW**

A. Does Affidavit for Application for Arrest Warrant include "false statements knowingly and intentionally, or with reckless disregard for the truth" by omitting "material" negative toxicology results in violation of probable cause and due process consistent with *Frank v. Delaware* 438 U.S. 154 (1978).

B. Should cruel and unusual punishment be considered as a new question settled by this Court under Rule 10(c) for serving prison time over an auto accident lacking intent, deadly weapon and DUI traffic infractions where injured parties settled personal injury auto accident with Liberty Mutual Insurance for same claims.

### **LIST OF PARTIES**

1. Tamika J. Pledger, Petitioner
2. State of Kansas, Respondent

### **RELATED PROCEEDINGS**

1. State v. Pledger, No. 118,391, 2019 WL, 2063903  
rev. denied 310 Kan. \_ (Dec. 19, 2019)
2. Pledger v. Geither, No. 20-3168, 2020 SAC, Denied  
in part, Granted in part (April 29, 2021)
3. Pledger v. Geither, No. 21-3212, JWL,  
010110682721 rev. denied 10<sup>th</sup> Cir, 2022 (May 11,  
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## PETITION FOR WRIT OF CERTIORARI

Tamika J. Pledger, a released inmate from Topeka Correctional Facility in Kansas, now registering as a violent offender for fifteen years, respectfully petitions this court for a Writ of Certiorari to review the judgment of the Kansas Court of Appeals and The United States District Court.

## OPINIONS BELOW

The decision by the Kansas Court of Appeals denying Miss Pledgers' direct appeal is reported as *State v. Pledger*, No. 118,391, 2019 WL 2063903, rev. denied 310 Kan. \_\_ (Dec. 19, 2019). That order and Justice Leben, P.J., Buser and Standridge, JJ.

## JURISDICTION

Miss Pledgers' petition for appealability to the 10th Circuit Court of Appeals was denied on May 11, 2020. Miss Pledger invoked this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the 10th Circuit Court of Appeals, Denver Colorado (See Appendix C Page 61a).

## CONSTITUTIONAL PROVISIONS

### United States Constitution, Amendment IV:

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.



**United States Constitution, Amendment V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**United States Constitution, Amendment VIII:**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**United States Constitution, Amendment XIV:**

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

Friday, January 30, 2015, Miss Pledger was called by her three cousins and daughter; two who were injured in the auto accident, to be removed from a possible altercation. Pledger left her home at 1920 North 16<sup>th</sup> Street, turned right onto Troup and proceeded up and over the hill in an attempt to go to the bus stop. Approximately 40 feet over the obstructed hill, Pledger was met with an unavoidable accident where a large crowd and two vehicles were parked in the street fighting. She swerved left to an open field to avoid the vehicles, crowd and fighter. She remained at the scene and administered aid by dialing 911.<sup>1</sup> After police arrived, Pledger's fifteen-year-old daughter and Pledger's *mobile* phones both confiscated without a search and seizure warrant. Officer Tobi Wolf-Simmons detained Pledger placing her in back seat of the police vehicle. Detective K.T. Garrett escorted Pledger to Kanas University Medical Center to submit blood toxicology according to Kansas Motor Vehicle Accident report,

*"METHOD OF DETERMINATION ALCOHOL No evidence of impairment, Impairment Test TG Evidentiary Test given and RP Results Pending."*<sup>2</sup>

Pledger was transported to Wyandotte County Detention Center on a 48-hour hold pending toxicology results.<sup>3</sup> That day, toxicology concluded:

*"Legal blood draw for PD performed. RAC cleansing with Povidine-iodine prior to venipuncture. No alcohol Used. Officer K.T. Garrett witnessed blood draw."*<sup>4</sup>

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<sup>1</sup> Appendix L 76a

<sup>2</sup> Appendix J 71a; 72a; 73a and 74a

<sup>3</sup> Appendix H 69a

<sup>4</sup> Appendix I 70a

February 2nd after 48-hour hold while detained, Kansas City Kansas Police Department filed its Affidavit for Application for Arrest Warrant Complaint #2015 01 3112 alleging cognizable DUI offense stating,

*“Detective Bye went with Tamika Pledger to KU Medical Center where she signed consent to search her person for a blood sample of her blood for the purpose of determining her blood alcohol contents and presence of drugs.”*<sup>5</sup>

Prior to Pledger bonding out, a warrant for her arrest was issued without appearing before a magistrate.<sup>6</sup> Once released she discovered she, and her daughter cellular along with 2001 Mercedes Benz confiscated by Detective Clayton Bye.

May 2017 prior to trial, Liberty Mutual Settled with Counts I T.S. parents, Count II B.G. parent, Count III E.R. and Count IV Mark Britt up to one hundred thousand dollars (\$100,000.00) full coverage bodily injury and death no-fault accident claims.<sup>7</sup>

Pledger’s counsel filed a timely appeal to the Kansas Court of Appeals affirmed May 10, 2019. She then appealed to the Supreme Court of Kansas and was denied review. October 22, 2020, she filed a Writ of Habeas Corpus § 2254 with the District Court of Kansas granted in part and denied in part November 12, 2021. She then appealed to the 10<sup>th</sup> Circuit Court of appeals denied May 11, 2022. May 25, 2017 Pledger was convicted Count I Involuntary Manslaughter, reckless lacking DUI involved, Counts II, III, IV Aggravated Batter, Reckless lacking leaving the scene or DUI involved.

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<sup>5</sup> Appendix E 64a

<sup>6</sup> Appendix F 67a

<sup>7</sup> Appendix M 77a; Appendix N 78a; Appendix O 79a

**A. Arbitrary and Insufficient Affidavit under oath for Probable Cause Warrant**

Kansas Motor Vehicle Accident Report created the day of the accident clarifying “no evidence of impairment”.<sup>8</sup> Three days later, State charged Pledger by filing an Affidavit for Application for Arrest Warrant under oath to secure probable cause for a warrant. Pursuant to the Kansas Code of Criminal Procedure K.S.A. 22-2201 et Seq., “Prosecution shall be commenced by filing a complaint with a magistrate.” A complaint is a “written statement under oath of the essential facts constituting a crime” and must be “signed by some person with knowledge of the facts”. To issue an arrest warrant, a judge must make a probable cause determination that the defendant has committed a crime based upon allegations contained in the complaint, the affidavit filed with it, or other evidence. An affidavit is defined as a written statement, under oath sworn to or affirmed are essentially a verification, which is a written statement given under oath [or affirmation] where the declaration must not only refrain from making a knowingly false statement, but must also have affirmative knowledge of the statement’s truthfulness.<sup>9</sup> The administration of an oath or affirmation is a notarial act, thus, it is governed by the Uniform Law on Notarial Act, K.S.A. 53-501 et seq., and the Act for Oaths and Affirmations, K.S.A. 54-101 et seq. In administering an oath, the notarial officer must determine “that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.” Officer Tobi Simmons-Wolf was first at the scene, Detective K.T. Garrett facilitated the blood withdrawal at KU Medical Center, yet Detective Randolph Slater acknowledged under oath the affidavit by Assistant District Attorney and Notary Casey Meyer.<sup>10</sup> Negative toxicology results were omitted from the Affidavit to secure a probable

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<sup>8</sup> Appendix J 71a; 72a; 73a and 74a

<sup>9</sup> *United States v. Maher* 919 F.2d 1482, 1485 (10<sup>th</sup> Cir. 1990)

<sup>10</sup> Appendix e 64a-66a

cause warrant for Pledger's arrest and criminal charges. The determination must be made "in light of the circumstances" as they would have appeared to a prudent, cautious, trained police officer.<sup>11</sup> It is a violation of the Fourth Amendment and Kansas Constitution Bill of Rights § Fifteen to conduct a search and seizure absent probable cause and for an affiant to knowingly and intentionally, or with reckless disregard for the truth, make a false statement in an affidavit.<sup>12</sup> Where a false statement is made, the search warrant must be voided if the affidavit's remaining content is insufficient to establish probable cause. This prohibition likewise applies to intentional or reckless omissions of material facts, which, if included, would vitiate probable cause.<sup>13</sup> The Cabassa factors<sup>14</sup> that the court must assess in evaluating whether, in a warrantless search situation the evidence would have been inevitably discovered are as follows:

- 1) "The extent to which the warrant process has been completed at the time those seeking the warrant learn of the search;
- 2) The strength of the showing of probable cause at the time the search occurred;
- 3) Whether a warrant ultimately was obtained, albeit after the illegal entry; and
- 4) Evidence that law enforcement agents "jumped the gun" because they lacked confidence in their showing of probable cause and wanted to force the issues by creating a *fait accompli*"<sup>15</sup>

State's warrantless blood drawn though done in accordance with implied consent had to violate defendant's fourth

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<sup>11</sup> *United States v. Maher* 919 F.2d 1485-86 [1406]

<sup>12</sup> *Frank v. Delaware*, 438 U.S. at 155-56

<sup>13</sup> *Frank v. Delaware*, 438 U.S. 154, 171-72, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)

<sup>14</sup> *United States v. Cabassa* 62 F.3d 470 (2d Cir. 1995)

<sup>15</sup> *United States v. Cunningham*, 413 F. 3d at 1203-04; *United States v. Souza*, 223 F. 3d 1197, 1204-05 (10<sup>th</sup> Cir. 2000)

Amendment rights because the fact that she was the driver in a fatal collision did not establish probable cause that she had been operating under the influence. "An essential element of the prosecution's DUI case is establishing that the defendant was intoxicated at the time he or she was apprehended-i.e., "while" driving.<sup>16</sup> As a result, Pledger endured cruel and unusual punishment serving 64 months for an auto accident.

#### B. No-Fault Auto Accident Insurance Claims

Automobile insurance is a comprehensive term which embraces insurance coverage for *all risk* involved in owning and operating an automobile, such as personal injury protection, property damage to another and to the insured, fire theft and vandalism. An accidental injury or death is an unintended and undersigned result arising from act done, while injury or death by "accidental means" is a result arising from acts unintentionally done or death. Accidental killing is one resulting from an act which is lawful and lawfully done under a reasonable belief that no harm is possible; distinguished from "involuntary manslaughter," which is the result of an unlawful act, or of a lawful act done in an unlawful way.<sup>17</sup> Pledger was charged with Count I Involuntary Manslaughter; Recklessly never under the influence of drugs nor alcohol. Frischer & Schaffer Law Firm -represented the interest of Liberty Mutual regarding Count I compensation May 1, 2017, prior to trial.

*"Dear Ms. Pledger: Enclosed for your records is a copy of the settlement released in this case as signed by Jeffrey Smith. The Smith's attorney was unable to locate Marla Smith to obtain her signature. Also enclosed is a satisfaction of Judgment as signed by Mr. Smith that will be filed with the court. The journal of Entry of Judgment as signed by the judged approving the settlement has been previously provided to you, but I am enclosing an additional copy for your reference. That judgment*

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<sup>16</sup> 1 Defense of Drunk Driving cases: Criminal, Civil § 1.05 [c] Blood-Alcohol Concentration [g] Element of "while"; See Appendix I 70a

<sup>17</sup> Black's Law Dictionary Seventh Edition

dismisses the suit against you with prejudice, meaning it can never be re-filed."<sup>18</sup>

Law Firm Frischer and Schaffer also mailed a letter informing her of Counts II and III aggravated battery recklessly stating,

*"Dear Ms. Pledger: Enclosed for your records is a copy of the Satisfaction of Judgment for the Glover/Robinson civil suit that has been filed with the court. Also enclosed is a copy of the settlement release for the Glover/Robinson claims that was previously sent to you by my office. The journal Entry of Judgment signed by the judge approving the settlement has also been previously provided to you by my office, but I am enclosing an additional copy for your reference. That judgment dismisses the suit against you with prejudice, meaning it can never be re-filed. The claims against you for the injuries of Brandy Glover and Essence Robinson are now fully resolved and terminated. Liberty Mutual has fully resolved all the civil suits and claims against you arising out of the January 30, 2015 auto accident and is closing its file."*<sup>19</sup>

Frischer and Schaffer also mailed a letter informing her of Count IV satisfaction of judgment.

*"Dear Ms. Pledger: As you are aware, claimant Mark Britt has never signed the settlement release provided to his attorney as part of the settlement of his claim against you for this January 30, 2015 auto accident. His attorney has informed me he has tried on numerous occasions to get Mr. Britt to sign the release but Mr. Britt has simply not been cooperative. Mr. Britt never filed a lawsuit against you, so at present there is no means to have a judge order Mr. Britt to sign the release. Regardless, the two-year statute of limitation for Mr. Britt to sue you with regards to this January 30, 2015 accident has now expired. I have checked Wyandotte County court records, which is where any suit against you with regard to this accident should be filed, and confirmed (1) Mr. Britt has never filed suit against you, and (2) there are no new suits filed against you by anyone with regard to this accident. At this point in time, any suit filed against you by Mr. Britt would be bared by the two-year statute of limitation and would be invalid. Therefore, even though Mr. Britt has not signed the release, you are now fully protected from liability as to his claim. For that reason, it is no longer a necessity to obtain a signed release from Mr. Britt to protect you from his claim. In addition, because Mr. Britt already*

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<sup>18</sup> Appendix M 77a

<sup>19</sup> Appendix N 78a

accepted settlement money for his claim against you, any suit he brought would be barred on that basis as well..."<sup>20</sup>

Never has there been a case like this where injured parties settled auto accidental insurance claim and incarcerated for same accident lacking drugs, alcohol and traffic infractions.

### Direct Appeal

On direct appeal, Pledger challenges the affidavit by raising lack of subject-matter jurisdiction. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.<sup>21</sup> In a published opinion, the Kansas Court of Appeals stated,

*"Pledger argues that these decisions were incorrect because the court didn't provide 'findings regarding Pledger's motion challenging the evidence,' and its rulings weren't supported by sufficient evidence."*

*"It was Pledger's responsibility to designate the record for appeal, and she didn't include the transcript of the hearing in which the court drew its conclusions that Pledger says weren't adequately supported by evidence. Since Pledger failed to include the transcript that would show what evidence the court considered in reaching its conclusion, we must 'presume that the district court's findings were properly supported.'" <sup>22</sup>*

"If a state prisoner has failed to exhaust or has procedurally defaulted a claim by failing to raise it in the state courts, the claim may be raised in the Federal habeas court only if the prisoner can demonstrate cause for the failure and actual prejudice from the constitutional violation; or that the prisoner is actually innocent, meaning that, in light of all of the evidence, it is more likely than not that no reasonable juror would have convicted the prisoner."<sup>23</sup> Pledger then took her

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<sup>20</sup> Appendix 0 79a-80a

<sup>21</sup> *Ex parte McCardle*, 74 U.S. at 514

<sup>22</sup> Appendix A 15a

<sup>23</sup> *Bousley v. United States*, 523 U.S. 614, 622-23 (1998)



Habeas Corpus claims § 2254(f) to United States District Court as they stated,

*"The Court notes that petitioner, in briefing this claim and various other claims, repeatedly raises certain issues, but she had not succeeded in explaining how those issues are relevant to her federal constitutional claims. For instance, petitioner emphasizes that she was not cited for any traffic violations on the date in question and that she was not shown to be under the influence of drugs or alcohol; but the statutes of conviction do not require any such proof. Petitioner also noted that her victims received compensation from an insurer, but she has not cited any authority that such payments prohibit or otherwise affect her criminal prosecution. Accordingly, the Court denies this claim."*<sup>24</sup>

On the contrary, "such statute of conviction" does require such proof and is the jurisdictional standards of due process. A prosecution of a traffic offense requires first a traffic citation K.S.A. 8-2108 and that absent strict compliance with the law at each stage of the proceeding; all subsequent proceedings are void for lack of jurisdiction. In the event the form of citation provided for in K.S.A. 8-2106 includes information, and is sworn to as required under the law of this section in respect to a complaint having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution under this act.<sup>25</sup> Once a traffic citation is filed a valid complaint in compliance to K.S.A. 22-2202 (6) is filed. A Complaint means a written statement under oath of the essential facts constituting a crime, except that a notice appear issued by a law enforcement officer pursuant to and in compliance with...[KSA § 8-2106] shall be deemed a valid complaint if it is signed by said law enforcement officer.<sup>26</sup> Kansas Legislature has concluded that due process is satisfied in such situations if the officer merely signs the citation where the citation contains sufficient information regarding the nature of the offense charging the motorist is given an opportunity to contest the citation. This statement by the United States Court of Appeals has decided an important question of federal law that has not been, but

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<sup>24</sup> Appendix B 50a

<sup>25</sup> K.S.A. 8-2108

<sup>26</sup> K.S.A. 22-2202 (6)

should be settled by this Court under Rule 10(c). Based on evidence presented, laws of Kansas and the United States Constitution, Pledger is innocent of all crimes, guilty of having an accident and served prison time for both.

### REASONS FOR GRANTING THE WRIT

As explained above, principles and examples described in the court precedents expose auto drivers of United State Amendment IV and VIII as a result of an accident.<sup>27</sup> Previous court's decisions make it pointless to pay auto insurance if ever accident equals prison time. Careful consideration is valued to avoid frivolous exhaustion of the prison system.

#### 1. TO AVOID DEPRIVATION OF FALSE CLAIM THIS COURT SHOULD CLARIFY "PROBABLE CAUSE" STANDARD ABSENT DRUGS AND ALCOHOL

This case presents this Court with an opportunity to clarify the Frank v. Delaware, 438 U.S. 154 (1978)' "substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth standard" in the face of law enforcement actions under 28 U.S.C. § 1001, 1623 and 31 U.S. Constitution § 3729. State obtained blood from Pledger never citing a traffic citation.<sup>28</sup> State can only acquire a warrant on probable cause if Pledger failed toxicology test or drugs and alcohol was involved "while" driving and a traffic citation was administered with truthfulness signed by the officer.

Kansas Statute Annotated and the Kansas Bill of Rights are consistent with United State Constitution Fourth Amendment due process and probable cause standard. State officials should have complied with both constitutions as they both are adopted into law. To disregard probable cause is to undermine a universal standard of police conduct when addressing drivers

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<sup>27</sup> Appendix P 81a; Appendix O 82a

<sup>28</sup> Appendix K 75a Department of Motor Vehicle Report

all across the United States of America. Drivers are required to abide by the laws, rules, regulations. Police are equally responsible to abide by the United State Constitution and all amendments.

## 2. TO PURPOSE AN IMPORTANT QUESTION OF LAW THAT HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT

The Court has recognized that Congress may, without running afoul of *Klein*, direct courts to apply newly enacted legislation to pending civil cases, even when such an application would alter the outcome in the case.<sup>29</sup> “While Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation.”<sup>30</sup> No case like this has been presented before this Court. Boundaries must be set to liability for the consequences for any act upon the basis of some social idea of justice or policy.<sup>31</sup> Legal responsibility must be limited to those causes which are so clearly connected with the result and of such significance that the law is justified in imposing criminal or accidental liability<sup>32</sup>; not both. Eighth Amendment forbids only extreme sentences that are grossly disproportionate to the crime.<sup>33</sup> This petition welcomes clarification on how an insurer is held criminally and accidentally responsible for a no-fault auto accident. Absent intervention by this Court, both Courts’

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<sup>29</sup> *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266–67 (1994)

<sup>30</sup> *Crowell v. Benson*, 69 F.2d at 257

<sup>31</sup> 1A *John Alan Appleman & Jean Appleman, Insurance Law and Practice* § 360 at 455 (rev. vol 1981)

<sup>32</sup> W. Page Keeton et al, *Prosser and Keeton on the law of Torts* § 41 at 264 (5th ed. 1984)

<sup>33</sup> *Graham v. Florida*, 560 U.S. 48, 59-60 (2010); Citing *Harmelin v. Michigan*, 501 U.S. 957, 997, 1000-01 (1991)

published decision will undermine the Constitution of the United States crafted to safeguard against challenging evidence under probable cause for a warrant. *Franks v. Delaware*, 438 U.S. 154 (1978), gives the rights to challenge evidence collected on the basis of false statements. A person who is falsely arrested is at the same time falsely imprisoned.<sup>34</sup> The false statements or omissions of negative toxicology results administered at THE UNIVERSITY OF KANSAS HEALTH SYSTEM by Officer K.T Garrett (APPENDIX I PAGE 70a) is "material" to a finding of probable cause.

### CONCLUSION

For the aforementioned reasons, Ms. Pledger respectfully requests this Court issue a writ of certiorari to review the judgment of the Kansas Court of Appeals, United States Court of Appeals and questions of federal law that has not been, but should be settled by this Court.<sup>35</sup>

Respectfully presented,

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November 11, 2022

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<sup>34</sup> 32 AM. Jur. 2d False Imprisonment § 3 (1995) Falsus in uno doctrine

<sup>35</sup> United States Supreme Court Rule 10 (c)