

No. _____

SUPREME COURT OF THE UNITED STATES

ELOY HERACLIO ALCALA,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent,

On Petition for a Writ of Certiorari to the
Thirteenth Court of Appeals of Texas

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

The question here is whether trespassing onto curtilage to touch the hood of an automobile to determine if it was recently driven, in light of the dissipation of heat, constitutes exigent circumstances?

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IV. Petition for Writ of Certiorari

Eloy Heraclio Alcala, an inmate currently incarcerated at the McConnell Unit in Beeville, Texas by and through appointed counsel Rolando Garza, respectfully petitions this court for a writ of certiorari to review the judgment of the Thirteenth Court of Appeals of Texas.

V. Opinions Below

The Thirteenth Court of Appeals of Texas issued an unpublished opinion addressing and denying Alcala's direct appeal regarding adverse rulings to the suppression of evidence reported as *Alcala v. State*, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*). (App. A)

In a prior unpublished opinion this same appellate court remanded Alcala's first conviction for a new trial based on Alcala's statement being obtained despite an unambiguous affirmative invocation of right to counsel in violation of the Fifth Amendment. *Alcala v. State*, No. 13-12-00259-CR, 2014 Tex. App. LEXIS 7949, at *47 (Tex. App.—Corpus Christi July 24, 2014, *pet. ref'd*) (App. C)

Alcala's son was also convicted of this same capital murder and he appealed his conviction to this same court of appeals and a published opinion followed. *Alcala v. State*, 476 S.W.3d 1 (Tex. App.—Corpus Christi 2013, *pet. ref'd*) (App. D)

VI. Jurisdiction

Review is sought of the decision of the Thirteenth Court of Appeals of Texas addressing and denying Alcala's direct appeal regarding adverse rulings to the suppression of evidence at the trial court level through motions to suppress and is reported as *Alcala v. State*, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*). (A-9-14)

After obtaining extensions of time to file a motion for rehearing up to and including December 15, 2023, same was filed on said date. The motion for rehearing was denied on January 9, 2024 by the Thirteenth Court of Appeals.

After obtaining extensions of time to file a petition for discretionary review in the Texas Court of Criminal Appeals up to and including May 10, 2024 same was transmitted on said date under case number PD-0119-24. The Texas Court of Criminal Appeals refused Alcala's petition for discretionary review on June 5, 2024. (B-17) Thus, the petition for writ of certiorari was due ninety days from June 5, 2024 being September 3, 2024. United States Supreme Court Rule 13. A motion for extension of time to file same was granted by this Court on August 22, 2024 up to and including October 3, 2024 under Application number (24A193).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), having timely filed this petition within the allotted time granted by this Court.

VII. Constitutional Provisions Involved

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 IV.

VIII. Statement of the Case

The Thirteenth Court of Appeals of Texas addressed and denied Alcala's direct appeal regarding efforts to suppress evidence at the trial court level through motions to suppress and is reported as *Alcala v. State*, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*). (A-9-14)

When this Court was confronted with the question of whether the natural metabolism of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases, this Court concluded that it does not, and held, consistent with general Fourth Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances.

Missouri v. McNeely, 569 U.S. 141, 145, 133 S. Ct. 1552, 1556 (2013)

The question here is whether trespassing onto curtilage to touch the hood of an automobile to determine if it was recently driven, in light of the dissipation of heat, constitutes exigent circumstances.

1. Background

In sum:

At approximately 1:30 a.m. on October 8, 2010, Pharr Police Department (PPD) Investigator Enrique Ontiveros contacted dispatch to report hearing "three loud noises that appeared to be gunshots." Within minutes, Investigator Ontiveros was directed to respond to reports of "shots fired with two men down" in the 900 block of East Santa Monica. Investigator Ontiveros arrived on scene near the intersection of East Santa Monica and South Sabino Avenue and observed a brown van with its lights on and engine running. Two men, later identified as cousins David Garcia and Victor De La Cruz, were lying motionless on the ground by the van, blood pooling around their heads. Investigator Ontiveros was soon joined by PPD Investigator Juan Manuel Quilantan Jr., Interim Police Chief Jose Alejandro Luengo, Investigator Michael Perez, Officer Eric Galaviz, Sergeant David Castillo, and Sergeant Daniel Leal.

Less than two hours later, appellant and his son, Eloy Jiovanni Perez Alcala (Jiovanni), had been identified as suspects in the double homicide and arrested. Appellant was later indicted on capital murder charges and pleaded not guilty.¹

Alcala v. State, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, at *1-2 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*) (A-2)

¹ As noted, Alcala's son also appealed his conviction of this same capital murder to the same court of appeals. *Alcala v. State*, 476 S.W.3d 1 (Tex. App.—Corpus Christi 2013, *pet. ref'd*) (App. D)

2. The approach of Alcala's home

Investigator Juan Manuel Quilantan:

Investigator Quilantan testified that he helped secure and block off the crime scene to preserve any potential evidence. Investigator Quilantan then joined other officers in looking for the suspect vehicle and ruled out the involvement of two other white Dodge trucks within the neighborhood before locating a third white Dodge truck at 708 Santa Monica.

While surveying the property at 708 Santa Monica, a neighbor told Investigator Quilantan that the driver of the white Dodge truck returned to the home without its headlights on shortly after the shooting. Investigator Quilantan then noticed somebody peeking through the windows from the home and the sound of a door locking followed. Investigator Quilantan determined that exigent circumstances dictated that he enter the property to feel the hood of the truck to determine if it was warm from recently being driven. Investigator Quilantan confirmed the hood felt hot and noticed two live rounds of ammunition in the cab of the white Dodge truck.

Also parked at the home was a white Cadillac. Investigator Quilantan and Sergeant Castillo were standing a few feet behind the white Cadillac when Sergeant Castillo shined his light into the back window of the white Cadillac and both officers noted blood inside the vehicle. Investigator Quilantan, accompanied by additional officers, initiated contact with the residents of 708 Santa Monica.

Alcala v. State, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, at *8-9 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*) (footnotes omitted) (A-4)

Similarly, in a prior opinion,² the court summarized this encounter as follows:

² As noted, this same Court of Appeals previously remanded for a new trial based on Alcala's statement being obtained despite an unambiguous affirmative invocation of right to counsel in violation of the Fifth Amendment. *Alcala v. State*, No. 13-12-00259-CR, 2014 Tex. App. LEXIS

Officer Quilantan "got other officers to assist [him]" in searching the neighborhood for the suspect vehicle. They discovered a white pickup truck parked on the street. At the time, Officer Quilantan was with Officer Luengo and Officer Galavis. Officer Quilantan testified that he touched the hood of the vehicle to determine if it had recently been driven and found that it was "cold, cold as can be." This indicated to Officer Quilantan that it had not recently been driven; he therefore believed that it was not the suspect vehicle.

The officers then walked towards Alcala's residence. Officer Quilantan testified, "That's when we spot the truck." He explained that it was difficult to see because it was a dark area inside the property and there was a tree blocking the way. The property was enclosed completely by a metal fence.³ Officer Quilantan remembers seeing someone looking through the blinds from a window in Alcala's house. There was also a Cadillac CTS parked inside the property. The two officers decided to walk onto the property "just to eliminate any possible person of interest." Officer Quilantan touched the hood and grille of the white Dodge Ram, and it was warm. Sergeant Castillo then arrived at Alcala's house and asked Officer Quilantan if he had "seen the inside of the car." Officer Quilantan testified, "And that's when we found the—back portion of the front headrest of the car full of blood." On cross-examination, Officer Quilantan testified that, using a flashlight, he looked through the passenger side window of the Dodge Ram and observed a live round of ammunition.

The officers then decided to speak with the owners of the property. The officers knocked on the door and spoke with Alcala.

7949, at *47 (Tex. App.—Corpus Christi July 24, 2014, *pet. ref'd*) (APP. C)

³In relevant part, a person commits an offense (Trespass) if the person enters or remains on or in property of another, including residential land, or an aircraft or other vehicle, without effective consent and the person had notice that the entry was forbidden. Tex. Penal Code § 30.05(a)(1). "Notice" means, in relevant part, fencing or other enclosure obviously designed to exclude intruders. Tex. Penal Code § 30.05(b)(2)(B).

Alcala v. State, No. 13-12-00259-CR, 2014 Tex. App. LEXIS 7949, at *12-13 (Tex. App.—Corpus Christi July 24, 2014, *pet. ref'd*) (C-21-22)

Finally and most concisely, the encounter was summarized in Alcala's sons separate appeal as follows:

At this point, Officer Jesse Garza of the Pharr Police Department arrived at the scene. Together, he and Officer Quilantan went inside the property and touched the hood of the truck. It "was warm." Then, using a flashlight, Officer Quilantan "spotlighted the inside of the cabin of the truck [and] . . . was able to see . . . a live bullet . . . inside . . . [a] cup holder." Then, Officer Garza said, "Hey, you know what, somebody is looking at us." The house "had the lights off, but you could see a silhouette going like - - you know, looking at us," Officer Quilantan testified. He "spotlighted it, [but] that person was no longer there."⁴

Officer Quilantan's attention then shifted to a pearl-colored Cadillac CTS that was also parked on the property, inside the chain-link fence. He "lit it up with [his] . . . flashlight, [and he] . . . could see a lot of bloodstains." Sergeant David Castillo of the Pharr Police Department opened the door to the vehicle, and the officers "looked at the inside and it was just full of blood."⁵ "And then that's when several of [the officers] . . . decided to do a knock and talk, which is talk to the owners of the residence and see what's going on."

Alcala v. State, 476 S.W.3d 1, 10-11 (Tex. App.—Corpus Christi 2013, *pet. ref'd*) (D-38)

3. Direct Appeal

⁴The exigent circumstances rule applies when the police do not gain entry by means of an actual or threatened violation of the Fourth Amendment. *See Kentucky v. King*, 563 U.S. 452 (2011)

⁵Law enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made. *See Horton v. California*, 496 U.S. 128, 136-140, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990)

The court of appeals set out the relevant law as follows:

The text of the Fourth Amendment "expressly imposes two requirements[:] [f]irst, all searches and seizures must be reasonable[;] [s]econd, a warrant may not be issued unless probable cause is properly established and the scope of the authorized search is set out with particularity." *Kentucky v. King*, 563 U.S. 452, 459, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011) (citing U.S. Const. amend. IV); *Martin v. State*, 620 S.W.3d 749, 759 (Tex. Crim. App. 2021). Such special protections attach to the home. *Martin*, 620 S.W.3d at 759. "At the [Fourth] Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511, 81 S. Ct. 679, 5 L. Ed. 2d 734 (1961)). "To give full practical effect to that right, the Court considers curtilage—the area immediately surrounding and associated with the home—to be part of the home itself for Fourth Amendment purposes." *Collins v. Virginia*, 138 S. Ct. 1663, 1670, 201 L. Ed. 2d 9 (2018) (quoting *Jardines*, 569 U.S. at 6) (cleaned up). "[T]he extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself." *United States v. Dunn*, 480 U.S. 294, 300, 107 S. Ct. 1134, 94 L. Ed. 2d 326 (1987).

"When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred." *Collins*, 138 S. Ct. at 1670. A warrantless search of a curtilage is presumptively unreasonable. *Igboji v. State*, 666 S.W.3d 607, 613 (Tex.Crim.App. 2023). Where a defendant establishes that a warrantless search occurred, "the State has the burden of showing that probable cause existed at the time the search was made and that exigent circumstances requiring immediate entry made obtaining a warrant impracticable." *Turrubiate v. State*, 399 S.W.3d 147, 151 (Tex.Crim. App. 2013). "If either probable cause or exigent circumstances are not established, a warrantless entry will not pass muster under the Fourth Amendment." *Parker v. State*, 206 S.W.3d 593, 597 (Tex.Crim.App. 2006).

"Probable cause exists when reasonably trustworthy circumstances within the knowledge of the police officer on the scene would lead him to reasonably believe that evidence of a crime will be found." *Turrubiate*, 399 S.W.3d at 151. Exigent circumstances justifying a warrantless entry include "(1) providing aid to persons whom law enforcement reasonably believes are in need of it; (2) protecting police officers from persons whom they reasonably believe to be present, armed, and dangerous; or (3) preventing the destruction of evidence or contraband." *Ratliff v. State*, 663 S.W.3d 106, 116 (Tex.Crim.App. 2022) (*quoting Turrubiate*, 399 S.W.3d at 151); *see Lange v. California*, 141 S. Ct. 2011, 2017-18, 210 L. Ed. 2d 486 (2021) (reviewing well-recognized exceptions for warrantless entry onto private property).

Alcala v. State, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, at *27-29 (Tex. App.—Corpus Christi Aug. 28, 2023, pet. ref'd) (A-9-10)

The court of appeals then, "Assuming, without deciding, that the officers' entry onto the property past the gated fence line and touch of the truck was an unlawful entry and search", concluded probable cause and exigent circumstances existed, rendering entry and search permissible. *Alcala v. State*, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, at *34-35 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*) (A-11)

The court of appeals posited probable cause due to:

The following information available to officers at the time of their entry onto appellant's curtilage⁶ established probable cause: a double homicide had transpired less than one hour before, and multiple witnesses reported the involvement of a white Dodge truck; a white Dodge truck was parked at appellant's home at 708 Santa Monica; the

⁶ There were multiple entries onto the curtilage.

decedents' family told officers that David had been in a physical altercation with an individual who resided at the home where the white Dodge truck was parked; appellant's neighbor reported seeing the white Dodge truck returning to the home with its headlights off shortly after the shooting, an unusual activity considering the time of evening; in response to the officers presence on the street, a resident of 708 Santa Monica was seen peeking through blinds before locking the door; and while still outside the fence line, an officer observed what he believed to be blood inside another vehicle parked in the driveway. These facts and circumstances were sufficient to warrant a reasonable man in believing that (1) a crime had been committed; (2) the white Dodge truck was utilized in the commission of the crime; and (3) an individual or individuals residing at 708 Santa Monica had committed the crime.

Alcala v. State, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, at *34-35 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*) (A-11)

However, at the time of the initial entry, the officers were simply going through a neighborhood and inspecting/searching white Dodge trucks. They did not know which one may have been involved and thus, the desire to touch the trucks.

Next, even assuming the existence of probable cause, exigent circumstances did not exist.

In an effort to support this, the opinion notes:

Investigator Quilantan testified he believed exigent circumstances warranted entry: "[A] double homicide had just occurred. People were telling us that that's the suspect vehicle. And I didn't know if anybody was in there. I didn't know if we were going to have an active shooter. I didn't know if the suspect was still inside the vehicle at that time." Additionally, Investigator Quilantan testified regarding his concern about the potential loss of evidence, namely, the dissipation of heat leaving the vehicle believed to be involved in the shooting.

This—coupled with the officers' observance that there was blood splattered inside another vehicle in the driveway and that a resident inside the home locked the door in response to police presence—satisfied the exigent circumstance exception. *See Missouri v. McNeely*, 569 U.S. 141, 145, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013) (observing that consistent with general Fourth Amendment principles, exigency is a matter which "must be determined case by case based on the totality of the circumstances")

Alcala v. State, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, at *35-37 (Tex. App.—Corpus Christi Aug. 28, 2023, *pet. ref'd*) (A-11-12)

However, any warrantless entry based on exigent circumstances must, of course, be supported by a genuine exigency. *See Brigham City v. Stuart*, 547 U.S. 398, 406 (2006). Here, the “exigency” was formed in the form of “if’s”. There will always be “if’s”. Rampant “if’s” does not equate to a genuine exigency. Also, law enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made/the blood splatter. *See Horton v. California*, 496 U.S. 128, 136-140, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990). Finally, the exigent circumstances rule applies when the police do not gain entry by means of an actual or threatened violation of the Fourth Amendment/the locking of the door. *See Kentucky v. King*, 563 U.S. 452 (2011)

The true question centers around Quilantan’s concern about the potential loss of evidence, namely, the dissipation of heat leaving a vehicle that may have been

involved in the shooting.

IX. Reasons for Granting the Writ

- A. To determine if the potential dissipation of evidence on curtilage amounts to exigent circumstances undermining the warrant requirement.

Just as in *Missouri v. McNeely*, that the natural metabolization of alcohol in the bloodstream does not present a *per se* exigency that justifies an exception to Fourth Amendment's search warrant requirement for nonconsensual blood testing, it follows that the possible cooling off of the hood of a truck on curtilage does not justify an exception to the Fourth Amendment warrant requirement. 569 U.S. 141 (2013)

Other factors must be considered. In *McNeely*, this Court noted how, "technological developments that enable police officers to secure warrants more quickly, and do so without undermining the neutral magistrate judge's essential role as a check on police discretion, are relevant to an assessment of exigency. That is particularly so in this context, where BAC evidence is lost gradually and relatively predictably." *Missouri v. McNeely*, 569 U.S. 141, 155 (2013)

The same is true in the present case. Noticeably here, after declaring exigent circumstances, the court of appeals did not conduct any analysis as to the ability to procure a warrant and simply relied on the perceived exigency. Such an approach is tantamount to a *per se* rule that the natural metabolization of alcohol in the

bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing, and which this Court found unconstitutional. *Missouri v. McNeely*, 569 U.S. 141, 145 (2013)

Extending *McKneely* to the circumstances at issue will ensure that the protections of the home/curtilage are not eviscerated.

X. CONCLUSION

For the foregoing reasons, Alcala respectfully requests that this Court issue a writ of certiorari to review the judgment of the Thirteenth Court of Appeals of Texas.

Respectfully submitted,

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