

IN THE
Supreme Court of the United States

THOMAS S. BELL,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA.

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Jr.,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Third Circuit

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**APPLICATION FOR EXTENSION OF TIME
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To the Honorable Samuel A. Alito, Jr., Associate Justice of the United States Supreme Court and Circuit Justice for the Third Circuit:

Applicant-Defendant Thomas S. Bell respectfully requests an extension of time of sixty days within which to file a petition for writ of certiorari. Sup. Ct. R. 13.5. On July 17, 2019, the Pennsylvania Supreme Court issued its opinion, concluding that, under the Fourth Amendment to the United States Constitution, a driver's refusal to consent to warrantless blood testing may be used as conclusive evidence of guilt in a driving-under-the-influence prosecution. *See* Appendix, Attachment A.

Mr. Bell's petition is currently due on October 15, 2019. *See* Sup. Ct. R. 13.1. For good cause, Mr. Bell asks that this deadline be extended to be filed on or before December 13, 2019.

1. Mr. Bell intends to file a petition for a writ of certiorari seeking review of the Pennsylvania Supreme Court's order affirming his judgment of conviction. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1257.

2. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

3. This case presents a substantial and important constitutional question: Whether the Fourth Amendment permits the government to use an individual's

refusal to consent to a warrantless blood test as dispositive evidence of his guilt in a subsequent criminal prosecution for driving under the influence (“DUI”).

4. Under Pennsylvania law, the Commonwealth is permitted in a criminal prosecution to introduce evidence at trial that the defendant charged with DUI exercised its constitutional right to refuse to submit to a blood test. 75 Pa. C.S. § 1547(e); *see* Appendix, Attachment A at 1 n.1.

5. Although the Fourth Amendment generally permits the imposition of certain “*civil*” penalties and evidentiary consequences on motorists who refuse to comply,” it prohibits statutory implied-consent regimes under which a motorist is “deemed to have consented to submit to a blood test *on pain of committing a criminal offense.*” *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016) (emphasis added).

6. In the aftermath of *Birchfield*, open questions remain regarding the extent to which the Fourth Amendment to the United States Constitution forbids the government from converting a purported “evidentiary consequence” for refusing to consent to a blood test into an impermissible criminal penalty.

7. This case is an ideal vehicle for resolving that question because, relying on 75 Pa. C.S. § 1547(e), the Commonwealth used Mr. Bell’s refusal to consent to a blood test as dispositive evidence of his guilt at trial.

8. Following his conviction, the trial court granted Mr. Bell a new trial, concluding that *Birchfield*, 136 S. Ct. 2160, precludes states from penalizing DUI

defendants for refusing to submit to warrantless blood testing. Appendix, Attachment A at 3. The Commonwealth of Pennsylvania filed an interlocutory appeal, and the Pennsylvania Supreme Court ultimately concluded—over the lengthy and persuasive dissent of two Justices—that the U.S. Constitution and this Court’s precedent permit a criminal conviction to rely on a driver’s refusal to consent to a warrantless blood search. *See* Appendix, Attachments A & B.

9. Mr. Bell seeks to challenge this ruling on Fourth Amendment grounds. The constitutional issue he intends to raise in his petition for writ of certiorari has implications for motorists across the country and, indeed, any citizen asserting his or her right to refuse to consent to a warrantless search.

10. Further increasing the need for a thoughtful and well-reasoned petition for a writ of certiorari is the fact that the highest courts in Colorado and Vermont are in accord with the Pennsylvania Supreme Court’s decision. *Fitzgerald v. People*, 394 P.3d 671, *cert. denied sub nom. Fitzgerald v. Colorado*, 138 S. Ct. 237 (Colo. 2017); *State v. Rajda*, 196 A.3d 1108 (Vt. 2018), *reargument denied* (Sept. 4, 2018). Notwithstanding these decisions, significant room for disagreement exists regarding the extent to which the government may penalize the exercise of the constitutionally recognized right to refuse a blood test without violating the Fourth Amendment, as demonstrated by the two-Justice dissent from the Pennsylvania Supreme Court’s decision affirming Mr. Bell’s conviction. *See* Appendix, Attachment B.

11. To properly brief these issues in a petition for writ of certiorari, Mr. Bell respectfully requests an extension of his deadline to file the petition until December 13, 2019, which falls within sixty days of the original due date. Good cause exists for the request. *See* Sup. Ct. R. 13.5.

12. Mr. Bell has only recently retained the assistance of new counsel, Professors Jean Galbraith and Ilana Eisenstein of the University of Pennsylvania Law School's Appellate Advocacy Clinic, for purposes of seeking this Court's review.

13. The requested extension is needed for undersigned counsel and other members of the Clinic to fully familiarize themselves with the trial record, the decisions below, and the relevant case law, and to prepare the petition for writ of certiorari.

14. In light of the Clinic's many other obligations and academic calendar schedule, the Clinic would have difficulty completing those tasks by the current due date in mid-October.

15. In addition, Ms. Eisenstein is a private practitioner with substantial professional obligations in the coming months, including serving as counsel at a two-week trial in a complex multi-district case beginning September 16, 2019.

16. Counsel for Mr. Bell has conferred with counsel for the Commonwealth, Kenneth A. Osokow, District Attorney of Lycoming County, Pennsylvania, who has advised that the Commonwealth does not oppose this requested extension.

17. This is Mr. Bell's first request for an extension of the deadline to file a petition for writ of certiorari.

18. For these reasons, Mr. Bell respectfully requests that the due date for his petition for a writ of certiorari be extended to and including December 13, 2019.

Respectfully submitted,

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