No. _____

In The
Supreme Court of the United States

ANN BUCARO,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Appeals, Second District Of Texas, At Fort Worth, Texas

PETITION FOR WRIT OF CERTIORARI

MELVYN CARSON BRUDER

516 Turley Law Center
6440 N. Central Expressway
Dallas, Texas 75206
214.987.3500
214.987.3581 Fax
melvyn@melvynbruderlaw.com

Counsel for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Whether the court of appeals failed to apply the proper Fourth Amendment standard for assessing the voluntariness of Ms. Bucaro's consent to provide specimens of her breath by holding that Ms. Bucaro's agreement to provide a specimen of breath pursuant to Texas's implied consent law satisfied the Fourth Amendment's free and voluntary consent requirement.

PARTIES TO THE PROCEEDING

Petitioner Ann Bucaro was the defendant in the County Criminal Court No. 2 of Denton County, Texas and the appellant in the court of appeals.

The State of Texas was represented by Paul Johnson, Criminal District Attorney, in the Texas courts in this case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINION BELOW	1
STATEMENT OF JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
I. Consent to a warrantless search and seizure under the Fourth Amendment must be based on a careful consideration of all the facts and circumstances surrounding the consent to assure that the consent was given freely and voluntarily	7
II. The court of appeals has erroneously held that consent given under the Texas implied consent law is tantamount to and satisfies the standard of consent required under the Fourth Amendment	11

TABLE OF CONTENTS – Continued

Page

III. Agreements to provide specimens of breath or blood pursuant to implied consent statutes are almost invariably situations in which the person is merely acquiescing to a police officer's authority rather than situations in which the person is expressing a free and voluntary decision to surrender Fourth Amendment rights 16

CONCLUSION 20

APPENDIX

Bucaro v. State, Tex. App. – Fort Worth, No. 02-14-00339-CR, August 27, 2015 (Memorandum Opinion on Rehearing) ..... App. 1

State v. Bucaro, No. CR-2013-5651-B, County Criminal Court No. 2 of Denton County, Texas, Findings of Fact and Conclusions of Law ..... App. 12

Bucaro v. State, Tex. Crim. App., No. PD 1428-15, February 24, 2016 ..... App. 17

TABLE OF AUTHORITIES

Page

CASES

Arizona v. Gant, 556 U.S. 332 (2009).....7

Bailey v. Alabama, 319 U.S. 219 (1911).....17

Bell v. Burson, 402 U.S. 535 (1971) 9, 18

Bucaro v. State, Tex. App. – Fort Worth, No. 02-14-00339-CR, August 27, 2015 .....*passim*

Bumper v. North Carolina, 391 U.S. 543 (1968) 8, 18

Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523 (1967) 17

Coolidge v. New Hampshire, 403 U.S. 443 (1971).....7, 8

District of Columbia v. Little, 339 U.S. 1 (1950) 17

Frost & Frost Trucking Co. v. R.R. Comm'n, 271 U.S. 583 (1926) 17

Garrity v. New Jersey, 385 U.S. 493 (1967) 9, 18

Katz v. United States, 389 U.S. 347 (1967).....7

Koontz v. St. Johns River Water Mgmt. Dist., 133 S.Ct. 2586 (2013).....17

Miranda v. Arizona, 384 U.S. 436 (1966) 9

Missouri v. McNeely, 133 S.Ct. 1552 (2013)..... 7, 8, 12, 14, 16

Reeder v. State, 428 S.W.3d 924 (Tex. App. – Texarkana 2014) (op. on reh'g), *aff'd, Reeder v. State*, No. PD-0601-14 (Tex. Crim. App. January 27, 2016).....14

TABLE OF AUTHORITIES – Continued

Page

Riley v. California, 134 S.Ct. 2473 (2014) 7

Royer v. Florida, 460 U.S. 491 (1983) 18

Schmerber v. California, 384 U.S. 757 (1966) 8, 14

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) 8, 9

See v. Seattle, 387 U.S. 541 (1967) 17

Skinner v. Ry. Labor Exec. Ass'n, 489 U.S. 602 (1989) 8

South Dakota v. Dole, 483 U.S. 203 (1987) 19

State v. Aiken, 282 Ga. 132 (2007) 9

State v. Butler, 302 P.3d 609 (Ariz. 2013) 15

State v. Declerck, 317 P.3d 794 (Kan. 2014) 15

State v. Fierro, 853 N.W.2d 235 (S.D. 2014) 14

State v. Medicine, 2015 S.D. 45 (June 10, 2015) 18, 19

State v. Wulff, 337 P.3d 575 (Idaho 2014) 14

Steward Mach. Co. v. Davis, 301 U.S. 548 (1937) 19

Terry v. Ohio, 392 U.S. 1 (1968) 7

Thomas v. Review Board, 450 U.S. 707 (1981) 19

United States v. Jackson, 390 U.S. 570 (1968) 19

United States v. Kroll, 481 F.2d 884 (8th Cir.1972) 9

Veronia School Dist, 47J v. Acton, 515 U.S. 646 (1995) 7

Williams v. State, 296 Ga. 817, 771 S.E.2d 373 (2015) 13, 14

TABLE OF AUTHORITIES – Continued

Page

Williams v. State, 167 So.3d 483 (Fla. Ct. App. 2015) 12

Ybarra v. Illinois, 444 U.S. 85 (1979) 15

CONSTITUTION

U.S. CONST. amend. IV .....*passim*

STATUTES

28 U.S.C. § 1257(a).....2

TEX.PENAL CODE § 49.04(a).....1

TEX.TRANSP.CODE § 724.011(a).....3

TEX.TRANSP.CODE § 724.012(a)(1).....3

TEX.TRANSP.CODE § 724.015 3

Ann Marie Bucaro respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Second District of Texas in this case affirming her conviction for driving while intoxicated and upholding the trial court's denial of her pretrial motion to suppress evidence.

OPINION BELOW

On July 30, 2013, the State of Texas charged the Petitioner with driving while intoxicated in *State v. Bucaro*, No. CR-2013-05651-B, in the County Criminal Court No. 2 of Denton County, Texas.[1] A hearing was held on the Petitioner's pretrial Motion to Suppress Evidence on August 20, 2014, at the conclusion of which the trial court denied the motion. The Petitioner then entered a plea of guilty and reserved her right to appeal from the denial of the motion to suppress evidence. The trial court entered Findings of Fact and Conclusions of Law on September 30, 2014. App. 17.

The Petitioner appealed, and on August 27, 2015, the Texas Court of Appeals for the Second District issued a Memorandum Opinion on Rehearing affirming the trial court's judgment. That decision is unreported. App. 1. The Petitioner timely filed a petition for discretionary review in the Texas Court of Criminal Appeals,

[1] TEX.PENAL CODE § 49.04(a).

which was refused without opinion on February 24, 2016.

STATEMENT OF JURISDICTION

The judgment of the Texas Court of Appeals was entered on August 27, 2015. The Texas Court of Criminal Appeals refused Ms. Bucaro's petition for discretionary review on February 24, 2016. This petition is being filed pursuant to an extension of time granted by Justice Thomas. *Bucaro v. Texas*, No. 15A1197. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides:

> 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.

TEX.TRANSP.CODE § 724.011(a) provides, in relevant part:

> If a person is arrested for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in a public place . . . while intoxicated . . . the person is deemed to have consented, subject to this chapter, to submit to the taking of one or more specimens of the person's breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance.

STATEMENT OF THE CASE

Texas's implied consent law provides that a person who operates a motor vehicle in a public place has consented to provide a specimen of breath or blood at the request of an officer who has arrested the person and who has reasonable grounds to believe the person was operating a motor vehicle in a public place while intoxicated.[2] Prior to requesting a person to submit to the taking of a specimen, the officer must inform the person that if the person refuses to provide the specimen the person's license will be automatically suspended for not less than 180 days and the refusal may be used as evidence in a subsequent prosecution.[3]

---

[2] TEX.TRANSP.CODE § 724.012(a)(1).

[3] *Id.* § 724.015.

Following her arrest for driving while intoxicated, Ms. Bucaro was transported to jail. At the jail the arresting officer read the implied consent law warnings to Ms. Bucaro.[4] Ms. Bucaro collapsed onto the floor but never lost consciousness. Paramedics were called and assisted Ms. Bucaro into a chair. When later asked by the arresting officer if she recalled reading and listening to the warnings, Ms. Bucaro indicated she did not. The arresting officer asked Ms. Bucaro for a third time if she recalled reading and listening to the implied consent law warning, and again she responded she did not. The arresting officer then read to Ms. Bucaro a portion of the implied consent law warning and explained to her that "if [she] says no, they can use it against her in court and [her] license will be suspended for not less than six months." The officer read the warning again, after which Ms. Bucaro agreed to provide a specimen of her breath.

The arresting officer testified that Ms. Bucaro gave the breath specimens "freely and voluntarily" and that "he never got the impression she did not want to give the sample." Ms. Bucaro testified that "she thought she had no option but to take the test because if she refused she would not be able to drive to work and she might lose her job."

The State relied on consent as the basis for the warrantless seizure of Ms. Bucaro's breath specimens.

---

[4] All facts stated herein are contained in *Bucaro v. State*, *supra*, slip op. 3-4, App. 2-4.

The trial court's findings of fact and conclusions of law recited *inter alia* that the arresting officer read the implied consent law warnings to Ms. Bucaro three times, that on one occasion she asked the officer "questions regarding the [warnings] and its consequences," and that Ms. Bucaro "freely and voluntarily" "consented to give a breath specimen." The trial court also concluded that under the implied consent law a person arrested for driving while intoxicated is deemed to have consented to submit to a taking of a specimen of a person's breath or blood for alcohol concentration analysis, that consent is an exception to the Fourth Amendment requirement that searches and seizures be conducted with a warrant, and that "[a]s a result [of the foregoing] the Court finds that the defendant freely and voluntarily consented to the giving of a breath specimen." App. 13-15. The trial court did not address the factors that are typically part of the Fourth Amendment standard for determining whether consent was freely and voluntarily given.

REASONS FOR GRANTING THE WRIT

In the court of appeals Ms. Bucaro specifically complained that she "did not voluntarily consent" to the taking of her breath specimens and that "the State failed to sustain its burden of proof" to show that her consent was freely and voluntarily given, as required by the Fourth Amendment. *Bucaro v. State*, *supra*, App. 6. In response to these contentions the court of appeals

recited the core of the implied consent law – that a person arrested for driving while intoxicated is deemed to have given consent to submit to providing a specimen of breath for determining alcohol concentration – stated that the implied consent law warnings are designed to ensure that consent given under the implied consent law is given "freely and with a correct understanding of the actual statutory consequences of refusal," *id*. at 8, and concluded that the trial court's denial of the pretrial motion to suppress was correct based on the implied consent law. App. 7-8.

The court of appeals also concluded that the State met its burden of showing that Ms. Bucaro's consent was given freely and voluntarily because the video recording of what took place at the jail showed that "Ms. Bucaro agreed [to provide a specimen of breath] and then submitted to one." *Id*. at 11.

The trial court and the court of appeals each concluded that Ms. Bucaro consented to provide a specimen of her breath based solely on the fact that she ultimately responded affirmatively to the officer's third request to provide a specimen of her breath pursuant to Texas's implied consent law after three readings of the implied consent law warnings. Neither court made any inquiry as to whether Ms. Bucaro consented freely and voluntarily to provide a specimen of her breath under the standards required by the Fourth Amendment. This case thus presents the question of whether consent obtained solely under the Texas implied consent law satisfies or supplants the need for

the free and voluntary standard required for consent by the Fourth Amendment.

I. Consent to a warrantless search and seizure under the Fourth Amendment must be based on a careful consideration of all the facts and circumstances surrounding the consent to assure that the consent was given freely and voluntarily.

It is fundamental that law enforcement officers must, "whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure." *Terry v. Ohio*, 392 U.S. 1, 20 (1968). "[W]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, reasonableness generally requires the obtaining of a judicial warrant." *Riley v. California*, 134 S.Ct. 2473, 2482 (2014) (quoting *Veronia School Dist, 47J v. Acton*, 515 U.S. 646, 653 (1995)).

Searches conducted without prior approval by a judge or magistrate are *per se* unreasonable under the Fourth Amendment. *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-455 (1971). This basic rule is "subject to a few specifically established and well-delineated exceptions," *Missouri v. McNeely*, 133 S.Ct. 1552, 1558 (2013).

Since the decision in *McNeely* there can be no dispute that a blood or breath test required by the State

is a search or seizure protected by the Fourth Amendment. *McNeely*, 133 S.Ct. at 1559-1560; *Skinner v. Ry. Labor Exec. Ass'n*, 489 U.S. 602, 619 (1989); *Schmerber v. California*, 384 U.S. 757, 767 (1966). Where it is possible for police officers to reasonably obtain a warrant before taking a person's blood or breath "without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *McNeely*, 133 U.S. at 1561. Thus, in the absence of a warrant the State bears the burden of proving the existence of an exception to the requirement of a warrant. *Coolidge*, 403 U.S. at 455.

In this case the State relied upon the consent exception to the requirement of a warrant. *See Bucaro*, App. 6. *McNeely* requires that "whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." *McNeely*, 133 S.Ct. at 1563 (quoting and relying on *Schmerber v. California*). Similarly, the standard announced in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), that a consent to search must be "the product of an essentially free and unconstrained choice," *id*. 412 U.S. at 225, must also be based on the totality of the circumstances.

To be valid, consent must be shown to have been given freely and voluntarily, and not as the result of coercion, whether implicit or explicit, or based on an implied threat or overt force. *Schneckloth*, *supra*, 412 U.S. at 228. Likewise, voluntary consent may not be based on fraud or deceit. *Bumper v. North Carolina*,

391 U.S. 543, 549-550 (1968). Consent is to be determined from the totality of the circumstances, *Schneckloth*, *supra*, 412 U.S. at 226, 233. It is the "careful sifting of the unique facts and circumstances of each case" that determines whether consent was freely and voluntarily given. *Id*. at 233. Although there is no single factor that is more important than another in making the determination of consent, *id*. at 227, several factors have been identified as important in determining whether consent was voluntary or coerced. Whether the accused was in custody,[5] whether the accused was advised he need not consent,[6] whether the accused was warned of his *Miranda*[7] rights, the repetitiveness of questioning leading up to consent,[8] the number of times the accused was asked for consent,[9] whether the accused signed a consent form,[10] the threat of losing something of value,[11] and whether the accused was aware of alternatives to consent.[12]

---

[5] *Schneckloth*, *supra*, 412 U.S. at 226.

[6] *Id*.

[7] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[8] *Schneckloth*, *supra*, 412 U.S. at 226.

[9] *Id*.

[10] *Id*.

[11] *Bell v. Burson*, 402 U.S. 535, 542-543 (1971) (state may not take a person's drivers license and motor vehicle registration without affording due process based on a failure to have liability insurance); *Garrity v. New Jersey*, 385 U.S. 493, 497-498 (1967) (state may not force accused to testify upon threat of loss of employment); *State v. Aiken*, 282 Ga. 132, 135-136 (2007).

[12] *United States v. Kroll*, 481 F.2d 884, 886 (8th Cir.1972).

In the case at bar neither the trial court nor the court of appeals addressed any of the aforementioned factors as part of their assessment of whether Ms. Bucaro consented to provide breath specimens. In assessing the voluntariness of Ms. Bucaro's consent, the court of appeals considered only the effect of the Texas implied consent law, App. 7-9, holding that under the statute "consent is given 'freely and with a correct understanding of the actual statutory consequences of refusal.'" *Id*. at 8. Consideration of most of the factors enumerated above – all of which were ignored by the court of appeals – bode well for Ms. Bucaro and against a finding of free and voluntary consent. Ms. Bucaro was in custody, had not been advised that she did not need to consent, and had not been warned of her *Miranda* rights. Ms. Bucaro was asked three times to consent despite indicating her reluctance to do so. She did not sign a waiver of consent. Ms. Bucaro was threatened with the loss of her drivers license which impacted her livelihood. She was not advised of any alternatives to consent. It is clear, therefore, that both courts ignored the Fourth Amendment standard used by this Court to determine the validity of consent to a warrantless search or seizure.

II. The court of appeals has erroneously held that consent given under the Texas implied consent law is tantamount to and satisfies the standard of consent required under the Fourth Amendment.

The court of appeals concluded that Ms. Bucaro had freely and voluntarily consented to provide breath specimens based on the fact that Ms. Bucaro had been warned of the consequences of the implied consent law. "A driver's consent to a breath or blood test must be free and voluntary." App. 7. "Before an officer may require a breath or blood sample from a person arrested for DWI, the officer is *required* to inform the person that a refusal to provide a specimen (1) may be admissible in subsequent prosecution and (2) will result in an automatic driver's license suspension." *Id*. "These warnings emphasize the importance of ensuring that the consent is given 'freely and with a correct understanding of the actual statutory consequences of refusal.'" *Id*. at 7-8. The court then held Ms. Bucaro's agreement to provide the breath specimens constituted valid consent under the Fourth Amendment. *Id*. at 9, 11. It is clear that the court of appeals resolved the issue of Ms. Bucaro's consent to provide the breath specimens on the basis that her acquiescence to provide the specimens in response to being warned of the consequences of the implied consent law instead of using the Fourth Amendment standard for determining consent.

An agreement to provide a specimen of breath or blood given for the purpose of complying with implied consent laws is not the equivalent of Fourth Amendment consent. Such an agreement does not require an evaluation of the totality of the circumstances surrounding the question of whether Fourth Amendment consent was given. In this case, the facts showed that Ms. Bucaro was in custody, had not been warned of her *Miranda* rights, had not been advised that she could refuse to provide the requested specimen, as asked at least three times to provide the specimen before she agreed to do so, never signed a written agreement consent to search or seize, had been threatened with the loss of her driving privileges, and had never been advised of the alternatives to complying with the implied law request. Given these facts, the use of Ms. Bucaro's agreement to provide a specimen of her breath given in response to the implied consent law warnings would allow implied consent laws "to constitute a per se, categorical exception to the warrant requirement and would make a mockery of the many precedential Supreme Court cases that hold that voluntariness must be determined based on a totality of the circumstances." *Williams v. State*, 167 So.3d 483, 491 (Fla. Ct. App. 2015). Additionally, the use of agreements to provide specimens pursuant to implied consent laws creates a per se categorical exception to the warrant requirement forbidden by *McNeely* that "would devour the *McNeely* rule." *Id*.

Numerous state courts have reached results contrary to the conclusion of the court of appeals in this

case. They have found that consent to provide specimens of breath and blood for alcohol concentration testing is not an equivalent to Fourth Amendment consent, and that consent to provide a specimen for alcohol concentration testing purposes must be established pursuant to Fourth Amendment standards. In *Williams v. State*, 296 Ga. 817, 771 S.E.2d 373 (2015), the arresting officer read to the accused the Georgia Implied Consent Law warnings and requested the accused to submit to blood and urine tests. Noting that "[t]here was no other conversation about consent for testing," the Georgia Supreme Court concluded that the accused's agreement to provide the requested specimens violated the Fourth Amendment because it did not focus on the "voluntary consent exception to the warrant requirement." *Williams*, 771 S.E.2d at 377. The court observed that when the State relies on the consent exception to the Fourth Amendment's warrant requirement, the State has the burden of proving that the accused acted freely and voluntarily under the totality of the circumstances. The court concluded that implied consent does not satisfy the test for "actual consent" under the Fourth Amendment because *inter alia* "mere compliance with statutory implied consent requirements does not, per se, equate to actual, and therefore, voluntary, consent on the part of the suspect so as to be an exception to the constitutional mandate of a warrant." *Williams*, 771 S.E.2d at 389.[13] The relevant facts of this case are the same as those in *Williams*:

---

[13] Although the *Williams* court did not reach the question of whether Georgia's implied consent law was unconstitutional as

the arresting officer read Ms. Bucaro the implied consent law warnings, requested her to provide a specimen of her breath as required by the law, and obtained an affirmative response. The reasoning used in *Williams* ought to be applied in this case given the identical fact situation on which the legal issue is based.

In *State v. Wulff*, 337 P.3d 575 (Idaho 2014), the court reached the same conclusion as in *Williams*, concluding that consent to provide a specimen of blood requires analysis under the totality of the circumstances test set forth in *McNeely* and *Schmerber*, and that implied consent does not satisfy the totality of the circumstances test. *Wulff*, 337 P.3d at 579-580.[14] The court also added to its reasoning its conclusion that implied consent cannot satisfy the Fourth Amendment consent standard because "it operates as a per se exception to the warrant requirement," *Wulff*, 337 P.3d at 580, which *McNeely* does not permit.[15]

---

applied, one Texas court of appeals concluded that the Texas implied consent law is unconstitutional as applied in circumstances similar to those presented in this case. *Reeder v. State*, 428 S.W.3d 924, 929 (Tex. App. – Texarkana 2014) (op. on reh'g), *aff'd, Reeder v. State*, No. PD-0601-14 (Tex. Crim. App. January 27, 2016).

[14] *See State v. Fierro*, 853 N.W.2d 235, 241 (S.D. 2014).

[15] *See Williams v. State*, *supra*, 167 So.3d at 491 (Fla. Ct. App. 2015), in which the court elaborated on this issue, stating that "allowing implied-consent statutes to constitute a per se, categorical exception to the warrant requirement would make a mockery of the many precedential Supreme Court cases that hold that voluntariness must be determined based on the totality of the circumstances."

In *State v. Declerck*, 317 P.3d 794 (Kan. 2014), the court pointedly held the warrantless blood draw violated Declerck's Fourth Amendment rights "because Declerck's implied consent to such a blood draw under Kansas' implied consent statute did not constitute consent for purposes of a valid exception to the warrant requirement under the Fourth Amendment." *Declerck*, 317 P.3d at 798.

In *State v. Butler*, 302 P.3d 609 (Ariz. 2013), the accused, like Ms. Bucaro, agreed to provide a specimen of blood after being read the Arizona implied consent law warning. Butler, like Ms. Bucaro, argued that "a blood draw is a search subject to the Fourth Amendment and, to be valid, requires either a warrant or an exception such as voluntary consent." Noting that Fourth Amendment consent must be voluntary and must be "assessed from the totality of the circumstances," the court concluded that Fourth Amendment consent is not satisfied by proof of implied consent. *Butler*, 302 P.3d at 612-613.

The conclusion that implied consent cannot satisfy the requirement of Fourth Amendment consent is bolstered by the concept that state legislatures may not enact legislation that abrogates a citizen's rights to be free from unreasonable searches and seizures. *Ybarra v. Illinois*, 444 U.S. 85, 96 n. 11 (1979). Implied consent statutes may not be used to authorize consent to a warrantless search or seizure protected by the Fourth Amendment without violating *Ybarra*.

There can be no doubt that the court of appeals, by failing to examine the factors relevant to determining the voluntariness of Ms. Bucaro's consent to provide the breath specimens, and by holding that Ms. Bucaro's agreement to provide a specimen under the implied consent law, compromised her rights under the Fourth Amendment and impermissibly applied a per se exception to the requirement of a warrant which is forbidden by *McNeely*.

This Court should grant the petition in order to resolve the conflict between the various state cases cited above and to ensure that Ms. Bucaro's surrender of her Fourth Amendment rights was evaluated under the proper Fourth Amendment standard – free and voluntary consent – and not using consent under an implied consent law.

III. Agreements to provide specimens of breath or blood pursuant to implied consent statutes are almost invariably situations in which the person is merely acquiescing to a police officer's authority rather than situations in which the person is expressing a free and voluntary decision to surrender Fourth Amendment rights.

The final reason why the opinion of the court of appeals should be reviewed by this Court involves the issue of whether the Texas implied consent law is coercive, within the meaning of the Fourth Amendment, so as to invalidate any "consent" given in response to its application.

The Texas implied consent law requires law enforcement officials to *inter alia* admonish citizens arrested for driving while intoxicated that if they do not provide a specimen of breath or blood their driving privileges will be automatically suspended for 180 days. As Ms. Bucaro testified in this case, that threat caused her to decide to provide the specimen she provided because she could not afford to lose her drivers license. *Bucaro*, *supra*, App. 4.

The Texas implied consent law attaches to the privilege of operating a motor vehicle on its roads the compelled surrender of the constitutional right to refuse consent to a request for a warrantless search or seizure whenever a citizen is arrested for driving while intoxicated. That type of legislation, which strips away a citizen's constitutional rights, is forbidden. *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S.Ct. 2586, 2594 (2013); *Frost & Frost Trucking Co. v. R.R. Comm'n*, 271 U.S. 583, 593 (1926). "What the state may not do directly it may not do indirectly." *Bailey v. Alabama*, 319 U.S. 219, 244 (1911).

The Fourth Amendment grants citizens the freedom to refuse to consent to requests for warrantless searches and seizures. *See v. Seattle*, 387 U.S. 541, 545 (1967); *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 540 (1967); *District of Columbia v. Little*, 339 U.S. 1, 6-7 (1950). However, under the Texas implied consent law citizens must either abstain from driving or "consent" to a warrantless seizure of their breath and/or blood. That choice is fraught with coercion given that substantial pressure is placed

on a citizen to surrender a Fourth Amendment right in order to protect the citizen's right to operate a motor vehicle, which this Court has deemed to be a valuable right. *Bell v. Burson*, 402 U.S. 535, 539 (1971). The substantial pressure placed on a citizen to choose between complying with the implied consent law or exercising his Fourth Amendment rights is no different in degree than the choice "between the rock and whirlpool" identified in *Garrity*, *supra* – incriminate yourself or lose your job.

In *State v. Medicine*, 2015 S.D. 45 (June 10, 2015), the court addressed the effect of the South Dakota implied consent law on the accused's agreement to provide a blood sample. Because he was not specifically advised that he could refuse to provide a blood specimen and because he believed he was required to provide a specimen, the court concluded that Medicine's consent was not voluntary. This conclusion was bolstered by the reading of the implied consent law warning which the court deemed was "evidence of coercion." *Medicine*, slip op. 7. Relying on *Royer v. Florida*, 460 U.S. 491 (1983), and *Bumper*, the court concluded that the officer's request for a specimen was the "functional equivalent to an assertion that the officer possesses a warrant – both claims are assertions that the officer has authority to conduct the search." When an officer acts with "presumed authority" in requesting the production of a specimen, the accused's conduct complying with that official request cannot be considered free and voluntary.

Ms. Bucaro's agreement to provide a breath specimen was the product of the type of impermissible pressure that operates to inhibit the exercise of a constitutional right. When a condition puts substantial pressure on an individual to forego a constitutional right, that pressure "turns into compulsion." *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)). Compulsion can become impermissible coercion when the compulsion inhibits or deters the exercise of constitutional rights. *Thomas v. Review Board*, 450 U.S. 707, 718 (1981). The chilling effect on the right to refuse to consent to a warrantless Fourth Amendment search or seizure inherent in the implied consent law's requirement to provide a specimen is both unnecessary and unrelated to the privilege of driving on a public road. *See United States v. Jackson*, 390 U.S. 570, 581 (1968) (holding that a statute permitting an accused to avoid the death penalty by pleading guilty "needlessly chill[s] the exercise of basic constitutional rights.").

Ms. Bucaro's decision to provide a breath specimen under the implied consent law was made in response to the arresting officer's recitation of the implied consent law warnings in which he conveyed a duty to provide the specimen. It also unquestionably required her to surrender her right to refuse to consent to a Fourth Amendment search and seizure in order to protect her right to drive on the public roads. As concluded in *Medicine*, the failure to advise Ms. Bucaro of her right to refuse to provide the requested specimen raises a conclusion that Ms. Bucaro believed the officer had

"presumed authority" to request the production of the specimen and that her compliance with that request was therefore not free and voluntary, within the meaning of the Fourth Amendment.

CONCLUSION

The Texas court of appeals failed to address the Fourth Amendment consent issues raised by Ms. Bucaro, and improperly concluded that Ms. Bucaro's agreement to provide a specimen of her breath pursuant to the Texas implied consent law satisfied the Fourth Amendment requirement that consent be shown to be free and voluntary based on totality of the relevant circumstances. This Court should grant certiorari to apply the appropriate standard required to review Fourth Amendment consent issues and to resolve the conflicts between the decisions of other state courts, on the one hand, and the decision in this case, on the other hand.

Respectfully submitted,

MELVYN CARSON BRUDER

516 Turley Law Center
6440 N. Central Expressway
Dallas, Texas 75206
214.987.3500
214.987.3518 Fax
melvyn@melvynbruderlaw.com

Counsel for Petitioner

[SEAL]

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-14-00339-CR

ANN BUCARO — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM COUNTY CRIMINAL COURT
NO. 2 OF DENTON COUNTY TRIAL
COURT NO. CR-2013-05651-B

MEMORANDUM OPINION[1] ON REHEARING

I. Introduction

Appellant Ann Bucaro filed a motion for rehearing. We deny the motion but withdraw our prior opinion of June 25, 2015, and substitute the following in its place.

In three issues, Bucaro appeals her conviction for driving while intoxicated. She argues that the trial court erred in overruling her motion to suppress and that portions of the Implied Consent Law violate the Fourth Amendment. We affirm.

---

[1] *See* Tex. R. App. P. 47.4.

II. Background

On January 12, 2013, The Colony police pulled Bucaro over for driving her vehicle off of the roadway, over a curb, and onto a sidewalk. Officer Mark Hamm was called to the scene to assist in the investigation of the possible offense of driving while intoxicated (DWI).

When Officer Hamm arrived, he performed standardized field sobriety tests on Bucaro and, as a result, concluded that she was intoxicated. He then arrested Bucaro and took her to The Colony Jail.

At the jail, Officer Hamm handed Bucaro a copy of the DIC-24[2] form and asked her to follow along as he read it aloud. After Officer Hamm finished reading the form, Bucaro collapsed onto the floor. Officer Hamm immediately called for the paramedics and then helped Bucaro, who told Officer Hamm that she felt "lightheaded," into a chair. During these events, Bucaro never lost consciousness.

While waiting for the medics to arrive, Officer Hamm showed Bucaro the DIC-24 form and asked if she remembered holding it and following along when he read it to her earlier. She shook her head, indicating that she did not. Just prior to the paramedic's arrival,

---

[2] The DIC-24 is the Texas Department of Public Safety's standard form containing the written warnings required by the transportation code to be read to an individual arrested for a DWI before a peace officer requests a voluntary blood or breath sample from a person. *See* Tex. Transp. Code Ann. § 724.015 (West Supp. 2014); *State v. Neesley*, 239 S.W.3d 780, 782 n.1 (Tex. Crim. App. 2007).

Bucaro's breathing became very heavy. However, the medics who evaluated Bucaro determined that she was not in need of any further medical attention.

After the medics left, Officer Hamm once again asked Bucaro if she remembered the DIC-24 form, and she indicated that she did not. Officer Hamm then read the DIC-24 to Bucaro a second time and afterwards asked if she understood. Once again, she shook her head, indicating that she did not. When Officer Hamm asked her if she had a question, Bucaro just shook her head. When he asked Bucaro what part of the form she did not understand, Bucaro again just shook her head. Officer Hamm then reread the second paragraph[3] and attempted to break it down into simpler terms. He explained to her that he was going to ask her for a breath specimen and she needed to understand that "if [she] says no, they can use it against her in court and [her] license will be suspended for not less than six months." Officer Hamm read the entire DIC-24 form to Bucaro a third time,[4] and she consented to giving a breath specimen.

At the hearing on the motion to suppress, the trial court heard testimony from Officer Hamm and Bucaro,

---

[3] The second paragraph of the DIC-24 form reads as follows: "If you refuse to give the specimen, that refusal may be admissible in a subsequent prosecution. Your license, permit or privilege to operate a motor vehicle will be suspended or denied for not less than 180 days, whether or not you are subsequently prosecuted for this offense."

[4] Officer Hamm testified that he read the complete DIC-24 form to Bucaro three times.

viewed the intoxilizer room video footage and the dashboard camera footage, and listened to the audiotape of Officer Hamm's body microphone.

Officer Hamm testified that Bucaro's consent was freely and voluntarily given and that he never got the impression she did not want to give the sample. He testified that there was no coercion, no force, no intimidation, and no threats – he asked her to provide a sample, she said yes, and when it was time to provide the sample she did.

Bucaro testified that she thought that she had no option but to take the test because if she refused she would not be able to drive to work and she might lose her job. However, on cross-examination, Bucaro admitted that she never told Officer Hamm that she did not want to give a breath specimen and that she never refused to provide one. She further admitted that she was not threatened or physically forced.

The trial court denied the motion to suppress and entered written findings of fact and conclusions of law.

III. Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions that turn on an

evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652-53 (Tex. Crim. App. 2002).

Stated another way, when reviewing the trial court's ruling on a motion to suppress, we must view the evidence in the light most favorable to the trial court's ruling. *Wiede v. State*, 214 S.W.3d 17, 24 (Tex. Crim. App. 2007); *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). When the trial court makes explicit fact findings, we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those fact findings. *Kelly*, 204 S.W.3d at 818-19. We then review the trial court's legal ruling de novo unless its explicit fact-findings that are supported by the record are also dispositive of the legal ruling. *Id.* at 818.

We must uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case even if the trial court gave the wrong reason for its ruling. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007); *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 974 (2004).

IV. Analysis

In her first two issues, Bucaro states that the trial court erred in denying her motion to suppress because

(1) Bucaro did not voluntarily consent and (2) the State failed to sustain its burden of proof. In her last issue, Bucaro asserts that portions of the Implied Consent Law are inherently coercive and, therefore, violate the Fourth Amendment's prohibition against unreasonable searches and seizures.

A. Voluntary Consent

In her first and third issue, Bucaro asserts that she did not voluntarily consent to provide a breath specimen because she was coerced. In both issues, Bucaro argues that the Implied Consent Law, i.e., the DWI statutory warnings, are inherently coercive. Specifically, she asserts that by "threatening that if Bucaro refused to provide a specimen . . . she would lose her driving privileges and . . . her refusal would be used as evidence against her at her trial, the officer applied psychological pressure . . . that caused her will to be overborne and her capacity for self-determination to be critically impaired."

Any person arrested for DWI is deemed to have given consent to submit to providing a specimen of breath or blood for determining alcohol concentration or the presence of a controlled substance. Tex. Transp. Code § 724.011(a) (West 2011). Nevertheless, a person retains an absolute right to refuse a test. *Id.* § 724.013 (West 2011). In other words, "'[C]onsent being implied by law, a driver may not legally refuse. A driver can, however, physically refuse to submit, and, in recognition of that practical reality, the implied consent law

forbids the use of physical force to compel submission.'" *Forte v. State*, 759 S.W.2d 128, 138 (Tex. Crim. App. 1988) (quoting *State v. Spencer*, 305 Or. 59, 750 P.2d 147, 153 (1988)), *overruled on other grounds by McCambridge v. State*, 778 S.W.2d 70, 76 (Tex. Crim. App. 1989).

A driver's consent to a breath or blood test must be free and voluntary – i.e., free from physical or psychological pressure from law enforcement. *Meekins v. State*, 340 S.W.3d 454, 458-59 (Tex. Crim. App. 2011). In order to determine whether consent was given voluntarily, the fact-finder must consider the totality of the circumstances. *Id.* at 459. "The trial judge must conduct a careful sifting and balancing of the unique facts and circumstances of each case in deciding whether a particular consent to search was voluntary or coerced." *Id.* "Accordingly, it follows that, because the fact finder must consider all of the evidence presented, no one statement or action should automatically amount to coercion such that consent is involuntary – it must be considered in the totality." *Fienen v. State*, 390 S.W.3d 328, 333 (Tex. Crim. App. 2012).

Before an officer may request a breath or blood sample from a person arrested for DWI, the officer is *required* to inform the person that a refusal to provide a specimen (1) may be admissible in subsequent prosecution and (2) will result in an automatic driver's license suspension. Tex. Transp. Code Ann. § 724.015(1), (2); *Schaum v. State*, 833 S.W.2d 644, 646 (Tex. App. – Dallas 1992, no pet.). "These warnings emphasize the

importance of ensuring that the consent is given 'freely and with a correct understanding of the actual statutory consequences of refusal.'" *Duke v. State*, No. 02-02-00290-CR, 2003 WL 1564326, at *1 (Tex. App. – Fort Worth Mar. 27, 2003, no pet.) (mem. op., not designated for publication) (citations omitted).

While the court of criminal appeals has not directly addressed the question of whether the DIC-24 statutory warnings are inherently coercive, the court has considered whether extra-statutory warnings – warnings that exceed the required DIC-24 statutory warnings – are inherently coercive. *See Fienen*, 390 S.W.3d at 335; *Erdman v. State*, 861 S.W.2d 890, 893-94 (Tex. Crim. App. 1993), *overruled by Fienen*, 390 S.W.3d at 335. In *Fienen*, the court of criminal appeals held that extra-statutory warnings are not inherently coercive but that any coercive effect of warnings should be determined by considering the totality of the circumstances in each particular case, holding,

> . . . No statement – whether it refers to the consequences of refusing a breath test, the consequences of passing or failing a breath test, or otherwise – should be analyzed in isolation because its impact can only be understood when the surrounding circumstances are accounted for.
>
> . . . .
>
> . . . Although [the officer] conveyed what would happen in more definite terms than suggested by the (present) statute, she provided only the most basic information and did

> not linger or prolong the exchange by explaining in detail the intricacies of obtaining the search warrant *(e.g.*, that the blood search warrant must be approved by a neutral and impartial magistrate and that the judge may sign the search warrant only if he believes that it is supported by probable cause).

390 S.W.3d at 335-36 (holding that under the totality of circumstances, the statements made by the officer were not coercive, "and if anything, Appellant had greater information on which to base his decision.").

Comparing the case at bar to *Fienen*, if the giving of the DIC-24 warnings *plus* the extra-statutory warnings present in *Fienen* were not inherently coercive, then the statutory warnings standing alone could not be inherently coercive. Applying *Fienen*, we hold that the giving of the DIC-24 warnings is not inherently coercive and does not violate the Fourth Amendment. We overrule Bucaro's first and third issues.

B. Burden of Proof

In her second issue, Bucaro argues that based on the totality of the circumstances the State failed to meet its burden in proving that her consent was voluntary. Specifically, Bucaro asserts that the evidence shows that

> at the time she agreed to provide a specimen of her breath Ms. Bucaro was under arrest, was in a police-dominated atmosphere at the jail and in the presence of several uniformed

> officers,[5] had not been warned of her rights under *Miranda* and article 38.22,[6] had not directly and affirmatively been made aware that she could refuse to provide a specimen of her breath,[7] had not been made aware of legal options available to her whereby she could avoid losing her driving privileges, had suffered a panic attack that resulted in several minutes of hyperventilation, vacillated about whether to provide the specimen.[8] had been threatened with the use of her refusal to provide a specimen of breath as evidence of her guilt, in violation of her Fourth Amendment rights, and provided the specimen only after she had been repeatedly told that her refusal to provide a specimen would result in the suspension of her driver's [license] and would result in the use of her refusal as evidence at her trial.

It is the State's burden to prove voluntary consent by clear and convincing evidence. *Fienen*, 390 S.W.3d

---

[5] The video indicates that Officer Hamm was the only police officer in the room; the others were medical professionals.

[6] *Miranda* warnings are not required to be given before an individual is asked to give a breath specimen. *Floyd v. State*, 710 S.W.2d 807, 809 (Tex. App. – Fort Worth 1986), *pet. dism'd, improvidently granted*, 768 S.W.2d 307 (Tex. Crim. App. 1989).

[7] Officer Hamm read the DIC-24 form to Bucaro in full three separate times. As noted above, the form includes the following admonition: "*If you refuse* to give the specimen, *that refusal* may be admissible in a subsequent prosecution. . . ." [Emphasis added.]

[8] The record does not indicate that Bucaro equivocated in her decision to submit a breath specimen.

at 335. Here, the State introduced video from the intoxilizer room and testimony from Officer Hamm. According to the record, when asked by Officer Hamm if she would give a breath specimen, Bucaro agreed and then submitted to one. Viewing the evidence in the light most favorable to the trial court's findings, the State met its burden, and the trial court did not err by denying Bucaro's motion to suppress. We overrule Bucaro's second issue.

V. Conclusion

Having overruled all of Bucaro's issues, we affirm the trial court's judgment.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: LIVINGSTON, C.J.; GARDNER and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 27, 2015

CR-2013-05651-B

STATE OF TEXAS	§	**IN THE COUNTY CRIMINAL**
VS.	§	**COURT NUMBER 2**
ANN BUCARO	§	**DENTON COUNTY, TEXAS**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Sep. 30, 2014)

Came to be heard on August 20th, 2014 and prior to a trial on the merits Defendant's Motion to Suppress Evidence. Having DENIED Defendant's motion, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Officer Marc Hamm is a certified peace officer in the State of Texas for The Colony Police Department. He is certified in Texas as a breath test operator for the Intoxilyzer 5000.

2. Officer Hamm testified before this Court at a hearing on Defendant's Motion to Suppress on August 20th, 2014. The Court finds his testimony to be credible.

3. On January 12th, 2013, Officer Hamm was called to Morningside Elementary School in Denton County, Texas by Lieutenant Charles Wood. Lieutenant Wood had stopped Ann

Bucaro, the defendant in this case, for a driving violation. Lieutenant Wood called Officer Hamm to the scene to assist on an investigation for driving while intoxicated.

4. Officer Hamm performed the standardized field sobriety tests on the Defendant. Officer Hamm found sufficient clues of intoxication to determine that the Defendant was intoxicated.

5. Officer Hamm arrested the Defendant for driving while intoxicated. The Defendant was handcuffed and transported to The Colony Jail.

6. While at the jail, Officer Hamm read the statutory warning, DIC-24, to the Defendant. A copy of the warning was provided to the Defendant.

7. After completion of reading the DIC-24, officer Hamm requested a breath specimen. The Defendant fell to the floor from a standing position, but remained conscious while lying on the floor.

8. Officer Hamm called for medics to assist. The medics determined that the Defendant did not need further medical attention. The medics also determined that the Defendant did not need to be transported to the hospital.

9. The Defendant did not want to go to the hospital either.

10. Officer Hamm read the DIC-24 again to the defendant. The Defendant asked Officer

Hamm questions regarding the DIC-24 and its consequences.

11. Officer Hamm read the DIC-24 to the Defendant a third time. Officer Hamm again requested a specimen of breath. The Defendant consented to give a breath specimen.

12. The Defendant freely and voluntarily gave a specimen of her breath.

13. The Defendant attempted to give a breath specimen two different times. The first attempt was unsuccessful and the intoxilyzer returned the result as an insufficient sample.

14. The second attempt was successful and revealed an alcohol concentration of .114 and .125.

15. Officer Hamm did not read Miranda warnings to the Defendant prior to her providing a specimen.

16. The encounter at the jail was recorded on video. However, the video system was not functioning properly. The resulting recording entered into evidence is a set of video clips that do not capture the entire encounter, rather just various portions of what occurred.

CONCLUSIONS OF LAW

1. The Defendant's motion to suppress challenges the Implied Consent Law as a violation of the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, as

applied to the states through the Due Process Clause of the Fourteenth Amendment. It seeks to suppress the results of the breath test.

2. A person arrested for an alcohol-related offense while operating a motor vehicle is deemed to have consented to submit to the taking of a specimen of the person's breath or blood for alcohol or drug analysis. TEX. TRANSP. CODE § 724.011.

3. A person may refuse to submit the taking of a specimen. TEX. TRANSP. CODE § 724.013.

4. Consent is an exception to the Fourth Amendment requirement that searches and seizure be conducted with a warrant. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-53 [sic], 91 S. Ct. 2022, 29 L.Ed.2d 564 (1971); *Beeman v. State*, 86 S.W. 3d 613, 615 (Tex. Crim. App. 2002)

5. A refusal to submit a specimen is not protected by the Fifth Amendment privilege against self-incrimination. *South Dakota v. Neville*, 459 U.S. 553, 103 S.Ct. 916, 74 L.Ed.2d 748 (1983).

6. There is not right to counsel on whether a driving while intoxicated suspect should give a specimen. *Forte v. State*, 759 S.W. 2d 128 (Tex. Crim. App. 1988); *De Mangin v. State*, 700 S.W. 2d 329 (Tex. App. – Houston [1st Dist.] 1985).

7. As a result, the Court finds that the defendant freely and voluntarily consented to the giving

of a breath specimen, and that the giving of the specimen did not violate The Constitution.

Signed on this the 30th day of September, 2014

/s/ Virgil Vahlenkamp
Virgil Vahlenkamp
Judge Presiding

FILE COPY

OFFICIAL NOTICE FROM COURT
OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, A
AUSTIN, TEXAS 78711

[SEAL]

2/24/2016 **COA No. 02-14-00339-CR**
BUCARO, ANN **Tr. Ct. No. CR-2013-05651-B**
PD-1428-15

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

MELVYN CARSON BRUDER
6440 NORTH CENTRAL EXPRESSWAY
605 TURLEY LAW CENTER
DALLAS, TX 75206
* DELIVERED VIA E-MAIL *

DISTRICT ATTORNEY
DENTON COUNTY
PAUL JOHNSON
P. O. BOX 2344
DENTON, TX 76202
* DELIVERED VIA E-MAIL *

LISA MCMINN
STATE PROSECUTING ATTORNEY
P.O. BOX 13046
AUSTIN, TX 78711
* DELIVERED VIA E-MAIL *

2ND COURT OF APPEALS CLERK
DEBRA SPISAK
401 W. BELKNAP, STE 9000
FORT WORTH, TX 76196
* DELIVERED VIA E-MAIL *