



# **IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

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**NO. PD-0622-14**

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**MARCUS BRUCE HOLIDY, Appellant**

**v.**

**THE STATE OF TEXAS**

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**ON STATE'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE SIXTH COURT OF APPEALS  
RUSK COUNTY**

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**HERVEY, J., delivered the opinion of the unanimous Court.**

## **OPINION**

The question in this case is whether the taking of a blood specimen from Appellant pursuant to a felony DWI investigation, and as authorized by the Texas Transportation Code,<sup>1</sup> violated the Fourth Amendment. We hold that it does.

After his arrest, Appellant filed a motion to suppress the blood evidence based on the United States Supreme Court's holding in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013). The trial court denied that motion, and Appellant subsequently pled guilty and

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<sup>1</sup>TEX. TRANSP. CODE § 724(b)(3)(B).

was assessed a six-year term of confinement.

On appeal, Appellant reurged his argument from the trial court that the taking of his blood violated the Fourth Amendment based on *McNeely*. The court of appeals agreed and reversed his conviction, citing *McNeely* and *Aviles v. State*, 385 S.W.3d 110, 112 (Tex. App.—San Antonio 2012, pet. ref'd), *vacated by*, 134 S. Ct. 902 (2014). *Holiday v. State*, No. 06-13-00261-CR, 2014 WL 1722171 (Tex. Crim. App. Apr. 30, 2014) (mem. op.) (not designated for publication). The State Prosecuting Attorney filed a timely petition for review, which we granted, arguing that the court of appeals erred because the mandatory blood-draw provision does not violate the Fourth Amendment, even after *McNeely*.

Approximately seven months after the court of appeals issued its opinion in this case, this Court handed down an opinion in *State v. Villarreal*, No. PD-0306-14, 2014 WL 6734178 (Tex. Crim. App. Nov. 26, 2014), in which we resolved the same issue against the State. Although we subsequently granted rehearing in *Villarreal*, we later concluded that the State's motion for rehearing was improvidently granted. Therefore, in light of our decision in *Villarreal* and the reasoning therein, we overrule the State's single ground for review and affirm the judgment of the court of appeals. *Villarreal*, 2014 WL at \*11.

Hervey, J.

Delivered: January 27, 2016

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