

TEXAS COURT OF CRIMINAL APPEALS

Thomas Andrew Evans, II v. The State of Texas

Evans · No. PD-0418-15 · Decided April 16, 2015

OPINION

PER CURIAM.

PD-0418-15 April 16, 2015 No. In the COURT OF CRIMINAL APPEALS For the STATE OF TEXAS THOMAS ANDREW EVANS, II Appellant v THE STATE OF TEXAS Appellee On State's Petition for Discretionary Review from the Fourteenth Court of Appeals, Appeal Number 14-13-00642-CR On Appeal from County Court at Law Number Two of Fort Bend County, Texas, Cause Number 12-CCR-159784 STATE'S PETITION FOR DISCRETIONARY REVIEW Counsel for Appellee JOHN F. HEALEY DISTRICT ATTORNEY FORT BEND COUNTY, TEXAS JASON BENNYHOFF ASSISTANT DISTRICT ATTORNEY FORT BEND COUNTY, TEXAS 309 South Fourth Street, 2nd floor Richmond, Texas 77469 281-341-4460 (Tel.)

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PAGE INDEX OF AUTHORITIES..... 1 STATEMENT REGARDING
ORAL ARGUMENT..... 2 STATEMENT OF THE CASE..... 3
STATEMENT OF PROCEDURAL HISTORY..... 4 GROUND FOR
REVIEW.....

5 Did the Fourteenth Court of Appeals err in holding that there is no way in which the mandatory blood draw taken in this case was reasonable under the Fourth Amendment to the United States Constitution, in reliance on this Court's opinion in State v. Villarreal?..... 5 ARGUMENT AND
AUTHORITIES.....

5 PRAYER FOR RELIEF..... 7 CERTIFICATE OF
SERVICE..... 8 APPENDIX..... 9 ii INDEX
OF AUTHORITIES CASES PAGE Beeman v. State, 86 S.W.3d 613, 616 (Tex. Crim. App. 2002)..... 6 Douds v. State, No. 14-12-00642-CR, 2013 WL 5629818 (Tex.

App.—Houston [14th Dist.] Oct. 15, 2013), rev'd by Douds v. State, 434 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2014, pet. granted Sep. 17, 2014)..... 6 Evans v. State, No. 14-13-00642, 2015 WL 545702 at *8 (Tex. App.—Houston [14th Dist.] Feb. 10, 2015)..... 5 Griffin v. Wisconsin, 483 U.S. 868, 873 (1987).....

5 Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 620-21 (1989)..... 5 State v. Villarreal, No. PD-0306-14, 2014 WL 6734178 (Tex. Crim. App. Nov. 26, 2014)..... passim 1 STATEMENT REGARDING ORAL ARGUMENT The State does not request oral argument. 2 No. In the COURT OF CRIMINAL APPEALS For the STATE OF TEXAS THOMAS ANDREW EVANS, II Appellant v THE STATE OF TEXAS Appellee On State's Petition for Discretionary Review from the Fourteenth Court of Appeals, Appeal Number 14-13-00642-CR On Appeal from County Court at Law Number Two of Fort Bend County, Texas, Cause Number 12-DCR-159784 STATE'S PETITION FOR DISCRETIONARY REVIEW TO THE HONORABLE COURT OF CRIMINAL APPEALS: Comes now the State, by and through it's District Attorney of Fort Bend County, and respectfully submits to the Court its petition for discretionary review pursuant to the Texas Rules of Appellate Procedure in the above named cause.

STATEMENT OF THE CASE Thomas Andrew Evans, II, (hereinafter referred to as "Evans") drove his 3 Toyota Tundra pickup truck through an intersection and struck a Chevrolet Traverse, causing the Traverse to flip over several times.

The two occupants of the Chevrolet Traverse were transported to the hospital for their injuries. Evans smelled of alcohol, had red, glassy eyes, and slurred his speech when he was interviewed by the responding DPS Trooper. Evans admitted drinking two to three beers. Evans refused to participate in field sobriety tests and refused to give a sample of his blood.

The Trooper ultimately took a sample of Evans blood over Evans's objection in keeping with Texas Transportation Code section 724.012(b)(1)(C). STATEMENT OF PROCEDURAL HISTORY Evans filed a motion to suppress in the trial court, arguing that the involuntary blood draw violated the Fourth Amendment to the United States Constitution.

The trial court denied that motion, and Evans then entered into a plea bargain agreement with the State, retaining his right to appeal the trial court's ruling. On February 10, 2015, the Fourteenth Court of Appeals reversed the ruling of the trial court and remanded the case to the trial court.

The State filed a motion for rehearing and a motion for en banc reconsideration on February 24, 2015. The Fourteenth Court of Appeals denied the State's motion for rehearing and motion for en banc reconsideration (Boyce, J., would grant reconsideration en banc), on March 17, 2015. 4 GROUND FOR REVIEW Did the Fourteenth Court of Appeals err in holding that there is no way in which the mandatory blood draw taken in this case was reasonable under the Fourth Amendment to the United States Constitution, in reliance on this Court's opinion in State v. Villarreal?

ARGUMENT AND AUTHORITIES The Fourteenth Court of Appeals, in reversing the trial court's denial of Evans's motion to suppress the mandatory blood draw in this case, held that

implied consent could not justify the warrantless blood draw in this case where Evans withdrew his consent. *Evans v. State*, No. 14-13-00642, 2015 WL 545702 at *8 (Tex. App.—Houston [14th Dist.]

Feb. 10, 2015). The Fourteenth Court of Appeals based this holding on this Court’s opinion in *State v. Villarreal*, No. PD-0306-14, 2014 WL 6734178 (Tex. Crim. App. Nov. 26, 2014). *Id.* The State raised numerous other grounds in support of its argument that the warrantless blood draw in this case was permissible under the Fourth Amendment, which were not addressed in the Fourteenth Court of Appeals’ opinion, including that the warrantless blood draw was justified under the “special needs doctrine” under *Maryland v. King*, 133 S.Ct.

1958, 1980 (2013), *Skinner v. Ry. Labor Executives’ Ass’n*, 489 U.S. 602, 620-21 (1989), and *Griffin v. Wisconsin*, 483 U.S. 868, 873 5 (1987). The Fourteenth Court of Appeals’ opinion, while not addressing the State’s argument in this vein necessarily impliedly overruled that argument.

The Fourteenth Court of Appeals also did not address the State’s argument that Article 38.23 of the Texas Code of Criminal Procedure should not be read to require exclusion of the blood draw evidence obtained in this case in light of the fact that the officers were acting in reliance on the body of case law which read Chapter 724 of the Texas Transportation Code to mandate blood draws without warrants.

See, e.g., *Beeman v. State*, 86 S.W.3d 613, 616 (Tex. Crim. App. 2002); *Douds v. State*, No. 14-12-00642-CR, 2013 WL 5629818 (Tex. App.—Houston [14th Dist.] Oct. 15, 2013), *rev’d by Douds v. State*, 434 S.W.3d 842 (Tex. App.—Houston [14th Dist.] 2014, *pet. granted* Sep. 17, 2014).

The Fourteenth Court of Appeals’ opinion, while not addressing the State’s argument in this vein necessarily impliedly overruled this argument as well. This Court has since granted the State’s motion for rehearing in *State v. Villarreal*.

The State’s motion for rehearing raised both the issue of the continuing nature of the defendant’s consent despite his attempt to withdraw that consent and the applicability of the special needs doctrine. See State’s Motion for Rehearing and Amended Motion for Rehearing in *State v. Villarreal* attached hereto as Exhibit B in the attached appendix. Being that these issues are considered worthy of this Court’s 6 reconsideration in *Villarreal*, this Court should grant the State’s petition for discretionary review in this case to address these same issues here.

PRAYER FOR RELIEF WHEREFORE, PREMISES CONSIDERED, Appellee, the State of Texas prays that the State’s Petition for Discretionary Review be granted, that the case be set for submission, and that after submission, this Court reverse the decision of the Court of Appeals. Respectfully submitted, John F. Healey, Jr. /s/ Jason Bennyhoff Jason Bennyhoff Assistant District

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Richmond, Texas 77469 281-341-4460 (office) 281-238-3340 (fax) 7 CERTIFICATE OF
SERVICE This is to certify that a true and correct copy of the foregoing State's Petition for
Discretionary Review (and its appendix) has been served upon Douglas Durham, counsel for
Thomas Andrew Evans, II, at durham.doug@yahoo.com by way of the Efile Texas electronic
delivery system on the date of the filing of the original of this document, and that these documents
are being served by U.S. mail on counsel for Thomas Andrew Evans, II, and upon the State
Prosecuting Attorney by U.S. mail on the date of the filing of the original in this case. /s/ Jason
Bennyhoff Jason Bennyhoff Certificate of Compliance with Texas Rule of Appellate Procedure
9.4(i)(3) In accordance with Texas Rule of Appellate Procedure 9.4(i)(3), I, Jason Bennyhoff,
hereby certify that the foregoing electronically created document has been reviewed by the word
count function of the creating computer program, and has been found to be in compliance with the
requisite word count requirement in that its word count in its entirety is 1,423 words. /s/Jason
Bennyhoff Jason Bennyhoff 8 APPENDIX Exhibit A - Fourteenth Court of Appeals opinion in
Evans v. State Exhibit B - Order granting rehearing, State's Motion for Rehearing and Amended
Motion for Rehearing in State v. Villarreal 9