No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Wesley Eugene Brooks,

Petitioner,

v.

State of Minnesota,

Respondent.

On Petition For A Writ Of Certiorari
to the Minnesota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

STRANDEMO, SHERIDAN & DULAS, P.A.
Jeffrey S. Sheridan
Counsel of Record for Petitioner
320 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
(651) 686-8800

THE MCCLOUD LAW FIRM
Eric J. McCloud
Attorney at Law
Box No. 457
1360 University Avenue West
St. Paul, Minnesota 55104
(651) 341-2220

John A. Price III
Attorney at Law
22530 Forest Ridge Drive
Lakeville, Minnesota 55044
(952) 469-6961

Attorneys for Petitioner, Wesley Eugene Brooks

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW

This Court granted certiorari in the case of *Missouri v. McNeely* on September 24, 2012. This case presents the identical issue to the one accepted in *McNeely* with two notable exceptions. First, in this case, the record contains substantial evidence regarding the process and the ease with which officers are able to obtain search warrants by phone under Minnesota's rules of criminal procedure. The second is that Minnesota's appellate courts arrived at the opposite conclusion to the one reached by the Missouri Supreme Court and concluded that in any case where an officer has probable cause to suspect drunk driving, there is no need for the officer to even attempt to obtain a warrant before extracting a biological specimen for testing. Because of the extensive record in this case, this court should grant certiorari and either consolidate the matters for consideration or hear them separately, but in the same term.

The issue Petitioner asks this court to consider in this case is this: in a typical driving while under the influence case (DWI), when law enforcement is seeking a biological specimen for alcohol testing, does the exigent circumstances exception to the United States Constitution's Fourth Amendment warrant requirement ***always*** justify the failure of the police to even attempt to obtain a warrant, even when the facts in the record clearly demonstrate:

1. That a telephone warrant could have been obtained in 15 minutes or less;

2. That the naturally occurring delays in processing a typical DWI case would allow law enforcement the time necessary to obtain a telephone warrant; and

3. That in one of the cases presented herein, in addition to the naturally occurring delays present in a typical DWI case before seizing a blood/urine sample, law enforcement spent approximately one and a half hours performing an "inventory" search of Petitioner's vehicle on the side of the road, while Petitioner sat handcuffed in the back seat of a squad car?

TABLE OF AUTHORITIES

CASES

United States Supreme Court

STATUTES

RULES

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Wesley Eugene Brooks, respectfully petitions for a Writ of Certiorari to review the judgments of the Minnesota Supreme Court.

OPINIONS BELOW

The denial of Wesley Eugene Brooks' consolidated Petitions for Review by the Minnesota Supreme Court is not reported and a copy is appended hereto at A-1. The opinion of the Minnesota Court of Appeals in File No. A11-1042 (the Scott County urine test cases) is unpublished, and a copy is appended hereto at A-4. The order of the trial court in the Scott County urine test cases is appended hereto at A-11.

The opinion of the Minnesota Court of Appeals in File No. A11-1043 (the Hennepin County blood test case) is unpublished and a copy is appended hereto at A-16. The order of the trial court in the Hennepin County blood test case is appended hereto at A-22.

JURISDICTION

The Minnesota Supreme Court entered its judgment denying review on July 18, 2012 in all three of Petitioner's cases. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution 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.

STATEMENT OF THE CASE

On July 31, 2009, at 2:06 a.m. in Scott County, Minnesota (File No. 70-CR-09-17926), the Petitioner herein, Wesley Eugene Brooks, was arrested on a DWI charge and he gave a urine sample one hour and nine minutes later, at 3:15 a.m.

On January 25, 2010, at 7:11 a.m. in Scott County, Minnesota (File No. 70-CR-10-2169), Petitioner was arrested on a DWI charge and he gave a urine sample one hour and thirty-four minutes later, at 8:45 a.m.

These two urine test matters were consolidated at the trial level for a decision on the issue of whether there was any valid exception to the Fourth Amendment warrant requirement to justify the warrantless seizure of the urine and they remained consolidated throughout the Minnesota appellate process. (Minnesota Court of Appeals File No. A11-1042)

On January 16, 2010, at 7:03 p.m. in Hennepin County, Minnesota (File No. 27-CR-10-2851), Petitioner was arrested on a DWI charge and he gave a blood sample one hour and fifty-eight minutes later at 9:01 p.m. (Minnesota Court of Appeals File No. A11-1043).

The trial court held a hearing to determine the issue of whether or not there was any valid exception to the Fourth Amendment warrant requirement to justify the warrantless seizure of the blood.

After separate decisions in the Minnesota Court of Appeals, File No. A11-1042 (deciding the Scott County Urine Test Cases) and File No. A11-1043 (deciding the Hennepin County Blood Test Case), the Minnesota Supreme Court consolidated all three cases and then denied further review by order dated July 17, 2012, for which judgment was entered on July 18, 2012.

In each of these routine driving while under the influence of alcohol (DWI) cases, Petitioner filed a pretrial motion to suppress the results of his blood or urine test on the ground that the blood or urine sample was seized without a warrant and in the absence of any valid exception to the warrant requirement of the Fourth Amendment to the United States Constitution. The trial court in the Hennepin County blood test case ruled that Petitioner's consent to testing was voluntary in spite of the fact that Petitioner was told by the officer that if he refused to give his consent he would be charged with a separate crime for refusing the test. Although litigated by the parties, the

trial court declined to address whether or not there were any exigent circumstances present. (See App. A-22).

Upon conviction, the Petitioner appealed to the Minnesota Court of Appeals, where he argued that his consent was not voluntary because it was given after he was threatened with being charged with a crime if he refused to give his consent.

The Minnesota Court of Appeals ruled that it was not necessary to decide the validity of Petitioner's consent because a single factor exigency always exists in all DWI cases; therefore, there is never a set of circumstances in a DWI case where a warrant is required. (See App. A-16). The court of appeals refused to consider the testimony in the record that establishes that a telephone warrant could have been obtained in fifteen minutes or less. The court also would not consider the officer's testimony that, rather than take Petitioner for an immediate seizure of his blood, Petitioner was made to sit handcuffed in the back seat of the squad car for over an hour and a half, while officers conducted a very thorough "inventory" search of Petitioner's vehicle. The blood sample in this case was finally obtained one hour and fifty-eight minutes after the stop was made.

The trial court in the Scott County urine test cases ruled that an exigency existed and the court of appeals agreed, ruling that the evanescent nature of alcohol created the same type of exigency as with a blood test. Further, the Minnesota Court of Appeals concluded that delay in obtaining a sample would always occur –if a warrant were sought and did not consider the record to ascertain if delay would have, in fact, occurred had the officer simply called the duty judge. In Minnesota, a person arrested for DWI is typically given at least thirty minutes to seek an attorney's advice before testing. During and contemporaneous with the thirty minutes the arrestee is allowed to consult with a lawyer, law enforcement should be able to get a telephone warrant without any problem. By stating that delay is always present as a matter of law, a driver is forever prevented from showing that no exigency, in fact, existed.

The Minnesota Supreme Court denied the consolidated Petition for Review on July 17, 2012 (See App. A-1) and the court of appeals entered judgments on July 18, 2012. (See App. A-2 and A-14).

STATEMENT OF FACTS

In the Hennepin County blood test case, a hearing was held on August 6, 2010, at which the following facts were elicited:

On January 16, 2010, Petitioner was stopped at 7:03 p.m. and almost immediately arrested for DWI. The arresting officer testified that for approximately the next hour and a half, she and a backup officer conducted an "inventory" search of the vehicle on the side of the road while Petitioner sat handcuffed in the backseat of her squad car. After the "inventory" search was unsuccessful in finding any contraband, the arresting officer read Petitioner the Minnesota Implied Consent Advisory which states, among other things, that "[a]t the time a test is requested, the person must be informed: (1) that Minnesota law requires the person to take a test ... [and] (2) that refusal to take a test is a crime. Minn. Stat. § 169.51, subd. 2(1)-(2) (2008). Petitioner, after consulting with a lawyer, consented to a blood draw, which was completed at 9:01 p.m., one hour and fifty-eight minutes after the stop.

Additional testimony revealed that a telephone warrant, pursuant to Rule 36 of the Minnesota Rules of Criminal Procedure, could have been obtained in fifteen minutes or less and that the warrant could have been obtained contemporaneous with other mandatory tasks required by Minnesota law that the police officer must complete before demanding a blood or urine sample. For example, law enforcement must give the person suspected of DWI a reasonable amount of time to consult with a lawyer before making a decision about whether to submit to a test. The testimony demonstrated that, absent some extraordinary circumstance, a warrant could be obtained in every DWI case without causing any delay whatsoever. In other words, the court-created "single factor exigency" of rapid alcohol dissipation is a fiction in a routine DWI case. The appellate courts of Minnesota have ruled that it is ***never necessary*** to consider the facts of a particular DWI case when deciding whether a warrant should be obtained because the so-called "single factor exigency" of alcohol dissipation will ***always*** provide justification for a warrantless search. Under this doctrine, law enforcement need not even attempt to get a telephone warrant and no matter what the underlying facts are in any given case.

In the Scott County urine test cases, the record shows that on July 31, 2009, the time from arrest until the urine sample was provided was one hour and nine minutes. During that time, Petitioner contacted and spoke with his attorney. The record reflects that while Petitioner was contacting his attorney

the officer could have contacted a judge to obtain a telephone warrant. The record also shows that, on January 25, 2010, the time from arrest until the time a urine sample was provided was one hour and thirty-four minutes. During that time, Petitioner again contacted and spoke with his attorney. The record further reflects that the officer could have contacted a judge for a telephone warrant and, in fact, judges were present in the courthouse across the street from the jail during this period of time. As previously stated, none of these facts were considered by the Minnesota appellate courts when it held that seeking a warrant would cause delay as a matter of law.

REASONS FOR GRANTING THE PETITION

I. The Minnesota Supreme Court has decided an important federal question in a way that is inconsistent with other decisions of the United States Supreme Court.

The Fourth Amendment to the United States Constitution provides that:

> 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.

Searches conducted without a warrant are presumed to be unreasonable.[1] A warrantless search is always illegal unless it fits into one of the narrowly-drawn exceptions to the warrant requirement, of which there are several: consent,[2] search incident to a lawful arrest,[3] exigent circumstances with probable cause,[4] hot pursuit,[5] stop and frisk[6] and inventory.[7] Beyond these, warrantless searches may be permissible at schools,[8] government offices[9] or of persons on probation.[10]

---

[1] *Preston v. United States*, 376 U.S. 364 (1964); *United States v. Jeffers*, 342 U.S. 48 (1951).
[2] *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).
[3] *Ker v. California*, 374 U.S. 23 (1963); *Michigan v. DeFillippo*, 443 U.S. 31 (1979).
[4] *United States v. Chadwick*, 433 U.S. 1 (1977); *Schmerber*, 384 U.S. at 757; *South Dakota v. Neville*, 459 U.S. 553 (1983); *Illinois v. Batchelder*, 463 U.S. 1112 (1983).
[5] *Warden v. Hayden*, 387 U.S. 294 (1967).
[6] *Terry v. Ohio*, 392 U.S. 1 (1968).
[7] *Cooper v. California*, 386 U.S. 58 (1967).
[8] *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
[9] *O'Connor v. Ortega*, 480 U.S. 709 (1987).
[10] *Griffin v. Wisconsin*, 483 U.S. 868 (1987).

Other general propositions regarding searches are also worth noting, as they underscore the jealousy with which the constitutional right to privacy must be guarded.[11] All searches, even those with warrants, are to be limited narrowly, leaving nothing to the discretion of executing officers.[12] Warrants must be narrowly interpreted.[13] Exceptions to the warrant requirement are always to be narrowly construed.[14] Statutes cannot undermine the constitutional protection.[15] The Constitution cannot be subverted in the name of convenience or efficiency of law enforcement.[16] Even emergency justifications are narrowly circumscribed and strictly scrutinized.[17] The judgment of a neutral magistrate is always preferable to that of a police officer on the scene,[18] who is engaged in the "competitive enterprise of ferreting out crime."[19] The careful regulation of extra-judicial searches enhances the ""moral and educative force of the law" and improves law enforcement as well as protecting basic privacy rights.[20]

This Court has consistently held since 1966 that the collection and analysis of a biological specimen for purposes of scientific evaluation is a "search and seizure" entitled to protection under the Fourth Amendment.[21] The Court last considered the questions raised by a warrantless, non-consensual blood draw in a case involving impaired driving forty-six years ago in *Schmerber v. California*.[22]

In that case, Schmerber and his companion drove off the road and collided with a tree. Officers arrived on the scene and noted that Schmerber had an odor of liquor on his breath and that his eyes were bloodshot, watery and had a glassy appearance. Both Schmerber and his passenger were then transported to the hospital for medical treatment. When the investigating officer concluded his investigation at the scene, he went to the hospital, arriving within two hours of the initial call.

---

[11] *Arkansas v. Sanders*, 442 U.S. 753 (1979).
[12] *Stanford v. Texas*, 379 U.S. 476 (1965).
[13] *Bivens v. Six Agents*, 403 U.S. 388 (1971).
[14] *Ybarra v. Illinois*, 444 U.S. 85 (1979).
[15] *Torres v. Puerto Rico*, 442 U.S. 465 (1979).
[16] *Sanders*, 442 U.S. at 753.
[17] *Mincey v. Arizona*, 437 U.S. 385 (1978).
[18] *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979)
[19] *Johnson v. United States*, 333 U.S. 10 (1948).
[20] *United States v. Caceres*, 440 U.S. 741 (1979).
[21] *See Schmerber*, 384 U.S. 757; *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989).
[22] 384 U.S. 757 (1966).

When the officer arrived, he advised Schmerber that he was under arrest and advised him of his right to counsel. Schmerber called an attorney and was apparently advised to refuse testing, which he did. The officer then directed the doctor in the emergency room to take a blood sample without Schmerber's consent and without a warrant. Schmerber's motion to suppress the evidence was denied.

In evaluating the legality of the officer's conduct, this Court first recognized that searches that probe beneath the surface of the body fall squarely within the protections of the Fourth Amendment.[23] As such, the Court went on to determine the legality of the warrantless search on the facts of the case and announced a landmark decision that has been mis-cited more often than perhaps any other case decided by this Court.

Although this Court went to great lengths to state that *Schmerber's* holding was limited to the "special facts" of the case before it,[24] the *Schmerber* decision has been used by some courts to justify warrantless searches based on exigency in all drinking and driving cases without allowing consideration of any facts tending to show that there would have been no delay. *Schmerber* never stood for the proposition that probable cause to suspect impaired driving will always justify a warrantless blood draw, nor did this Court intend for it to do so.[25] But the Minnesota appellate court's decision in these cases make clear that it is being read to mean exactly that in even the most routine DWI case.

What *Schmerber* actually said was that:

> the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system. Particularly in a case such as this, where time had to be taken to bring the accused to a hospital and to investigate the scene of the accident, **there was no time to seek out a magistrate** and secure a warrant. Given these special facts, we conclude that the attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to petitioner's arrest.[26] (emphasis added)

---

[23] *Id.* at 769-70.
[24] *Id.* at 771
[25] *Id.* at 770-71
[26] *Id.* at 770-71.

This Court's decision in *Schmerber* concludes with this caution:

> We thus conclude that the present record shows no violation of petitioner's right under the Fourth and Fourteenth Amendments to be free from unreasonable searches and seizures. It bears repeating, however, that we reach this judgment only on the facts of the present record. The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the State's minor intrusions into an individual's body under stringently limited conditions in no way indicates that it permits more substantial intrusions, or intrusions under other conditions.[27]

In the Hennepin County case, it is difficult to imagine a set of facts less "exigent" than those facts. Apparently, an" "inventory" search was deemed more important than a citizen's Fourth Amendment right to a warrant prior to the extraction of blood from his body. Minnesota has declared that, no matter the circumstances, in a DWI case, an officer ***never*** has to even consider getting a warrant.

To make matters even worse, the Minnesota's appellate courts' decisions on this subject have come at a time when technological advances have made getting a warrant almost instantaneous. Would there even be an "exigent circumstance" exception to the warrant requirement if finding a magistrate and securing his or her approval was essentially instantaneous? The obvious answer is no. If there is no significant delay attributable to seeking a warrant, "exigency" as an exception to the warrant requirement of the Fourth Amendment would disappear.

At the time of *Schmerber*, this Court could not have imagined that within a generation every person, including police officers, would carry a wireless phone in his or her pocket, that everyone's desk would have a computer connected to everyone else's computer via the internet or even that the contents of a piece of paper could be transmitted via facsimile over a telephone line. Courts have kept pace with these advancements in a number of different ways, including the advent of oral telephone warrants.

---

[27] *Id.* at 772.

Minnesota has permitted the issuance of search warrants based on oral testimony since 1994.[28] The rules for oral search warrant applications provide that the entire process may be conducted by calling a judge by telephone, radio or any other similar means of communication and recording the conversation.[29] In addition, any written material the judge and police officer wish to exchange may be transmitted by facsimile or any other "appropriate means," which would presumably include emails and attachments and can even be done the next day.[30]

The Minnesota Supreme Court briefly addressed a telephonic warrant issue and summarily dismissed it in *State v. Shriner*.[31] The Court reasoned that:

> The officer facing the need for a telephonic warrant cannot be expected to know how much delay will be caused by following the procedures necessary to obtain such a warrant.[32] And during the time taken to obtain a telephonic warrant, it is undisputed that the defendant's body is rapidly[33] metabolizing and dissipating the alcohol in the defendant's blood. We do not believe that the possibility of obtaining a telephonic warrant is sufficient to overcome the single-factor exigent circumstances of the rapid[34] dissipation of alcohol in the defendant's blood in this case.[35]

This statement misses the point completely. If an officer tries to obtain a warrant and fails to reach a judge, or the process proves to be too cumbersome or time consuming in a particular case, that fact can simply be added to the officer's calculation of whether to proceed without a warrant. Assuming the officer then goes forward with a warrantless blood draw, the fact that he or she tried to obtain a warrant is simply added to what is supposed to be the

---

[28] *See generally* Minn. R. Crim. P. 36.
[29] Minn. R. Crim. P. 36.01.
[30] Id.
[31] *Shriner*, 751 N.W.2d at 549.
[32] This is probably true if officers are encouraged by the court's decision never even to give the telephone warrant process a try.
[33] The Minnesota Supreme Court decided to add the word "rapid" to every sentence where it discussed the dissipation of alcohol from the body, but never cited any authority as to why that word belongs in the lexicon. The rate of dissipation is, and always has been (even in 1966) 0.015 percent per hour. From a scientific and practical perspective, it is hardly what one would call rapid. But even if that could somehow be considered "rapid," the court never even hinted at how long it believed it would have taken to contact a neutral magistrate.
[34] *Id.*
[35] Footnote omitted.

""totality of the circumstances" a court will consider in determining whether exigent circumstances truly existed. All that needs to be decided is a rule that requires the officer to at least try to make the phone call to the duty judge to try to get the warrant. The Minnesota Supreme Court invented the constitutional concept of the "single-factor exigency" in *Shriner* to expand the *Schmerber* holding to allow warrantless seizures of blood or urine on every DWI case without any regard for the facts. If such a concept existed, this Court would not have needed to bother with its lengthy analysis in *Welch v. Wisconsin*.[36] In that case, the state argued that the threat to public safety, hot pursuit and the need to preserve evidence of the driver's alcohol concentration were sufficient reasons to set aside the warrant requirement.[37] This Court rejected the claim that even the combination of those factors was enough to create the exigent circumstances needed to forgive the lack of a warrant.[38]

Since *Schmerber*, some courts and law enforcement have expanded the holding in *Schmerber* to the point that it is now cited as justification for every warrantless blood draw in a DWI case.[39] Minnesota's interpretation, that *Schmerber* created a "single-factor exigent circumstance," obviating the need to ever consider the totality of the circumstances, is just the latest affront. As this Court cautioned long ago:

> It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of persons and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.[40]

The Fourth Amendment right to be free from warrantless intrusions beneath the skin has been subjected to forty-six years of "slight deviations" and

---

[36] 466 U.S. 740 (1984).
[37] *Id.* at 753
[38] *Id.* at 754.
[39] *See generally* Section II, below.
[40] *Boyd v. United States*, 116 U.S. 616, 635 (1886)

""stealthy encroachments." Petitioner asks this Court to intervene to reaffirm the importance of the warrant requirement. For these reasons, Petitioner respectfully requests that the United States Supreme Court grant certiorari in this case and Petitioner will ultimately ask the Court to reverse the decisions of the state courts.

II. The Minnesota Supreme Court has decided an important federal question in a way that conflicts with the decisions of other states.

The federal question raised in this case has been resolved inconsistently by appellate courts around the country. Not only are the decisions inconsistent, they have actually arrived at polar opposite conclusions while passing on the same federal constitutional question.

The following courts have ruled, like Minnesota, that the so-called exigency of alcohol dissipation will always allow law enforcement to seize a sample of breath, blood or urine without a warrant no matter what the underlying facts of the case may show as to whether or not any exigency really existed: Wisconsin, Oregon, Minnesota, Ohio, Maine, Idaho, Hawaii, California, and Tennessee.[41] The courts that have ruled that the "totality of the circumstances" must be considered before the existence of an exigency is found are Utah, Iowa, Missouri, Alaska, Arizona, and Indiana.[42] *Missouri v. McNeely* is now pending before this Court on a Petition for a Writ of Certiorari (#11-1425) filed by the State of Missouri. This court granted that petition on September 24, 2012. Should the Court deem it appropriate, Petitioner would welcome the opportunity to have this case consolidated with the *McNeely* case for consideration. In the alternative, the Court could consider the cases as companion cases to be heard in the same term. At a minimum, Petitioner requests that this Petition be granted and then stayed pending the outcome of the *McNeely* case, to avoid any injustice or undue expense to the parties.

---

[41] *State v. Bohling*, 494 N.W.2d 399 (Wis. 1993); *State v. Faust*, 682 N.W.2d 371 (Wis. 2004); *State v. Machuca,* 227 P.2d 729 (Or. 2010); *State v. Shriner,* 751 N.W.2d 538 (Minn. 2008); *State v. Netland,* 762 N.W.2d 202 (Minn. 2009); *State v. Hoover,* 916 N.E.2d 1056 (Ohio 2009); *State v. Baker,* 502 A.2d 489 (Me. 1985); *State v. Wooley,* 775 P.2d 1210 (Idaho 1989); *State v. Entrekin,* 47 P.3d 336 (Hawaii 2002); *People v. Thompson,* 135 P.3d 3 (Cal. 2006); *State v. Humphreys,* 70 S.W.3d 752 (Tenn. Ct. App. 2001).

[42] *State v. Rodriguez*, 156 P.3d 771 (Utah 2007); *State v. Johnson,* 774 N.W.2d 340 (Iowa 2008); *State v. McNeely,* 358 S.W.3d 65 (Mo. 2012); *State v. Blank,* 90 P.3d 156 (Alaska 2004); *State v. Flannegan,* 978 P.2d 127 (Ariz. Ct. App. 1998) *rev. denied* (Ariz. May 26, 1999); *Justice v. State,* 552 N.E. 844 (Ind. Ct. App. 1990).

As the stewards of the Fourth Amendment, this Court should be particularly concerned that courts around the country are reaching opposite conclusions when interpreting the same opinions from this Court. Clearly, additional guidance is required. This case presents a perfect opportunity to lay this question to rest. No party here is claiming the existence of any fact other than the evanescent nature of alcohol as a justification for forgoing a warrant. The Court would have the opportunity to provide an answer that is obviously needed to ensure that the Constitution is being applied equally to every person in the United States. Further, this Court's decision would eliminate the cost and time associated with continuing to litigate this important Fourth Amendment issue. This is also an opportunity for this Court to encourage the use of modern technology so that warrants without delay could become the norm throughout this country.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Certiorari and reverse the decision of the Minnesota appellate courts.

Respectfully submitted,

STRANDEMO, SHERIDAN & DULAS, P.A.

Jeffrey S. Sheridan
Counsel of Record for Petitioner
320 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
(651) 686-8800

THE MCCLOUD LAW FIRM

Eric J. McCloud
Attorney at Law
Box No. 457
1360 University Avenue West
St. Paul, Minnesota 55104
(651) 341-2220

John A. Price III
Attorney at Law
22530 Forest Ridge Drive
Lakeville, Minnesota 55044
(952) 469-6961