S292379

No.

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

v.

SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent,

JOSEPH FEGHHI,
Real Party in Interest.

Sixth Appellate District, Case No. H053051
Santa Clara County Superior Court, Case No. F2200028
The Honorable Robert Foley, Judge

PETITION FOR REVIEW

JEFFREY F. ROSEN (SBN 163589)
District Attorney, Santa Clara County
DAVID A. ANGEL (SBN 164676)
Assistant District Attorney
ALEXANDRA W. GADEBERG (SBN 271567)
Supervising Deputy District Attorney
*THOMAS BUTTERFOSS (SBN 327772)
Deputy District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110
Telephone: (408) 792-2040
Fax: (408) 279-3547
tbutterfoss@dao.sccgov.org
Attorneys for Petitioner

August 11, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

TABLE OF AUTHORITIES
(continued)

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

Petitioner respectfully seeks review of the summary denial of its petition for writ of mandate by the Court of Appeal for the Sixth Appellate District. The summary denial order was filed on August 1, 2025, and is attached. (Opn.) The order was final when filed and thus Petitioner could not have filed a petition for rehearing in that court. (Cal. Rules of Court, rule 8.490(b)(1)(A); Cal. Rules of Court, rule 8.268(a)(2).) This petition is timely. (Cal. Rules of Court, rule 8.500(e)(1).)

ISSUES PRESENTED

(1) Does the Fourth Amendment require "necessity" and/or "exhaustion" for the issuance of a lawful search warrant for routine blood draws? Specifically, in the context of a felony driving under the influence case, does a suspect's consent to a breath test invalidate a search warrant for a blood draw?

(2) Can a trial court order the suppression of evidence obtained pursuant to a search warrant without first holding an evidentiary hearing on disputed issues of fact?

INTRODUCTION

The Respondent trial court ordered suppression of a blood sample obtained pursuant to a search warrant in a felony driving under the influence case that resulted in the death of another motorist. In suppressing this vital evidence, Respondent did not find that the warrant lacked probable cause. Instead, Respondent

created a "necessity" requirement for search warrants for routine blood draws that has no precedent. Respondent then applied this novel necessity requirement, holding there was no need for a blood draw once the suspect purportedly consented to a breath test, and thus no basis for the warrant that was issued. Furthermore, Respondent made these findings and suppressed evidence without conducting an evidentiary hearing, despite Petitioner disputing pivotal assertions of fact in Real Party's briefing and argument.

STATEMENT OF THE CASE

A. The murder

On November 7, 2021, Real Party was driving his Corvette at nearly 130 miles per hour on Highway 101 when he rear-ended the victim, Vanessa Arellano, killing her. (Ex. 1[1], p. 5:11-13, p. 59:17-18.) Officers responding to the collision noticed Real Party smelled of alcohol, conducted a driving under the influence investigation, and concluded he was intoxicated. (*Id* at pp. 104:11-111:13.)

California Highway Patrol Officer Nile King Stewart asked Real Party if he would provide a breath sample for a Preliminary Alcohol Screening Device, and Real Party refused. (*Id*. at p. 111:18-24.) After arresting Real Party, Officer Stewart explained to Real Party that he had an obligation under the implied consent law to provide either a breath or blood sample,

[1] Exhibit citations refer to exhibits attached to the Petition for Writ of Mandate filed in the Court of Appeal for the Sixth Appellate District on March 3, 2025, in case number H053051.

and Real Party refused. (*Id*. at pp. 111:25-112:4.) Officer Stewart explained that if Real Party refused to provide a blood or breath sample, officers would seek a search warrant and draw his blood. (*Id*. at p. 112:20-23.) Real Party still refused to provide a sample. (*Id*. at p. 112:24-26.)

California Highway Patrol Officer Fernando Marquez took custody of Real Party and transported him to the station. (*Id*. at p. 125:18-20.) Officer Marquez sought and obtained a search warrant to seize a sample of Real Party's blood. (Ex. 2.)

While there is no competent evidence of this in the record, Real Party asserted in his motion to suppress that he expressed willingness to complete a breath test after Officer Marquez informed him he was obtaining a search warrant for a blood sample. (Ex. 5, p. 4:20.)

A registered nurse and certified phlebotomist technician withdrew a sample of Real Party's blood in a medically approved manner. (Ex. 1, pp. 6:22-7:19.) The vials of Real Party's blood were secured by Officer Marquez and later tested by a qualified expert criminalist at the Santa Clara County Crime Laboratory using a scientifically accepted process. (*Id*. at pp. 7:22-9:9.) The testing revealed Real Party's blood alcohol concentration was 0.14 percent at the time his blood was drawn, about three and a half hours after he caused the fatal collision. (*Id*. at p. 9:7-9.)

B. The criminal prosecution and motion to suppress

1. The preliminary hearing

A preliminary hearing in this case was held on March 7 and 8, 2024. (Ex. 1.) Real Party had not filed a written motion to

suppress in advance of the hearing and did not make a motion to suppress at the preliminary hearing. (Ex. 1; see Pen. Code[2] § 1538.5, subd. (f).) Thus, Fourth Amendment issues were not addressed at the preliminary hearing. Officer Marquez, the author of the search warrant affidavit and the person to whom Real Party purportedly gave his consent to perform a breath test, did not testify at the preliminary hearing. (See Ex. 1, p. 2 ("Index of Examination").)

On March 8, 2024, Real Party was held to answer for the murder of Vanessa Arellano on or about November 7, 2021 (Pen. Code § 187, subd. (a)), gross vehicular manslaughter (§ 191.5, subd. (a)), driving under the influence of alcohol and causing injury to another (Veh. Code § 23153, subd. (a)), and driving with a blood alcohol level of 0.08% and causing injury to another (Veh. Code § 23153, subd. (b)). (Ex. 1, pp. 147:2-148:1; Ex. 3.) On March 20, 2024, Petitioner filed an Information conforming to the magistrate's holding, and adding an allegation that Real Party personally inflicted great bodily injury within the meaning of sections 1192.7, subdivision (c)(8), 667, 12022.7, subdivision (a), and 1203, subdivision (e)(3). (Ex. 4)

2. The motion to traverse and suppress

On August 16, 2024, Real Party filed a "Motion to Quash and Traverse Search Warrant and Suppress Evidence Pursuant to Penal Code Section 1538.5(i); Request for Evidentiary Hearing" and accompanying Memorandum of Points and

---

[2] Further statutory references are to the Penal Code unless otherwise stated.

Authorities. Real Party alleged that in the search warrant affidavit, Officer Marquez misrepresented Real Party's refusal to submit to a blood test and omitted that Real Party had belatedly consented to a breath test. (Ex. 5.) Real Party argued that, based on these alleged omissions and/or misrepresentations regarding whether a search warrant was "necessary," evidence seized pursuant to the search warrant must be suppressed. (*Id.* at p. 5:3-11.) Real Party attached his own transcript of a portion of a body-worn camera video to the motion and later relied upon its contents in his argument. (*Id.* at pp. 8-15, pp. 21-30 [Real Party "Exhibit B – Body-Worn Camera Transcript"].)

On January 24, 2025, Petitioner filed an opposition to Real Party's motion to suppress, arguing that Real Party had not met his preliminary burden to justify a *Franks*[3] hearing by making a substantial showing that there were any misrepresentations and/or material omissions in the affidavit. (Ex. 9, pp. 4-15.) Petitioner further argued that Real Party's claimed misrepresentations and/or omissions were not material and that the affidavit would still be supported by probable cause if the purported misrepresentations were corrected and/or omissions were included. (*Id.* at pp. 13-15.) Petitioner contested the accuracy of Real Party's transcript of the body-worn camera video and noted that Real Party's transcript omitted the portion of the investigation wherein Real Party repeatedly refused to complete a chemical test. (*Id.* at pp. 9-12.)

[3] *Franks v. Delaware* (1978) 438 U.S. 154.

On January 28, 2025, Real Party served Petitioner with a reply brief for the suppression motion, reiterating the argument that because Real Party had purportedly consented to a breath test, a warrant for his blood could not have been issued. (Ex. 11.)

3. The hearing on the motion and Respondent's ruling

On January 31, 2025, Respondent heard the motion to traverse and suppress. (Ex. 14.) Real Party's motion included a request for an evidentiary hearing pursuant to *Franks v. Delaware* (1978) 438 U.S. 154. (Ex. 11, p. 1.) While Petitioner asserted that Real Party had not met his burden to justify an evidentiary *Franks* hearing, Petitioner secured the presence of both officers involved in the challenged affidavit via subpoena in case a hearing were to proceed. (Ex. 13, p. 2.)

However, Respondent did not hold a hearing to evaluate whether any misstatements or omissions in the affidavit negated the probable cause supporting the warrant, as required by *Franks*. (Ex. 14; Ex. 13.) Respondent did not hear testimony from either officer. (Ex. 14; Ex. 13.) Respondent did not review, much less admit into evidence, the video referenced and relied on by Real Party in his motion to traverse (the transcript of which was contested by Petitioner). (Ex. 14.) In fact, Respondent did not receive any evidence at all. (Ex. 14.)

Instead, Respondent accepted Real Party's characterization of the events and concluded that Real Party had, in fact, freely and voluntarily consented to a breath test. (Ex. 14, p. 12:23-26.) Respondent then abruptly ordered the evidence obtained

pursuant to a search warrant suppressed based on the alleged lack of need for the warrant. (Ex. 14, p. 12:9-13, p. 12:23-28.)

Specifically, Respondent concluded that, had the "fact" that Real Party stated he was willing to submit to a breath test "been put in the affidavit, I do not believe [the magistrate who signed the warrant] would have issued that warrant. She simply would have said, 'You have your alternative to a breath test [sic]. He says he will take it. Go get it done.' For me, that's the end of the discussion." (Ex. 14, p. 12:9-13.) Respondent further concluded that Real Party "may have initially refused, but once he learned that there was to be a blood draw, he simply said, 'No. I will submit to a breath test.'[4] I believe that under the current law, he has that option, he exercised it, and that should have ended it. All right. [Real Party's] motion is granted." (Ex. 14, p. 12:23-28.)

4. Summary denial of the petition for writ of mandate

On March 3, 2025, Petitioner filed a petition for writ of mandate in the Court of Appeal for the Sixth Appellate District, case number H053051.

On May 19, 2025, the Court of Appeal for the Sixth Appellate District ordered Real Party to file points and authorities in preliminary opposition to the petition. On May 27, 2025, Real Party filed a response to the Petition.

---

[4] While this statement is in quotation marks in the transcript, they are solely to indicate the court speaking in another's voice; it is not a direct quote from any evidence of Real Party's statement, and it does not appear in the transcript Real Party submitted with his motion to suppress.

On August 1, 2025, the Court of Appeal for the Sixth Appellate District summarily denied the petition.

REASONS FOR GRANTING REVIEW

Respondent's suppression order—made without an evidentiary hearing—created and applied a new constitutional requirement: that a felony driving under the influence suspect must refuse a breath test before a search warrant for a medically approved, routine blood draw can be issued. By doing so, Respondent suppressed vital evidence in a murder prosecution.

The Court of Appeal's summary denial of the petition for writ of mandate has further left Petitioner and Respondent without guidance regarding the propriety of this potential new constitutional requirement, and Petitioner without adequate review or remedy in this case.

For these reasons, Petitioner requests review by this Court to secure uniformity of decision under Rule 8.500(b)(1). However, Petitioner is aware that there are great burdens on this Court's limited resources and that this case comes to this Court without the benefit of the Court of Appeal having considered and decided the merits of the issues. Therefore, the Court should alternatively grant review to transfer the matter to the Court of Appeal with instructions to issue an Order to Show Cause why:

(1) Respondent's January 31, 2025 order granting Real Party's Motion to Traverse and Quash Search Warrant and Suppress Evidence should not be vacated, and

(2) an order denying said motion should not be entered.

(Cal. Rules of Court, rule 8.500(b)(4).)

ARGUMENT

A. Contrary to Respondent's ruling, there is no law—constitutional or statutory—that prohibits the issuance of a search warrant after a defendant has consented to a breath test.

The Fourth Amendment provides that "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." (U.S. Const., 4th Amend.) There is no constitutional requirement that consent must first be refused before a warrant can be issued. Similarly, as specifically applied to the facts presented here, there is no "necessity" requirement or "least invasive means" requirement for a blood draw search warrant in a felony case, despite Real Party's repeated efforts to read them into the law.[5] Real Party repeatedly

---

[5] The Supreme Court has held that probable cause alone is not enough to render certain extremely invasive searches, such as forced surgery under general anesthesia to remove a bullet from a suspect's chest, reasonable under the Fourth Amendment. (See *Winston v. Lee* (1985) 470 U.S. 753, 766 [holding it unreasonable under the Fourth Amendment to force a suspect to undergo surgery under general anesthesia to remove a bullet from his chest, where the risk to his life and health were a subject of considerable dispute and the government had not demonstrated a compelling need for the evidence].) However, Petitioner is not aware of, and neither Real Party nor Respondent cited below, any case where such "necessity" requirement was applied to a routine medically approved blood draw in a driving under the influence case. Indeed, the Supreme Court in *Winston* specifically contrasted the surgery at issue there with the blood draws approved in *Schmerber v. California* (1966) 384 U.S. 757, which "involve[] virtually no risk, trauma, or pain" and where "all reasonable medical precautions were taken and no unusual or untested procedures were employed." (*Winston*, *supra*, 470 U.S. at p. 761.)

argued—and Respondent accepted—that if a suspect belatedly offers to complete a breath test, a magistrate cannot issue a search warrant for a blood draw, regardless of the presence of probable cause to believe there is evidence of a felony in the suspect's blood. That is not the case. If an officer has probable cause to search a suspect's home, the suspect may not prevent the officer from obtaining a search warrant by offering to let him look through the front windows. Similarly, Real Party here could not prevent an officer with probable cause to search his blood from obtaining a search warrant by purportedly offering to provide a breath sample, which is commonly argued to be an inferior type of blood alcohol evidence.

In his motion to suppress, Real Party claimed a search warrant could not issue once he consented to a breath test "because there would be *no need* for the magistrate to authorize the invasive blood test if she knew defendant had consented to the breath test." (Ex. 11, p. 3 [emphasis added].) As explained above, there is no requirement of "necessity" for a blood draw warrant – only probable cause. The fact that Real Party believes other evidence would have been available and sufficient to prove his guilt does not require the People to be satisfied with that evidence.

Real Party doubled down on this legal fallacy at the hearing before Respondent, erroneously claiming no less than four times that if a suspect consents to a breath test, a warrant to seize and search their blood cannot be issued. (Ex. 14, p. 6:19-22 ["If the person is saying, 'I'm consenting to a breath test,' there

wouldn't be a basis for a warrant there, because he's elected to one of the two choices that are available to him under the law."]; Ex. 14, p. 7:6-10 ["Had [the defendant's statement that he would take a breath test] been relayed to the Court, the warrant wouldn't have issued because he's consenting. He's consenting to the statutory mandated breath test – breath or blood. He's made his choice. There is no basis for a warrant."]; Ex. 14, p. 10:19-21 ["You could not go to an issuing magistrate and say, 'He's agreeing to do a breath test. This is an alcohol-only case, but I still want a warrant for his blood.' "]; Ex. 14, p. 11:3-10 ["Had this officer been truthful with the Court and said he has agreed – after being admonished pursuant to [Vehicle Code section] 23612, he has agreed to a breath test, then a judge would say, then there is no need for a warrant. He's consenting. He's giving you permission to do a breath test, and the inquiry ends there. But this Court instead was told that he refused all tests, and, therefore, the warrant issued. That's the problem."].)

Respondent accepted this erroneous legal argument and held that after Real Party consented to a breath test—a disputed factual claim—a warrant to search his blood could not issue. (Ex. 14, p. 12:23-28 ["[Real Party] said, 'No. I will submit to a breath test.' I believe that under the current law, he has that option, he exercised it, and that should have ended it. All right. [Real Party's] motion is granted."].)

Real Party's argument apparently stems from Penal Code section 1524, which authorizes search warrants in particular scenarios. (§ 1524.) Section 1524, subdivision (a)(13) does create a

statutory requirement for a suspect to have refused a blood test in *misdemeanor* driving under the influence cases before issuance of a warrant, which is authorized "[w]hen a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a *blood* test as required by Section 23612 of the Vehicle Code." (*Ibid.* [emphasis added].)

However, Real Party here was not suspected of *misdemeanor* driving under the influence; he was suspected of murder, or at the very least of gross vehicular manslaughter and driving under the influence causing great bodily injury, all felonies. (See § 191.5, subd. (a); Veh. Code § 23153; § 12022.7, subd. (a).) Therefore, the search warrant in this case was requested under and statutorily authorized by Penal Code section 1524 subdivision (a)(4), as the defendant's blood "constitute[d] evidence that tends to show a felony has been committed." (§ 1524, subd. (a)(4).) Unlike for a misdemeanor driving under the influence offense, there was no statutory requirement of any kind of refusal before a search warrant could issue in this case. Whether Real Party consented—to a breath test, or even to a blood test—was legally irrelevant to whether a warrant could issue in this case.

There is simply no law, statutory or otherwise, that prohibits an officer from obtaining a blood draw warrant supported by probable cause simply because the suspect

purportedly consents to a breath test. Respondent's order erroneously invented a new necessity requirement to obtain a search warrant for a routine blood draw, then suppressed vital evidence in a murder prosecution based on that brand-new requirement. Respondent's ruling must be reversed.

B. Respondent further erred by suppressing evidence on the basis of a purported statutory violation, rather than a constitutional violation.

Respondent erroneously suppressed evidence based on a perceived failure to give Real Party his purported choice of a breath test pursuant to Vehicle Code section 23612, subdivision (a)(2)(A). Respondent held that Real Party "said, 'No. I will submit to a breath test.' I believe that under the current law, he has that option, he exercised it, and that should have ended it. All right. [Real Party's] motion is granted." (Ex. 14, p. 12:23-28.) To the extent that Real Party did have the option of a breath test under current law, it was purely statutory. (See Veh. Code § 23612.) There is no Fourth Amendment right to a breath test. Ergo, Respondent also erred by suppressing evidence based on a perceived statutory violation, as there was no constitutional violation mandating application of the exclusionary rule.

"In California, issues relating to the suppression of evidence derived from governmental searches and seizures are reviewed under federal constitutional standards. [Citations.]" (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1212.) Any lack of "compliance with the implied consent law does not mandate the suppression of the test result," because "evidence may be suppressed pursuant to section 1538.5 only if the defendant's

Fourth Amendment rights were violated and suppression is mandated by the federal exclusionary rule." (*People v. Vannesse* (2018) 23 Cal.App.5th 440, 447, *as modified (June 1, 2018)* [citing *In re Lance W.* (1985) 37 Cal.3d 873, 896].) In fact, exclusion of evidence on the basis of a statutory violation "is prohibited by the 'Truth-in-Evidence' provision of Article I, section 28, subdivision (f)(2) of the California Constitution." (*Ibid*.; see also *People v. Truer* (1985) 168 Cal.App.3d 437, 440-443; *People v. Luevano* (1985) 167 Cal.App.3d 1123, 1128-1129; and see generally, *Lance W.*, *supra*, 37 Cal.3d at pp. 884-890.)

It appears Respondent believed that officers had not followed California's implied consent statute. However, "California case law unequivocally establishes a police officer's failure to comply with the implied consent law does not amount to a violation of an arrestee's constitutional rights." (*Ritschel v. City of Fountain Valley* (2006) 137 Cal.App.4th 107, 118; see also *People v. Superior Court (Maria)* (1992) 11 Cal.App.4th 134, 144; *People v. Ryan* (1981) 116 Cal.App.3d 168, 181-183; *People v. Brannon* (1973) 32 Cal.App.3d 971, 975-976.)

Directly contrary to Real Party's claims, "case law has rejected contentions that a failure to *advise* an arrestee of the tests available or to *honor* the arrestee's choice of a particular test amounts to a constitutional violation." (*Ritschel*, *supra*, 137 Cal.App.4th at p. 119, emphasis in original; see also *People v. Ling* (2017) 15 Cal.App.5th Supp. 1, 10 ["[A]lthough the actions of the arresting officer failed to comply with the requirements of the implied consent law, no court has held that such a failure rises to

the level of a constitutional violation, and we do not so hold now."]; *People v. Harris* (2015) 234 Cal.App.4th 671, 691-692 ["[F]ailure to strictly follow the implied consent law does not violate a defendant's constitutional rights"]; *People v. Bloom* (1983) 142 Cal.App.3d 310, 316-318 [failure to advise of other possible tests violates no constitutional right].) A California appellate court has upheld as constitutional even a *warrantless* blood draw despite the suspect's ostensible preference for a breath test, holding that the defendant had "not shown that requiring him to take a [warrantless] blood test violated his Fourth Amendment rights," despite the defendant's claim that the police could not require him to take a blood test after he had selected a breath test. (*People v. Sugarman* (2002) 96 Cal.App.4th 210, 215-216.)

Even if there were a statutory violation in this case (which Petitioner does not concede), it would be error to suppress evidence on that basis, as there was no constitutional violation. Real Party and Respondent provided no case, and Petitioner believes there is none, stating that the Constitution is violated by the issuance of a warrant for a blood draw merely because a suspect would prefer a breath test.

The case mentioned by Respondent during its ruling for the proposition that "Justice Sotomayor … was very, very, you know, concerned about the invasiveness of a blood draw" (Ex. 14, p. 12:20-22), was regarding blood draws conducted *without a warrant*. (See *Missouri v. McNeely* (2013) 569 U.S. 141, 145.) The Court in *McNeely* did not *prevent* officers from obtaining

warrants to search driving under the influence suspects' blood – on the contrary, it *required them to do so*. (*Id*. at p. 152 ["In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment *mandates that they do so*."] [emphasis added].)

The officers here complied with the Fourth Amendment by obtaining a search warrant for Real Party's blood. Respondent Court erroneously suppressed that lawfully obtained evidence when it elevated Real Party's purported preference for a breath test into a brand-new constitutional right with no precedent in the Constitution or Fourth Amendment jurisprudence. Again, Respondent's ruling must be reversed.

C. Respondent also erred by suppressing evidence obtained pursuant to a search warrant without hearing any evidence as to a disputed factual claim.

Respondent improperly granted Real Party's motion to traverse without hearing any evidence. (Ex. 14, pp. 2-12.) As Real Party had the burden to prove the search warrant was invalid, this was error.

A search conducted pursuant to a search warrant is presumed lawful. Thus, a defendant bears the burden of establishing the invalidity of the search warrant. (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 101; *People v. Rowland* (2022) 82 Cal.App.5th 1099, 1111.) This burden extends both to a motion to quash and a motion to traverse a search warrant. (*People v. Amador* (2000) 24 Cal.4th 387, 393.)

It "is a rare day indeed" when "facially sufficient warrants issued by neutral magistrates" can be successfully challenged, as "the sanction of suppressing relevant evidence should be reserved for cases of the most serious misconduct committed by agents of the commonwealth." (*People v. Wilson* (1986) 182 Cal.App.3d 742, 750.) One who seeks to challenge a facially sufficient warrant issued by a neutral magistrate "better have his facts and figures, and they should be compelling." (*Ibid*.)

Real Party here did not present any facts or figures, compelling or otherwise. Real Party did not meet his burden to prove the search warrant was invalid because he presented *no evidence* beyond a contested exhibit attached to his motion. (Ex. 14, pp. 2-12.)

Respondent simply accepted Real Party's assertions that, despite refusing to complete a chemical test at the scene of the fatal collision, Real Party later consented to a breath test. There was no competent evidence to support this finding. Real Party never moved to admit his transcript into evidence. Petitioner repeatedly and specifically contested the contents of the transcript in Petitioner's "Opposition to Defendant's Motion for (1) A *Franks* Hearing and (2) To Suppress," filed with Respondent Court on January 24, 2025. (Ex. 9, p. 11 ["The People believe the transcript is in error in lines 24-28, an important portion of the recording."], Ex. 9, p. 9 ["[T]here are some section[s] of the transcript which the transcript describes as 'inaudible' which the People believe can be heard and understood."], Ex. 9, pp. 16-17 ["This exchange occurs at 32:12-32:32 in the recording. Defense

Exhibit B describes most of this po[r]tion of the recording as inaudible."].) In addition to disputing the contents of the transcript, Petitioner challenged Real Party's interpretation of those contents, as well as Real Party's failure to include a transcript of other relevant portions of the video footage. (Ex. 9, p. 9 ["[T]his transcript records only the second time the defendant was asked to submit to chemical testing, it is not a transcript of defendant's refusal to submit to a chemical test with Officer Stewart at the scene."].)

Such transcription disputes are why it has been established for over sixty years that the accuracy of a transcript must be established before it can be admitted into evidence. (*People v. Wojahn* (1959) 169 Cal.App.2d 135, 146.) It is also why "reviewing courts have recommended that trial courts review the recording to ensure that the transcript reasonably reflects the recorded words." (*People v. Jones* (2017) 3 Cal.5th 583, 611 [collecting citations].) Here, despite Petitioner's specific assertions that portions of the transcript were inaccurate, Real Party did not lay any foundation regarding the accuracy of the transcript, and Respondent did not make any independent evaluation of its accuracy.

After accepting Real Party's factual assertions without competent evidence to support them, Respondent found that once Real Party consented to a breath test, there was no need for a blood sample to be seized. This finding was also based on no evidence. Petitioner had no opportunity to meet this new necessity requirement through testimony explaining why

investigating officers thought it was in fact necessary to obtain a search warrant for a blood draw—such as the ambiguity of the defendant's "consent," or the common tactic used by driving under the influence suspects to delay the collection of evidence by "consenting" to a breath test, only to later withdraw their consent or provide insufficient breath samples for the machine to read.

Respondent suppressed vital evidence obtained pursuant to a search warrant on the basis of a contested transcript of a video it never received or reviewed, a transcript of a preliminary hearing where no Fourth Amendment questions were at issue, and Real Party's oral and written argument. Once again, Respondent's order must be reversed.

D. Review is necessary to secure uniformity of decision.

By imposing a novel "necessity" requirement for the issuance of a search warrant for a routine blood draw in a felony driving under the influence case, Respondent's order upsets well-settled law governing the legality of blood draws. Over ten years ago, the Supreme Court held that the metabolization of alcohol in the bloodstream does not create a per se exigency justifying an exception to the warrant requirement for driving under the influence cases. (*Missouri v. McNeely, supra*, 569 U.S. at p. 156.)

Following *McNeely*, officers in California have developed a standard investigative practice when an individual is arrested for driving under the influence: the individual is advised of the implied consent law (Vehicle Code section 23162) requiring them to submit to a chemical test, and if they refuse to provide consent—or if their consent is ambiguous or equivocal—officers

obtain a search warrant to draw a sample of their blood. California courts have never upheld the suppression of routine blood evidence in a felony driving under the influence case seized pursuant to a search warrant solely because a defendant may have consented to a breath test. They have repeatedly held that even violations of the implied consent statute do not rise to the level of constitutional violations requiring the suppression of evidence. (*Ritschel*, *supra*, 137 Cal.App.4th at p. 118; see also *Maria*, *supra*, 11 Cal.App.4th at p. 144; *Ryan*, *supra*, 116 Cal.App.3d at pp. 181-183; *Brannon*, *supra*, 32 Cal.App.3d at pp. 975-976.)

The Respondent trial court's ruling invents a novel "necessity" requirement for routine blood draws, upending decades of precedent and suppressing vital evidence in a murder prosecution. Review is necessary to secure uniformity of decision.

CONCLUSION

The petition for review should be granted.

Respectfully submitted,

JEFFREY F. ROSEN
District Attorney, Santa Clara County
DAVID A. ANGEL
Assistant District Attorney
ALEXANDRA W. GADEBERG
Supervising Deputy District Attorney

/S/ THOMAS BUTTERFOSS
THOMAS BUTTERFOSS
Deputy District Attorney
Attorneys for Petitioner

August 11, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached PETITION FOR REVIEW uses a 13-point Century Schoolbook font and contains 5,655 words.

/S/ THOMAS BUTTERFOSS
THOMAS BUTTERFOSS
Deputy District Attorney,
Attorney for Petitioner

August 11, 2025

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,
Petitioner,
v.
THE SUPERIOR COURT OF SANTA CLARA COUNTY,
Respondent;
JOSEPH FEGHHI,
Real Party in Interest.

H053051
Santa Clara County Super. Ct. No. F2200028

BY THE COURT:

The petition for writ of mandate is denied.

(Greenwood, P.J., Danner, J., and Bromberg, J.
participated in this decision.)

Date: 08/01/2025 _____ P.J.

S292379

PROOF OF SERVICE

Case Name: The People v. Superior Court (Feghhi)

Case Number: California Supreme Court Docket S_____ (to be assigned)
Sixth District Court of Appeal Docket H053051
Santa Clara County Superior Court Docket F2200028

I declare:

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years, and not a party to the above-entitled action. My business address is Office of the District Attorney, 70 West Hedding Street, West Wing, San Jose, CA 95110.

On **August 11, 2025**, I served the following upon the interested parties in this action by the method(s) indicated below:

INVITATION FOR REVIEW
ON THE COURT'S OWN MOTION CRC 8.512(c)(1)

Via TrueFiling:

Office of the Attorney General
SFAGdocketing@doj.ca.gov

Sixth District Court of Appeal
Sixth.District@jud.ca.gov

Alexandra Waner Gadeberg
Deputy District Attorney
agadeberg@dao.sccgov.org

Thomas Peter Butterfoss
Deputy District Attorney
tbutterfoss@dao.sccgov.org

Honorable Robert Foley
Santa Clara County Superior Court
sscriminfo@scscourt.org

Glenn Cole Casey
cole@duisandiego.com

Lauren Ruth Angelos
lauren@duisandiego.com

Patrick Morgan Ford
ljlegal@sbcglobal.net

Santa Clara County DA's Office
dca@dao.sccgov.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **August 11, 2025** in San Jose, California.

/s/ *Shalese Huang*
Shalese Huang

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **The People v. Superior Court (Feghhi)**
Case Number: **TEMP-VZWVROJY**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **tbutterfoss@dao.sccgov.org**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PROOF OF SERVICE	Proof Of Service
PETITION FOR REVIEW	H053051_PFR_Feghhi

Service Recipients:

Person Served	Email Address	Type	Date / Time
Thomas Butterfoss Santa Clara County District Attorney's Office 327772	tbutterfoss@dao.sccgov.org	e-Serve	8/11/2025 3:45:08 PM
Office of the Attorney General	sfagdocketing@doj.ca.gov	e-Serve	8/11/2025 3:45:08 PM
Alexandra Gadeberg 271567	agadeberg@dao.sccgov.org	e-Serve	8/11/2025 3:45:08 PM
SCC DAO	dca@dao.sccgov.org	e-Serve	8/11/2025 3:45:08 PM
Hon. Robert Foley of Santa Clara County Superior Court (docket F2200028)	sscriminfo@scscourt.org	e-Serve	8/11/2025 3:45:08 PM
Glenn Cole Casey	cole@duisandiego.com	e-Serve	8/11/2025 3:45:08 PM
Lauren Ruth Angelos	lauren@duisandiego.com	e-Serve	8/11/2025 3:45:08 PM
Patrick Morgan Ford 114398	ljlegal@sbcglobal.net	e-Serve	8/11/2025 3:45:08 PM
Sixth District Court of Appeal	Sixth.District@jud.ca.gov	e-Serve	8/11/2025 3:45:08 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/11/2025

Date

/s/Shalese Huang

Signature

Butterfoss, Thomas (327772)

Last Name, First Name (PNum)

Santa Clara County District Attorney's Office

Law Firm