

CASE NO: 24-5075

IN THE SUPREME COURT OF THE UNITED  
STATES

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DETRON L. PERRY,

Petitioner,  
v.

JACOB L. STREITTMATTER,

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE NEBRASKA COURT OF APPEALS

NO. A-23-034

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BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI

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## I. TABLE OF AUTHORITIES

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## **II. INTRODUCTION**

This is a simple motor vehicle collision case. Petitioner claimed he was rear-ended by Respondent; Respondent claimed Petitioner merged into his lane. Petitioner proceeded *pro se* in the Trial Court. A jury returned a verdict in favor of Respondent. Petitioner appealed to the Nebraska Court of Appeals. The Nebraska Court of Appeals affirmed on every issue, then denied rehearing. The Nebraska Supreme Court rejected Petitioner's Petition for Further Review because it was untimely. There is no reason for this case to be considered by the United States Supreme Court. The Petition for Writ of Certiorari should be denied.

## **III. STATEMENT OF THE CASE**

The Trial Court abided by pretrial orders regarding expert witnesses and claims. The Rules of Evidence were adhered to, and evidence was correctly admitted or excluded. The jury was properly instructed. The parties blamed each other for causing the accident, with evidence adduced from

both sides. The jury's verdict was supported by the evidence, and there is no basis for reversal.

The Nebraska Court of Appeals decision set forth the pertinent facts in some detail. The case was decided without oral argument. Petitioner's Motion for Rehearing was promptly denied. Petitioner then missed the deadline for filing a Petition for Further Review in the Nebraska Supreme Court. Finally, Petitioner missed the filing deadline with this Court for his Petition for Writ of Certiorari.

With no valid legal basis, Petitioner refuses to take the jury's "no" for an answer. Respondent asks that the Petition for Writ of Certiorari be denied so that this case can be over.

#### **IV. REASONS TO DENY CERTIORARI**

##### **A. THE PETITION FOR WRIT OF CERTIORARI WAS UNTIMELY**

The Petition For Writ Of Certiorari was not timely filed. Here are the relevant dates:

December 26, 2023 - Court of Appeals decision

January 22, 2024 – Court of Appeals Order

overruling Motion for Rehearing

February 26, 2024 – Petition for Further  
Review filed in Nebraska Supreme  
Court

February 26, 2024 – Mandate issued by  
Nebraska Supreme Court

February 26, 2024 – Order on Mandate by  
Trial Court

March 1, 2024 - Nebraska Supreme Court  
Order denying Petition for Further  
Review as untimely filed

April 19, 2024 – Per Redmond Barnes letter,  
Petition received

April 22, 2024 – 90 days from Court of  
Appeals' decision denying rehearing;  
Last day to seek Certiorari

April 26, 2024 - US Supreme Court receives  
Petition for Writ

May 1, 2024 – US Supreme Court letter of  
Redmond Barnes stating Petition was

postmarked April 19, 2024, but not

received until April 26, 2024

July 16, 2024 – Docketed

The decision of the Nebraska Court of Appeals

was entered on December 26, 2023. Petitioner filed a

Motion for Rehearing in the Court of Appeals. That

Motion was overruled on January 22, 2024. U.S. Sup.

Ct. Rule 13(2) states the time to file the Petition for Writ

of Certiorari runs from the date of denial of rehearing.

Ninety days would have been Monday, April 22, 2024.

A letter was issued by the Office of the Clerk on

May 1, 2024. The letter stated the Petition for Writ of

Certiorari was postmarked April 19, 2024, and

received by the Court on April 26, 2024. The Petition

for Writ of Certiorari was untimely, and should not

have been docketed.

The letter was correct, but for the wrong reason.

The letter calculated the 90 days from the date of the

Court of Appeals decision, which was not the right

date to use. Even using the correct date, when rehearing was denied on January 22, 2024, the April 26, 2024 filing was untimely.

For unknown reasons, another letter was issued which stated the Petition for Writ of Certiorari was received on April 19, 2024. That would have been timely, but April 19, 2024 was the date of mailing, not the date of filing.

The Nebraska Court of Appeals entered the Mandate on February 26, 2024. The Trial Court entered Judgment on Mandate on February 26, 2024.

Petitioner filed a Petition for Further Review with the Nebraska Supreme Court on February 26, 2024. The time limit for filing a Petition for Further Review is 30 days from entry of the Order disposing of the appeal. Neb. Ct. R. App. P. § 2-102(F)(1) (2024). Court of Appeals Order overruling Motion for Rehearing was entered on January 22, 2024. The deadline was thus February 21, 2024 for filing a

Petition for Further Review. It was not filed until February 26, 2024, and was untimely.

Petitioner also filed a Motion to Extend Brief Date in the Nebraska Supreme Court. On March 7, 2024, the Nebraska Supreme Court entered an Order stating, "Mandate having been issued, Appellant's motion to extend brief date overruled for lack of jurisdiction."

Rule 13 allows a Petition for Writ of Certiorari "to review a judgment" of a state court of last resort. That would be the Nebraska Supreme Court in this case. U.S. Sup. Ct. Rule 13(1) requires Petition for Writ of Certiorari to be filed within 90 days of "entry of the order denying discretionary review." Petitioner's Petition for Further Review was untimely. The Nebraska Supreme Court did not even consider Petitioner's request to review the judgment of the Nebraska Court of Appeals. The Nebraska Supreme

Court refused to consider it. The times in U.S. Sup. Ct. Rule 13(1) are inapplicable.

**B. THERE IS NO REASON THIS  
CASE SHOULD BE CONSIDERED  
BY THE UNITED STATES  
SUPREME COURT**

The United States Supreme Court typically grants a Petition for Writ of Certiorari for cases of national or widespread importance. That standard in no way applies to this case. Considerations are set forth in United States Supreme Court Rule 10, Considerations Governing Review on Certiorari:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure

by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

U.S. Sup. Ct. R. 10 (2024). There is no compelling reason for this Court to grant the Petition. This case involves a motor vehicle collision in Nebraska. The case was tried to a jury, which returned a defense verdict. No United States District Court entered a ruling, let alone a conflicting or unusual ruling. U.S. Sup. Ct. R. 10(1). Neither the Nebraska Supreme Court, nor any federal court, addressed any federal question. U.S. Sup. Ct. R. 10(2), 10(3).

The Questions Presented by Petitioner include

(1) if the Trial Court erred in overruling Petitioner's

Motion for New Trial; (2) if the Nebraska Court of Appeals failed to consider “issues such as abuse of discretion for district court”; (3) if the Nebraska Rules of Evidence were followed; (4) if the jury was properly instructed; and (5), if evidence of certain damages should have been admitted.

Petitioner phrases his complaints as denying a new trial affected “his substantial right prejudice him a fair trial,” and violating his “civil procedure substantial rights”. Despite Petitioner’s overblown language, the Trial Court and Nebraska Court of Appeals addressed enforcement of scheduling deadlines and discovery rules, and application of the Nebraska Rules of Evidence.

There was no novel issue raised at any point. Denial of a Motion for New Trial and certain evidentiary decisions were reviewed for an abuse of discretion, including relevancy and admissibility at trial. The Nebraska Court of Appeals found no abuse of discretion in the Trial Court rulings.

Whether a jury instruction is correct is a question of law. The Nebraska Court of Appeals found the Trial Court correctly instructed the jury. It is well-settled law in Nebraska that a party must object to a jury instruction, or the party cannot complain on appeal. Petitioner did not object. Further, Petitioner did not meet his burden to show the ‘omitted’ instruction should have been given. (Opinion, p. 5; *de Vries v. L & L Custom Builders*, 968 N.W.2d 64 (2021)). The omitted jury instruction concerned expert witness testimony, but Petitioner did not introduce expert testimony at trial. (Opinion, p. 5)

Petitioner appealed the Trial Court not directing a verdict in his favor on the issue of liability. However, Petitioner never made a Motion for Directed Verdict. (Opinion, p. 4)

Petitioner agreed before trial that he was not seeking lost wages. Evidence of lost wages was therefore excluded at trial. That decision was

affirmed by the Nebraska Court of Appeals.

(Opinion, p. 5)

Proper foundation must be laid at trial for medical bills. Generally an expert witness must opine the bills were fair, reasonable, and necessary. Petitioner did not call any expert witness at trial, so the medical bills could not be admitted. (Opinion, p. 5; *Putnam v. Scherbring*, 902 N.W.2d 140 (2017)).

Petitioner complains that his Motion for New Trial was overruled. He asserted a different basis for granting a new trial on appeal than he had in the Trial Court. (Opinion, p. 6) There was no error properly before the Nebraska Court of Appeals to review. (Opinion, p. 5; *Sherman v. Karyn N.*, 837 N.W.2d 746 (2013)).

## **VIII. CONCLUSION**

This garden-variety negligence case was filed in State District Court in Nebraska. There are no federal issues, conflicting decisions, or compelling issues presented. Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

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Respondent

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### **Certificate of Compliance**

I hereby certify that this brief complies with  
the word count and page limit requirements as it  
contains 2,027 words and is 15 pages.

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### **Proof of Service**

The undersigned hereby certifies that a true  
and correct copy of the foregoing was served by email  
and by regular United States Mail on this 14th day  
of August, 2024, and addressed as follows:

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