

No. 24-5321

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

JAN 26 2024

OFFICE OF THE CLERK

Terry Peterson, Jr.  
(Your Name)

— PETITIONER

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Wisconsin Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terry Peterson, Jr.  
(Your Name)

2213 S. Pine St  
(Address)

Jansville, WI 53546  
(City, State, Zip Code)

608-397-3687  
(Phone Number)

### QUESTION(S) PRESENTED

When a law enforcement officer applies for a search warrant by phone, the call between the officer and the judge who issues the warrant must be recorded. Wis. Stat. § 968.12(3)(d). If the call is not recorded, it ~~be~~ may be difficult or impossible for the defendant to challenge the warrant in pretrial suppression proceedings or on appeal. Thus, absent adequate reconstruction of an unrecorded search warrant application, due process may dictate suppression of the evidence stemming from the search.

In this case, Officer Josiah Gjetle applied by phone for a search warrant that would enable him to draw Terry M. Peterson's blood. The call was not recorded, but Officer Gjetle's body cam captured his side of the conversation. No one did anything to try and reconstruct the judge's side of the conversation for well over two years. When the judge and officer finally convened to attempt a reconstruction, neither had any memory of the call. ① When a telephonic search warrant application goes unrecorded, can body cam footage of the officer's side of the conversation adequately reconstruct the record - even when the judge admits he can't remember what was said? The circuit court held that the State adequately reconstructed the record. The court of appeals affirmed.

### LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

### RELATED CASES

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### STATUTES AND RULES

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 20, 2023  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Const. am. IV

Wis. Const. art. I, Sec. 21

Wis. Stat. sec. 968.12(3)(d)



## Statement of my case.

I was pulled over and charged with Drunk Driving. I refused a blood test. The officer requested a warrant by calling the Judge. The call was never recorded or filed with the Clerk until Two years later. I filed a motion to dismiss because of the call not being recorded or filed with the Clerk in five business days as is required by state Statutes. The Court denied my motion and said the Officer's body cam recording was good enough. The state basically put on a play, re-enactment of the phone call, while the judge and officer stated they did not remember the call or that night. The appeal court agreed with the ~~lower~~ lower court. The Wis Supreme court never looked at my case, so now I'm filing with the USSC, United States Supreme court. State statute clearly says the call must be recorded and filed within five days, not almost Two years later.

Reasons for granting the writ

ordered to be issued. The judge shall immediately transmit the signed warrant to the person who requested it.

- (c) *Probable cause.* The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit.
- (d) *Recording and certification of testimony.* When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge or requesting person shall arrange for all sworn testimony to be recorded either by a court reporter or by means of a voice recording device. The judge shall have the record transcribed. The transcript, certified as accurate by the judge or reporter, as appropriate, shall be filed with the court.
- (e) *Contents.* The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.
- (f) *Entry of time of execution.* The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.
- (4) *LOCATION OF SEARCH.* A search warrant may authorize a search to be conducted anywhere in the state and may be executed pursuant to its terms anywhere in the state.
- (5) *SIGNATURES.* In this section, a person requesting a warrant and a judge issuing a warrant may sign by using an electronic signature, a handwritten signature, or a handwritten signature that is electronically imaged.

Wis Stat 968.12 (3) (d)

Wis Stat 968.17(2)

~~return shall be accompanied by a written~~  
inventory of any property taken. Upon request, the clerk shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the search warrant.

- (2) An affidavit or complaint made in support of the issuance of the warrant and the transcript of any testimony taken shall be filed with the clerk within 5 days after the date of the execution of any search warrant.

**History:** 1971 c. 298.

In computing the time within which a search warrant must be returned, the court may exclude the hours between 4:30 p.m. Friday and 8 a.m. Monday. Such a delay would not affect the validity of the search. *State v. Meier*, 60 Wis. 2d 452, 210 N.W.2d 685 (1973).

The trial court erred in suppressing controlled substances and associated paraphernalia seized pursuant to a search warrant on the ground that a transcript of testimony upon which the warrant was based was not filed within five days of its execution, as required by sub. (2), because: 1) s. 968.22 provides that no evidence seized under a search warrant may be suppressed due to technical irregularities not affecting the defendant's substantial rights; 2) the five-day filing requirement is a ministerial duty, a violation of which does not invalidate a search absent prejudice; and 3) there was no prejudice when the transcript was filed approximately six weeks prior to the filing of the information, before which the defendant was statutorily precluded from making any motion to suppress. *State v. Elam*, 68 Wis. 2d 614, 229 N.W.2d 664 (1975).

Law enforcement's failure to return an order and inventory within the confines of this section and s. 968.15 did not render the execution of the order unreasonable. The timely return of a warrant is a ministerial duty that does not affect the validity of the search absent prejudice to the defendant. ↑  
*State v. Swann*, 2010 WI 92, 228 Wis. 2d 364

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Terry Peterson, Jr.

Date: 1-25-24