

No. 24-6273

IN THE
SUPREME COURT OF THE UNITED STATES

DARREN R. REINER,
Petitioner

v.

STATE OF WISCONSIN,
Respondent

On Petition for Writ of Certiorari
to the Wisconsin Second District Court of Appeals

PETITION FOR REHEARING OF WRIT OF CERTIORARI

DARREN R. REINER, Petitioner
1005 S. 113th Street
West Allis, WI 53214
414-430-1087
slimshady915x@aol.com



Supreme Court Justices,

Pursuant to Rule 44.2, Petitioner Darren R. Reiner requests rehearing and reconsideration of the Court's March 3, 2025 order denying the Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds not previously presented.

I know I am not a lawyer, however, I was clearly denied U.S. Constitutional rights when exculpatory evidence requested by my expert witness was not provided. The DA went as far as requesting the documentation my expert was looking for, but did not follow through and provide it to my lawyers or expert witness. And, because the DA lied indicating he handed everything over in his possession, the judge did not allow my lawyer to ask my expert witness about this missing exculpatory documentation during the trial hearing as clear reversible error. *At the time of the trial, and after the original decision March 8, 2023, I was unaware of the email exchange between my lawyer, the DA and the DOJ state lab official, which also proves the DA lied during the trial. (Please see the attached email exchange pages 4-6, which were included with my Appendix, however, was withheld by the clerk due to length and you might not have seen.)* Also, I have included my expert witness's opinion pages 7-11, that, based on the missing documents and other factors, it can't be determined that my BAC was .02 or greater at the time of driving. The DA did receive a copy of an earlier expert report as evidenced by the email exchange pages 4-6, but lied during the trial about this too. *Why this expert report was not filed, or allowed to be filed, with the Court is unknown, thus the lower Court was unaware of this report as of the original decision March 8, 2023. (This was also included with my Appendix, however, was withheld by the clerk due to length and you might not have seen).*

Further, I can't believe a majority of you don't find it a compelling enough reason with national significance and an important question of federal law that traffic officers should be required to provide evidence of non-impairment prior to getting behind the wheel and determining civilian probable cause. This novel idea would seem to be at the same landmark level as *Brady v. Maryland*, 373 U.S. 83 (1963) where it was decided that under the Due Process Clause of the Constitution of the United States, the prosecution must turn over to a criminal defendant any significant evidence in its possession that suggests the defendant is not guilty. Especially, when I believe traffic cops driving on duty while impaired is an epidemic. *The lower Court was unaware of the evidence that the traffic cop admitted to only 4 hours of sleep prior to his shift as of the original decision on March 8, 2023 or at the hearing to suppress evidence on October 21, 2021.*

The Court should grant the Petition for Rehearing and Petition for Writ of Certiorari, and grant certiorari in this case, so that this injustice does not continue.

Pursuant to Rule 44.2, Petitioner certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Petitioner certifies that this Petition is presented in good faith and not for delay.

Dated at Milwaukee, Wisconsin, March 17, 2025.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Darren Reiner", is written over a light blue rectangular background.

DARREN R. REINER,
Petitioner

FILED

10-02-2023

Clerk of Circuit Court

Waukesha County

2021CF000499

Jorge Fragoso

From: Pitzo, Jack <Jack.Pitzo@da.wi.gov>
Sent: Thursday, September 15, 2022 1:11 PM
To: Macans, Leah J - DOJ; Anderson, Kyle M - DOJ
Cc: Jorge Fragoso
Subject: RE: Darren Reiner | Expert Report

Kyle

I am hereby requesting the below items on behalf of the Waukesha County District Attorneys Office thank you!

Jack A. Pitzo
Assistant District Attorney
Waukesha County
(262) 548-7076



From: Macans, Leah J. [mailto:MacansLJ@DOJ.STATE.WI.US]
Sent: Thursday, September 15, 2022 1:08 PM
To: Pitzo, Jack <Jack.Pitzo@da.wi.gov>; Anderson, Kyle M - DOJ <AndersonKM@DOJ.STATE.WI.US>
Cc: Jorge Fragoso <jfragoso@grgblaw.com>
Subject: RE: Darren Reiner | Expert Report

Hi Jack,

This is a discovery request regarding R21-901. That information has to be requested by you or a court order. This request will be supplied through Sharefile and assembled by Supervisor Kyle Anderson. I've cc'ed him regarding this request.

Leah Macans

Technical Leader - Toxicology
WI State Crime Lab - Milwaukee
1578 South 11th Street
Milwaukee, WI 53204
phone: 414-382-7500
fax: 414-382-7507
macanslj@doj.state.wi.us

From: Pitzo, Jack <Jack.Pitzo@da.wi.gov>
Sent: Thursday, September 15, 2022 1:01 PM
To: Macans, Leah J. <MacansLJ@DOJ.STATE.WI.US>
Cc: Jorge Fragoso <jfragoso@grgblaw.com>
Subject: FW: Darren Reiner | Expert Report

EXTERNAL EMAIL: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hey Leah

Can you provide what is in the email below to defense counsel if you have it?

Jack A. Pitzo
Assistant District Attorney
Waukesha County
(262) 548-7076



From: Jorge Fragoso [mailto:jfragoso@rrglaw.com]
Sent: Thursday, September 15, 2022 12:49 PM
To: Pitzo, Jack <Jack.Pitzo@da.wi.gov>
Subject: RE: Darren Reiner | Expert Report

Hi Jack, I just tried to reach out to Leah Macans but they wouldn't let me through to her. They wouldn't give me her email address either. They said I would have to go through you. Can you either request the documents I mentioned from her and Cc me on it or give me her email address and I'll Cc you on my request? Thanks.

Jack,
I'm sending over the expert's report. Let me know if you need anything else from me, and please give me a heads up if you plan on filing a *Daubert* motion after all.

Dr. Henson requested that I ask for the following items from you and the lab:

1. Provide any Telephone Conversation Records maintained by the Lab for Mr. Reiner.
2. Provide chain of custody report for Mr. Reiner.
3. Provide a copy of the completed volatile worksheet and/or notes (documentation) for Mr. Reiner.
4. Identify the condition and volume of the blood in each vacutainer when they arrived at the lab.
5. Produce all records showing the protocols, methodologies, and analytical procedures that were used during the analysis of Defendant's blood, to assure the sample was not contaminated by ethanol producing micro-organisms.
6. Provide a copy of the chromatograms for the test runs for the blood alcohol analysis related to Mr. Reiner's sample testing.

Do you mind if I reach out to the lab personally to request these documents? Would they need the request to come from you? Let me know please. Thanks.

From: Pitzo, Jack <Jack.Pitzo@da.wi.gov>
Sent: Friday, September 2, 2022 1:46 PM

Re: Darren Reiner

From: Ronald Henson (rhenson@beron.us)

To: slimshady915x@aol.com

Cc: mark@huppertzpowers.com; shellyvotaw@gmail.com

Date: Thursday, September 14, 2023 at 05:15 PM CDT

I did not receive the following:

1. Provide and Telephone Conversation Records maintained by the Lab for Mr. Reiner.
2. Provide chain of custody report for Mr. Reiner
3. Provide a copy of the completed volatile worksheet and/or notes (documentation) for Mr. Reiner.
4. Identify the condition and volume of the blood in each vacutainer when they arrived at the lab.
5. Produce all records showing the protocols, methodologies, and analytical procedures that were used during the analysis of Defendant's blood, to assure the sample was not contaminated by ethanol producing micro-organisms.
6. Provide a copy of the chromatograms for the test runs for the blood alcohol analysis related to Mr. Reiner's sample testing.

I have attached 7 documents that are in my possession. I did receive 3-CDs and a thumb drive from Mr. Powers, however, the original information requested from Mr. Fragoso was not presented. I do not know if Mr. Fragoso made the request or received any of the information. I have attached 7 attachments that I have related to your file.

I am sorry, I am unable to help any further. I have closed your case file.

Ronald E. Henson, Ph.D.
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March 2, 2023

Mr. Mark P. Powers, Attorney at Law
Huppertz & Powers, S.C.
Waukesha, WI 53187

RE: Darren Reiner

Dear Mr. Powers:

I have received the file information regarding the case of: Mr. Darren Reiner. I have also verified the State's discovery information with files sent by your office to update any new findings. I have formed my observations and anticipated testimony below. If additional information or additional facts are placed into evidence at trial, I may make an addendum to this report. If called to testify, I expect to testify to the following:

1. That I hold a Doctorate degree in which my peer reviewed dissertation involved drug and alcohol testing in the criminal justice environment, and I have additional education in drug and alcohol toxicology, physiology & pharmacology. I have served as a former supervisor of the Drug/Narcotics and Alcohol Testing program at the University of Illinois, Police Training Institute. I have been certified by the State of Illinois' police training board as a practitioner, and instructor in Standardized Field Sobriety Testing (SFST) as well as various behavioral, physiological and pharmacological aspects of drug and alcohol related disciplines. I have lectured and authored regarding drug and alcohol testing, and behavioral, physiological and pharmacological aspects of drug and alcohol related disciplines for several Universities/Colleges, Illinois Institute for Continuing Legal Education, State Bar Associations, Lorman Education Services, Mastering Scientific Evidence National Conference, Kendall-Hunt Publishing Company and Thomson-Reuters.
2. That I am an independent consultant and president of Beron Consulting, LabWorks and Media Services, Inc. I have served as Dean of Criminal Justice at Aspen University. I have also served as a Professor at Iowa Wesleyan College and held several adjunct and invited lecturer at several academic institutions. I have been qualified as an expert in approximately 25 States in the United States, (including Federal Court, and Military Court) relating to standardized field sobriety testing, breath/blood/urine alcohol

testing, drug testing and investigations, retrograde extrapolation, and alcohol related behavioral, physiological and pharmacological aspects.

3. That I have been requested to review the file information related to Mr. Darren Reiner that included the following:
 - a. Information documents from the Waukesha County & Brookfield Police;
 - b. Police incident report, supplement reports and forms;
 - c. Blood testing results from Wisconsin Crime Laboratory (.154 & .153 g/dl \pm .011);
 - d. Multiple videos for the field investigation and blood draw.
4. The officer stopped the driver (Mr. Reiner) for speeding. According to NHTSA, speeding is not one of the top 20 cues associated with DUI. Speed under the speed limit is a cue, however speeding over the limit is not a cue for DUI.
5. During the initial contact, the investigating officer noted the driver had an odor of an alcohol odor from within the vehicle and also noted a strong odor from the driver.
 - a. Specifically, the odor of an intoxicating beverage from the vehicle or an individual is an observation of virtually no scientific value to determine intoxication or impairment. The alcoholic beverage odor smelled is not ethyl alcohol. The odor is derived from flavoring agents and manufacturing processes (generally called "congeners") that give beverages their characteristic odors. Congeners are different chemicals than ethyl alcohol, with different absorption, distribution and removal patterns than ethyl alcohol and they can be present even in the absence of ethyl alcohol (non-alcohol beverages). Ultimately, the odor of alcohol does not indicate the type drink, the strength of the drink, nor the amount of alcohol consumed.

A study published in 1999, by the original investigators for standardized field sobriety testing (Moskowitz, H., Burns, M., Ferguson, S.) examined experienced officers and their abilities to associate the odor from alcoholic beverage consumption and estimates of an individual's blood-alcohol concentration level. The researchers concluded that "Odor strength estimates were unrelated to BAC levels." The researchers further opined "Estimates of BAC level failed to rise above random guesses. These results demonstrate that even under optimum laboratory conditions, breath odor detection is unreliable..." (Moskowitz, H., Burns, M., Ferguson, S., 1999, "Police Officer's Detection of Breath Odors from Alcohol Ingestion").
6. The officer noted glassy and bloodshot eyes. This condition is noteworthy in the investigation; however, the observation is not indicative of alcohol

impairment. NHTSA SFST training does not recognize the observations to conclude alcohol intoxication. Watery eyes are not noted for alcohol consumption or impairment in the NHTSA training manuals. Sleep deprivation, irritants to the eyes, and other conditions will cause bloodshot eyes. NHTSA has warned that numerous conditions will affect the condition of the eyes in a 1997 report (Jack Stuster, U.S. Department of Transportation, NHTSA Final Report, *The Detection of DWI at BAC's Below 0.10*, DOT HS-808-654 [Sept. 1997], p. E-10).

7. The investigating officer noted slurred speech. Speech is a difficult assessment to determine a relationship between speech and the consumption of alcohol. Primarily, the officer does not know how the driver normally speaks. Second, speech is not a reliable indicator as a manifestation from alcohol consumption. Third, the video does not indicate slurred speech.
8. I would expect to testify regarding the pre-arrest screening phase (SFST). The Standardized Field Sobriety Tests (SFST) whether administered properly, the tests also have limitations and are not 100% reliable to determine alcohol impairment at the time of driving. Further, any post driving alcohol consumption would also affect the limitations of the SFSTs.
 - a. The officer administered an HGN examination. The test administration clearly compromised the reliability of the results to determine a BAC level or impairment due to alcohol.
 - i. The driver was facing rapid moving traffic and flashing lights from the back-up squad cars (shown on the videos). Optokinetic nystagmus (non-alcohol related nystagmus) can occur in this type of condition. NHTSA states: "Examples of Optokinetic nystagmus include watching strobe lights, rotating lights, or rapidly moving traffic in close proximity" (2006, VIII-8; also see: 2018, session 8, p. 21).
 - ii. The officer states that he checked for nystagmus prior to 45 degrees, however, the video shows this did not occur. There were numerous passes (more than expected according to NHTSA training), but nystagmus prior to 45 degrees did not occur on the video.
 - b. The officer did not check VGN.
 - c. The officer administered a walk and turn test. The officer noted two clues. However, the officer improperly noted one validated clue, when he should not have noted the clue. The clue was missing heel to toe "...by approximately a half an inch." Estimating an "approximate" half an inch is not conclusive for this clue. Without the clue being measured, the result of this test is not supportive of alcohol impairment and in direct conflict

(or disconnect) with the blood alcohol results in this case. (See NHTSA 2006 training manual, chapter 8, pg.10)

- d. The officer conducted a one leg stand test. The results in this case are compromised for the following:
 - i. The officer did not make an inquiry regarding the ability to perform this test. NHTSA states: "Persons with injuries to their backs, legs, or inner ear disorders, may have, difficulty with these tests or with other balance tests" (instructor manual, 2006, VIII-54, 2013, 8-67, 2018, Session 8, p. 62).
 - 1. The SCRI identified in the original SFST studies that individuals with the above conditions had difficulty performing the tests (instructor manual, 2018, 62 of 95 and 73 of 95).
 - ii. NHTSA admonishes: wind and weather conditions may interfere with the performance on the walk and turn and the one leg stand tests (NHTSA, 2006, Instructor Manual, VIII-60 & VIII-63; NHTSA, 2015, Instructor Manual, Session 8, p. 74 & p. 79, NHTSA, 2018, Instructor Manual, Session 8, p. 86 & 88).
- 9. Post arrest, the blood test results were reported as .154 and .153 g/dl (g/100mL). I would expect to testify regarding the proper collection, testing and reliability of the testing results. I would also expect to testify to an anticipated fact pattern of alcohol consumption after driving and before field sobriety testing.
 - a. The blood collection in this case was well short of the expected 9 to 10 ml of blood in the vacutainers. The video indicates an approximate 5 ml or less in the tubes before labelling. The manufacturer states: "Overfilling or under filling of tubes will result in an incorrect blood-to-additive ratio and may lead to incorrect analytic results or poor product performance." BD Vacutainer, Evacuated Blood Collection System, 2012, Pg. 3.
 - b. There are missing documentable items and processes regarding the blood draw evidence in this case. Any pre-analytical errors will affect the outcome of the blood testing results.
 - c. When combining the stated variables of the blood alcohol test results (plus or minus .011 g/100mL) and additional variables associated with the collection procedure and analysis of the blood samples obtained (\pm), it cannot be determined Mr. Darren Reiner's BAC was .02 or greater at the time of driving.

All of the opinions expressed in this report are based upon a reasonable degree of

forensic and scientific certainty, except for those matters where it is explicitly noted otherwise. Additionally, all of my opinions are based upon the totality of my knowledge, through training, education, and experience in the areas noted in my curriculum vitae, and any vitae supplement which I incorporate by reference in its entirety. I reserve the right to revisit any opinion contained herein should any additional information be provided or made known to me that is deemed material. These opinions are specific to the facts contained in this matter only, and no attempt should be made to apply these statements to any other matter without my knowledge.

Professionally yours,



Dr. Ronald E. Henson