

No. _____

In the Supreme Court of the United States

MICHAEL LEROY WAITE,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the
Fifth District Court of Appeal of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A prosecutor filed an information charging Waite with unlawful interception of a phone conversation and certified that she had received sworn witness testimony. The information did not set out that testimony. A circuit court clerk issued a capias for Waite's arrest under a statute directing its issuance without leave or order of court. A judge signed the bail endorsement on the capias after a detective told him the facts of the case. At the suppression hearing, the detective's account identified neither the facts he conveyed nor an oath supporting his presentation to the judge. The Circuit Court upheld the capias as a warrant based on sworn probable cause. The District Court of Appeal later reversed the oral interception convictions because the deputies lacked a reasonable expectation of privacy in the calls. The judgment now under review affirmed denial of postconviction relief from the surviving convictions after the interception counts were dismissed.

The question presented is:

Whether the capias procedure used to order Waite from the curtilage of his home and arrest him satisfied the Fourth Amendment's requirement for a neutral and detached official to independently determine probable cause.

PARTIES TO THE PROCEEDING

Petitioner Michael Leroy Waite was the defendant in the Circuit Court and the appellant in the Fifth District Court of Appeal of Florida.

Respondent State of Florida was the prosecution in the Circuit Court and the appellee in the Fifth District Court of Appeal of Florida.

CORPORATE DISCLOSURE STATEMENT

Petitioner is not a corporate entity.

RELATED PROCEEDINGS

State of Florida v. Michael Leroy Waite, No. 2021-CF-000177-A, Circuit Court of the Fifth Judicial Circuit in and for Citrus County, Florida. Nolle prosequi entered upon consolidation into No. 2021-CF-000253-A, March 19, 2021.

State of Florida v. Michael Leroy Waite, No. 2021-CF-000200-A, Circuit Court of the Fifth Judicial Circuit in and for Citrus County, Florida. Nolle prosequi entered upon consolidation into No. 2021-CF-000253-A, March 19, 2021.

State of Florida v. Michael Leroy Waite, No. 2021-CF-000253-A, Circuit Court of the Fifth Judicial Circuit in and for Citrus County, Florida. Judgment entered March 9, 2023; order vacating judgment and dismissing Counts I–V entered December 20, 2024; order denying Petitioner’s Second Motion to Vacate Judgment and Dismiss entered February 20, 2025, with a written order entered March 24, 2025.

Michael L. Waite v. State of Florida, No. 5D2023-1354, Fifth District Court of Appeal of Florida. Substituted opinion and judgment entered August 16, 2024; rehearing denied September 30, 2024.

Michael Leroy Waite v. State of Florida, No. 5D2025-0841, Fifth District Court of Appeal of Florida. Judgment entered May 5, 2026; rehearing denied June 26, 2026.

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PETITION FOR WRIT OF CERTIORARI

Michael Leroy Waite, an individual, respectfully petitions for a writ of certiorari to review the Fifth District Court of Appeal's May 5, 2026, judgment affirming the denial of postconviction relief.

OPINIONS BELOW

The judgment of the Fifth District, without opinion, entered May 5, 2026, is unreported and reproduced at App. 1a. Its June 26, 2026, order denying rehearing, striking the request for rehearing en banc, and denying certification and a written opinion is unreported and reproduced at App. 49a.

The Circuit Court's February 20, 2025, order denying Waite's second motion to vacate judgment and dismiss is unreported and reproduced at App. 6a. Its March 24, 2025, written order is unreported and reproduced at App. 3a.

The Fifth District's August 16, 2024, substituted opinion is reported at *Waite v. State*, 395 So. 3d 601 (Fla. Dist. Ct. App. 2024), and reproduced at App. 22a. The court's September 30, 2024, order denying rehearing is unreported and reproduced at App. 20a.

The Circuit Court's January 12, 2023, transcribed ruling and written disposition denying Waite's motions to dismiss and suppress are unreported and reproduced at Apps. 44a and 33a, respectively.

JURISDICTION

The Fifth District entered its judgment affirming the denial of Waite's second motion to vacate on May 5, 2026. App. 1a. Waite timely moved for rehearing. On June 26, 2026, the Fifth District denied rehearing,

struck his request for rehearing en banc as legally insufficient, and denied certification and a written opinion. App. 49a. Under Rule 13.3, the time to petition for certiorari runs from June 26, 2026. This Petition is timely.

The Fifth District affirmed without opinion or citation. The Supreme Court of Florida lacks jurisdiction to review such an unelaborated per curiam affirmation. *Wells v. State*, 132 So. 3d 1110, 1112–13 (Fla. 2014). Therefore, the Fifth District was the highest state court in which a decision could be had.

This Court has jurisdiction under 28 U.S.C. § 1257(a). Waite specially claimed a right under the Fourth Amendment to the United States Constitution in the state proceedings.

This petition seeks review of the 2026 judgment affirming denial of relief from Counts VI–VII after Counts I–V were dismissed. The postdismissal motion incorporated the earlier suppression motion, challenged the capias in light of the Fifth District’s holding, and alleged no neutral magistrate had independently determined probable cause. 2R. 550 ¶15, 551–553, 566–569; Apps. 73a, 95a. The Circuit Court denied relief, stating the Fifth District Court had “addressed this” in the first appeal, and the Fifth District affirmed without elaboration. 2R. 582–583; Apps. 4a, 1a. The first appeal’s stated basis for retaining Counts VI–VII was Florida’s prohibition against forcibly resisting an arrest “unless the defendant can show that the officer was not acting in good faith.” 2R. 537–538; App. 30a. The opinion did not separately analyze whether a neutral magistrate independently determined probable cause. The present petition challenges the denial of that federal question.

A state procedural ground does not prevent review when its application depends on resolving the federal constitutional claim. *Foster v. Chatman*, 578 U.S. 488, 497–99 (2016); *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985). If the record is uncertain whether the 2026 judgment rejected the incorporated federal suppression claim on its merits or declined reconsideration on an adequate and independent state ground, the Court should vacate and remand for clarification. *Capital Cities Media, Inc. v. Toole*, 466 U.S. 378, 378–79 (1984) (per curiam).

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS AT ISSUE

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.

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.

Section 901.02 of the Florida Statutes provides:

Issuance of arrest warrants.—

(1) A judge, upon examination of the complaint and proofs submitted, if satisfied that probable cause exists for the issuance of an arrest warrant for any crime committed within the judge's jurisdiction, shall thereupon issue an arrest warrant signed by the judge with the judge's name of office.

(2) The court may issue a warrant for the defendant's arrest when all of the following circumstances apply:

(a) A complaint has been filed charging the commission of a misdemeanor only.

(b) The summons issued to the defendant has been returned unserved.

(c) The conditions of subsection (1) are met.

(3) A judge may electronically sign an arrest warrant if the requirements of subsection (1) or subsection (2) are met and the judge, based on an examination of the complaint and proofs submitted, determines that the complaint:

(a) Bears the affiant's signature, or electronic signature if the complaint was submitted electronically.

(b) Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths.

(c) If submitted electronically, is submitted by reliable electronic means.

(4) An arrest warrant shall be deemed to be issued by a judge at the time the judge affixes the judge's signature or electronic signature to the warrant. As used in this section, the term "electronic signature" has the same meaning as provided in s. 933.40.

Section 932.48 of the Florida Statutes provides:

Upon the filing of an information, the clerk of the circuit court shall docket the information and shall, without leave or order of the court first being had and obtained, issue a capias for the arrest of the person charged; and the clerk shall likewise issue any and all other necessary process incident to the information.

Florida Rule of Criminal Procedure 3.120 provides:

RULE 3.120. COMMITTING JUDGE

Each state and county judge is a committing judge and may issue a summons to, or a warrant for the arrest of, a person against whom a complaint is made in writing and sworn to before a person authorized to administer oaths, when the complaint states facts that show that such person violated a criminal law of this state within the jurisdiction of the judge to whom the complaint is presented. The judge may take testimony

under oath to determine if there is reasonable ground to believe the complaint is true. The judge may commit the offender to jail, may order the defendant to appear before the proper court to answer the charge in the complaint, or may discharge the defendant from custody or from any undertaking to appear. The judge may authorize the clerk to issue a summons.

Florida Rule of Criminal Procedure 3.131(j) (2021) provides:

Issuance of Capias; Bail Specified. On the filing of either an indictment or information charging the commission of a crime, if the person named therein is not in custody or at large on bail for the offense charged, the judge shall issue or shall direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a capias for the arrest of the person. If the person named in the indictment or information is a child and the child has been served with a promise to appear under the Florida Rules of Juvenile Procedure, capias need not be issued. Upon the filing of the indictment or information, the judge shall endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing. This endorsement shall be made on the capias and signed by the judge.

Florida Rule of Criminal Procedure 3.131(k) (2026) provides:

Issuance of Capias; Bail Specified. On the filing of either an indictment or information charging the commission of a crime, if the person named therein is not in custody or at large on bail for the offense charged, the judge must issue or direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a capias for the arrest of the person. If the person named in the indictment or information is a child and the child has been served with a promise to appear under the Florida Rules of Juvenile Procedure, capias need not be issued. On the filing of the indictment or information, the judge must endorse the amount of bail, if any, and may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing. This endorsement must be made on the capias and signed by the judge.

STATEMENT OF THE CASE

Citations to "1R." refer to the Record on Appeal in *Waite v. State*, No. 5D23-1354 (Fla. Dist. Ct. App. 2024), filed May 10, 2023.

Citations to "2R." refer to the Record on Appeal in *Waite v. State*, No. 5D2025-0841 (Fla. Dist. Ct. App. 2024), filed April 30, 2025.

A. Factual Background

On January 6, 2021, Waite called the Sheriff's Office to report what he believed to be unlawful activity and sought to make a complaint. 2R. 526; App. 24a. A

dispatcher told him a supervisor would return his call. App. 24a. Sergeant Edward Blair called Waite back while acting in his official capacity. App. 24a. Waite recorded the approximately three-minute conversation without telling Blair he was doing so during the call. App. 24a. He later emailed the recording to the Sheriff's Office and requested an internal investigation. App. 24a.

Detective Jacob Chenoweth investigated the recording. App. 24a. On February 19, 2021, he executed an "Affidavit and Verification of Report," swearing his report was true to the best of his knowledge and belief. 1R. 661. He presented the report to the Office of the State Attorney. 2R. 364:24–365:3; App. 65a. Assistant State Attorney Debra Munchel filed an information charging Waite with one felony count of unlawful interception of oral communication under § 934.03(1)(a), Florida Statutes. 2R. 526–527; App. 51a.

The information stated Waite, in Citrus County, Florida, on January 6, 2021, "did intentionally intercept or endeavor to intercept, or procure another person to intercept or endeavor to intercept the wire, oral, or electronic communication of another person, to wit: Sgt. Ed Blair, in violation of Florida Statute 934.03(1)(a)." 2R. 526; App. 51a. It supplied no account of how the alleged interception occurred. *Id.*; App. 51a.

The information included Munchel's sworn certification that the allegations were based on facts sworn to be true and that she had received testimony under oath from material witnesses. 2R. 527; App. 52a. It did not set out that testimony. *Id.*; App. 52a.

A clerk of the Circuit Court issued a capias directing law enforcement to take Waite into custody "to

answer unto the State of Florida on an Information filed against him by the State Attorney” for the interception charge. 2R. 528–29; App. 41a.

Chenoweth testified he brought the information and capias to Judge Carney. 2R. 366:12–24, 405:20–406:13. Judge Carney’s signature appears beneath the endorsement setting bail. 2R. 529; App. 41–42a. The capias separately bears the clerk’s attestation. App. 42a.

Chenoweth agreed the State had already charged Waite when Judge Carney signed the capias, “[b]ased on the Direct File.” 2R. 366:8–11, 367:2–4; App. 67a. Asked whether he told Judge Carney the facts before the judge signed, Chenoweth answered, “Yes, he asked me what everything was,” and confirmed the exchange preceded the signature. 2R. 406:1–13; App. 70a. Chenoweth’s account did not identify what facts he supplied or describe an oath supporting the presentation. 2R. 405:20–406:13; App. 70a.

Later that day, deputies went to Waite’s home to execute the capias. App. 24a. Waite was inside the fenced curtilage of his home behind a closed gate. 2R. 388:16–24. The deputies did not have a search warrant for the home or the curtilage. 2R. 445:1–6. They had only the capias. *Id.* Sergeant Paul Viggiano announced over his vehicle’s public-address system that the deputies had a warrant for Waite’s arrest and he “needed to come out with his hands up.” 2R. 445:7–15.

Waite came through the gate and turned to close it. 2R. 391:1–2. Captain Ryan Glaze grabbed him. 2R. 391:10–392:14. Chenoweth testified Waite brought his right elbow backward and struck Glaze in the face. 2R. 392:24–393:2. The State charged Waite with

battery on a law enforcement officer and resisting an officer with violence. 2R. 24–26, 512–14; App. 25a.

During the arrest, deputies recovered a digital recorder from Waite. 2R. 400:2–5; App. 25a. A later search of the recorder revealed three additional recorded phone calls with members of the Sheriff’s Office, which resulted in three more charges. App. 25a. Another recorded call, discovered later, resulted in a fifth interception charge. App. 25a.

B. Proceedings Below

On August 18, 2022, Waite filed omnibus motions to dismiss and suppress. 1R. 303. He challenged issuance of the *capias* upon the prosecutor’s information without an independent probable cause determination and all evidence resulting from his seizure under the Fourth Amendment and *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). 1R. 373–376.

He moved to dismiss the battery on a law enforcement officer and resisting an officer with violence because the absence of a valid warrant negated the lawful execution element of both charges. 1R. 364–367.

The Circuit Court struck the motions with leave to refile separately. 2R. 78:19–79:2. On October 27, 2022, Waite filed his separate motion to suppress, raising the same challenge to the *capias* and the evidence obtained after he was seized, including the deputies’ observations of how the arrest occurred. 2R. 45–48; App. 95a.

The State’s written response relied on Chenoweth’s sworn presentation to Munchel, her sworn verification of the information, and his account to Judge Carney. 1R. 970–972; App. 101a–106a. It asserted Judge Carney had sufficient sworn testimony and:

Judge Carney not only signed the search warrant [sic] based on what Detective Chenoweth told him, but also signed it finding probable cause based on the sworn testimony of the State Attorney filing the information, swearing that there is sworn testimony that the Defendant is the one who committed the offense of recording Sgt. Blair without permission on January 6, 2021. Therefore, a neutral and detach[ed] magistrate did review and issue the capias.

1R. 971; App. 104a–105a.

The Circuit Court held evidentiary hearings on January 4 and January 12, 2023. 2R. 70, 340. Chenoweth testified as recounted above. 2R. 405:20–407:25; App. 66a–67a, 70a. The State presented no evidence or argument to the Circuit Court that Chenoweth was under oath when he spoke with Judge Carney, or that Judge Carney received any sworn testimony other than the prosecutor’s oath accompanying her information. 1R. 970–972; 2R. 405:20–407:25, 497:14–498:8; Apps. 66a–67a, 69a; 102a–114a. In closing, the State again relied on the officers’ sworn accounts supplied to the prosecutor, the sworn charging document, and Chenoweth’s account to Judge Carney. 2R. 497:14–498:8; App. 102a–114a. The State argued the prosecutor’s oath and Chenoweth’s account to Judge Carney left “nothing that indicated a reason to suppress any of the evidence.” 2R. 498:6–8; App. 109a. Under Florida law, a defendant’s *prima facie* showing that a search was invalid shifts the burden to the State to establish its validity. *Miles v. State*, 953 So. 2d 778, 779 (Fla. Dist. Ct. App. 2007).

After the hearing, the Circuit Court denied suppression on all grounds and expressly rejected the

federal claim, stating it found no “Constitutional violations whether it’s Fourth Amendment or otherwise” and that “the warrant is based on sworn probable cause.” 2R. 69, 501:14–18, 503:4–6; App. 44a. The Circuit Court concluded the officers could enter the curtilage and even pull down the gate to reach him. 2R. 502:22–503:4; App. 45a.

On March 9, 2023, Waite entered a plea of no contest while reserving his right to appeal the denial of his motions to dismiss and suppress. 2R. 522–524; Apps. 54a, 60a. The written plea, signed by the parties and the Circuit Court, states, “Defense reserves right to appeal denial of motions to dismiss and suppress. State stipulates issues were/are dispositive.” 2R. 523; App. 58a. The State confirmed the stipulation at the plea hearing. 1R. 1924:3–8; App. 60a. Florida appellate courts are bound by such a stipulation in the appeal from a conditional plea. *Churchill v. State*, 219 So. 3d 14, 17–18 (Fla. 2017).

Waite appealed. He again challenged the capias under the Fourth Amendment. He argued the capias was invalid because no probable cause affidavit was presented to a neutral and detached magistrate and the State Attorney’s Office, rather than such a magistrate, determined probable cause. Initial Br. 38–42, *Waite v. State*, No. 5D23-1354.

The State argued filing the information required issuance of the capias and “[t]here is no such affidavit requirement for a capias.” Answer Br. 41, *Waite v. State*, No. 5D2023-1354; App. 113a. However, Florida’s Constitution requires probable cause “supported by affidavit” for warrants. Fla. Const. art. I, § 12. See *Moreno-Gonzalez v. State*, 67 So. 3d 1020, 1025–26 (Fla. 2011).

On April 12, 2024, the Fifth District reversed the denial of Waite’s motion to dismiss the five interception charges and affirmed in all other respects. Its August 16, 2024, substituted opinion reached the same result. App. 22a. “It is only when the state cannot establish even the barest bit of a *prima facie* case that it should be prevented from prosecuting.” *Waite v. State*, 395 So. 3d 601, 604–05 (Fla. Dist. Ct. App. 2024) (citation omitted); App. 26a. The opinion did not separately analyze his Fourth Amendment challenge to the *capias*. *Id.*; App. 23a.

As to Counts VI–VII, the court denied relief and stated the deputies were “executing an arrest warrant,” that Waite had not demonstrated they lacked good faith in doing so, and he was required to comply without resorting to violence. App. 30a. The State again sought rehearing, which the Fifth District denied on September 30, 2024. App. 20a. Following the mandate, and Waite’s first motion to vacate, the Circuit Court vacated judgment and dismissed Counts I–V on December 20, 2024. 2R. 542; App. 13a.

On February 17, 2025, Waite filed his second postconviction motion to vacate judgment and dismiss. App. 73a. The motion incorporated the earlier suppression motion and relied on the dismissal of Counts I–V in challenging the constitutional foundation of the *capias*. 2R. 550 ¶15, 551–553, 566–569; App. 82a. Florida Rules permit postconviction challenges where “the judgment was entered or sentence was imposed in violation of the Constitution or laws of the United States or the State of Florida[.]” Fla. R. Crim. P. 3.850(a)(1).

Relying on the appellate court’s *prima facie* standard and privacy holding, Waite argued the facts

underlying the capias that first brought law enforcement to his gate did not establish probable cause because the conduct was lawful. 2R. 551 ¶¶18–24; App. 83a–84a. The motion also alleged material omissions in obtaining the capias and separately challenged the absence of independent review by a neutral magistrate under the Fourth Amendment. 2R. 552–553 ¶¶28–32; App. 85a–86a.

The Circuit Court denied the motion on February 20, 2025, and entered its written order on March 24. 2R. 570, 582–583; Apps. 6a, 6a. The order identified Waite’s argument that an unlawful arrest was fatal to the lawful execution element of the remaining convictions and stated the Fifth District “addressed this” in the first appeal. 2R. 582–583; App. 4a. The Circuit Court denied the requested reconsideration of Waite’s Fourth Amendment challenges. App. 5a.

Waite appealed that denial. He argued the capias was invalid because no neutral and detached magistrate determined probable cause. Initial Br. 7–15, *Waite v. State*, No. 5D2025-0841. The brief relied on *Giordenello v. United States*, 357 U.S. 480 (1958), *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), and *Johnson v. United States*, 333 U.S. 10 (1948).

The State asserted procedural bars prohibited review, and that Waite could not lawfully resist arrest with violence. Answer Br. 5–9, *Waite v. State*, No. 5D2025-0841.

On May 5, 2026, the Fifth District affirmed without opinion. App. 1a. Waite moved for rehearing and again expressly argued the capias procedure circumvented the neutral magistrate requirement of the Fourth Amendment. Mot. for Reh’g 1–2, *Waite v. State*, No. 5D2025-0841.

On June 26, 2026, the Fifth District denied rehearing, struck Waite’s request for rehearing en banc as legally insufficient, and denied certification and a written opinion. App. 49a.

REASONS FOR GRANTING THE PETITION

I. The Capias Procedure Used Here Conflicts With This Court’s Decisions Requiring Neutral and Detached Review of Probable Cause.

Before an arrest warrant issues, a neutral official, detached from law enforcement, must receive sufficient facts supported by oath or affirmation and independently determine probable cause. *Giordenello*, 357 U.S. at 485–87; *Johnson*, 333 U.S. at 13–14. An issuing official must “judge for himself the persuasiveness of the facts” offered to establish probable cause, not merely accept the conclusion of the complainant. *Giordenello*, 357 U.S. at 486.

Facts known to the officer but not disclosed to the issuing official cannot cure an insufficient application. *Whiteley v. Warden*, 401 U.S. 560, 565 n.8 (1971). *Whiteley* ultimately refused the State’s request for another opportunity to show the magistrate received additional information because the State chose to litigate on the record as it existed. *Id.* at 569.

In *Coolidge v. New Hampshire*, this Court invalidated a warrant because the state attorney general who issued it was also responsible for the investigation and prosecution. 403 U.S. 443, 449–53 (1971). Prosecutors and police “simply cannot be asked to maintain the requisite neutrality with regard to their own investigations.” *Id.* at 450.

In *Gerstein v. Pugh*, this Court rejected Florida’s contention the prosecutor’s decision to file an information provided a sufficient probable cause determination for pretrial detention. 420 U.S. 103, 116–17 (1975). A prosecutor’s charging decision affords some protection against unfounded prosecution, but “prosecutorial judgment standing alone” does not satisfy the Fourth Amendment. *Id.*

Gerstein relied on *Albrecht v. United States*, 273 U.S. 1, 5 (1927). There, this Court held that an arrest violated the Fourth Amendment when the warrant rested on improperly verified affidavits accompanying a prosecutor’s information. *Id.* at 5. The prosecutor’s official oath could give verity to the information as a charging instrument, but it could not itself supply the constitutionally required probable cause for the arrest warrant. *Albrecht*, 273 U.S. at 6; *Gerstein*, 420 U.S. at 117–18.

In *Giordenello*, the complaint recited the offense but gave no adequate basis for an independent probable cause determination. 357 U.S. at 485–87. It identified neither the source of the complainant’s belief nor other facts sufficient to support the charge. *Id.* at 486. The commissioner could not cure those omissions by assuming the complainant had personal knowledge. *Id.* The required determination could not be reduced to formal approval of the accusation. *Id.* at 486–87.

Section 932.48 of the Florida Statutes directs circuit court clerks to issue a capias upon the filing of an information without first obtaining leave or an order of the court. Here, Rule 3.131(j) (2021) likewise directed judges to issue or direct the issuance of a capias “either immediately or when so directed by the

prosecuting attorney,” when a prosecutor filed an information, and required Judge Carney to sign the bail endorsement.

In contrast, section 901.02(1) of the Florida Statutes requires the judge to examine the complaint and proofs and find probable cause before issuing an arrest warrant. Rule 3.120 requires a written, sworn complaint stating facts showing an offense, and permits a judge to take testimony under oath to determine whether there are reasonable grounds to believe the complaint. *Gerstein* itself contrasted Florida’s Rule 3.120 procedure with continued detention based on a prosecutor’s information without a neutral probable cause determination. 420 U.S. at 116–17 & n.18.

Munchel’s information recited the offense without describing the circumstances. App. 51a. Her verification certified she received sworn testimony; it did not set out that testimony. App. 52a. The capias commanded Waite’s arrest “to answer unto the State of Florida on an Information filed against him by the State Attorney[.]” App. 41a. Judge Carney’s signature appears beneath the bail endorsement. App. 41a-42a.

No evidence established Chenoweth presented testimony under oath to Judge Carney. App. 62a-72a. The State never argued to the Circuit Court that Judge Carney received sworn testimony other than the prosecutor’s sworn information. App. 102a-110a. The State relied on the prosecutor’s receipt of sworn testimony, Chenoweth’s statements to Judge Carney, and Judge Carney’s receipt of the prosecutor’s sworn information. App. 102a-110a. The Circuit Court upheld this arrest process as a warrant “based on sworn probable cause.” 2R. 501:14–18; App. 44a.

Applying the “barest bit of a prima facie case” standard, the Fifth District held these official calls were not protected oral communications and the State should have been prevented from prosecuting Counts I–V. App. 30a. That holding was relevant to the circumstances existing when the *capias* was sought. The circumstances bearing on a *capias*’ validity must be considered together, not in isolation. *Cf. Massachusetts v. Upton*, 466 U.S. 727, 732–34 (1984) (*per curiam*).

Whether a person’s alleged conduct constituted the charged offense weighs upon analysis of whether probable cause for the *capias* existed. The postdismissal motion incorporated the request to suppress the deputies’ observations underlying Counts VI–VII and challenged whether the deputies were lawfully executing their duties. 2R. 550 ¶ 15, 553–554 ¶¶ 33–35, 566; 1R. 1924:3-8; App. 82a, 87a.

The Court may examine state findings unsupported by evidence or factual and legal conclusions so intermingled that determining the federal right requires examination of the facts. *Fiske v. Kansas*, 274 U.S. 380, 385–86 (1927). “The substance of the Constitution’s warrant requirements does not turn on the labeling of the issuing party.” *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972). Those factors include inquiry into whether a magistrate manifested the neutrality and detachment demanded for independent review. *See Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 326–27 (1979).

Treating this *capias* as a warrant issued in compliance with the Fourth Amendment conflicts with this Court’s decisions. Sup. Ct. R. 10(c). The Fourth Amendment applies to the States through the

Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Under the totality of circumstances, this Court should find the *capias* issued without a neutral and detached official’s independent determination of probable cause on sufficient facts supported by oath or affirmation. This Court should grant review, hold the *capias* was not a valid warrant, vacate the May 5, 2026, judgment and remand for reconsideration of the incorporate suppression claim and its consequences for Counts VI–VII under the correct Fourth Amendment standard.

II. The Question Affects Florida’s Continuing Arrest Process.

Section 932.48 continues to direct clerks of the circuit court to issue *capiases* upon a prosecutor’s filing of an information without leave or order of the court. The Supreme Court of Florida has since amended Florida Rule of Criminal Procedure 3.131. It now states “the judge *must* issue or direct the clerk to issue, either immediately or when so directed by the prosecuting attorney, a *capias* for the arrest of the person.” *In re Amendments to Fla. Rule of Crim. Proc. 3.131*, 419 So. 3d 1069 (Fla. 2025); Fla. R. Crim. P. 3.131(k) (2026) (emphasis added). The amendment became effective January 1, 2026.

In April 2026, the Eleventh Circuit identified a related unresolved Fourth Amendment issue arising from Florida’s *capias* procedure in *Clark v. Bell*, No. 25-13645, slip op. at 3–5, 12–13 n.6 (11th Cir. Apr. 29, 2026) (per curiam) (unpublished). Clark alleged a detective submitted a probable cause affidavit to the State Attorney’s Office, a prosecutor filed an information and Clark was arrested the following day.

After the State dropped the charges, Clark sued for malicious prosecution.

The Eleventh Circuit recognized that Florida law provides for a *capias* to issue automatically when a prosecutor files an information. *Id.* at 12–13 n.6. It described the statutory *capias* issuance process as a “ministerial act” and observed that such process “may not be subject to our ordinary deferential review for an arrest warrant issued by a neutral magistrate after a probable cause determination.” *Id.*

The court further stated that its precedent did not appear to address “how to review Fourth Amendment malicious prosecution claims where a plaintiff’s seizure was triggered by a Direct Information or ministerial *capias* rather than a formal, magistrate-issued arrest warrant.” *Id.* at 13 n.6. Because the complaint did not establish whether the ministerial *capias* had actually caused Clark’s arrest, the Eleventh Circuit left the issue “for another day.” *Id.*

Resolving this question would guide the officers and judicial officials who continue to use Florida’s *capias* procedure. This Court has recognized the importance of resolving Fourth Amendment questions when necessary to guide future action by law enforcement officials and magistrates. *United States v. Leon*, 468 U.S. 897, 924–25 (1984).

Here, deputies expressly invoked the *capias* as authority to compel Waite from the curtilage of his home and arrest him. 2R. 445:3–15. The record contains the information, the *capias* and Judge Carney’s bail endorsement, Chenoweth’s testimony about the presentation to Judge Carney and Munchel, and the State’s explanation about the process. The Circuit Court concluded the deputies could have pulled down Waite’s

gate to execute the capias. 2R. 502:22–503:4; App. 45a. This record supplies the connection between the capias process and the arrest left unresolved in *Clark*, and permits review of the constitutional foundation for the authority exercised here.

CONCLUSION

The Court should grant the petition. If the basis of the 2026 judgment remains uncertain, the Court should vacate the judgment and remand for clarification.

Respectfully submitted,

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