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STATE OF WISCONSIN

IN SUPREME COURT

Appeal No. 2019AP001398-CR

STATE OF WISCONSIN

Plaintiff-Respondent,

v.

JOHNATHAN L. JOHNSON

Defendant-Appellant-Petitioner

On Appeal From a Judgment of the Circuit Court

For Vilas County, Case No. 2018-CF-145

Honorable Neal A. Nielsen III, Presiding

Petition for Review

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Wisconsin Cases

Other Jurisdictions

Wisconsin Statutes

Wisconsin Legislation

Wisconsin Supreme Court Rules

Wisconsin Attorney General Opinions

Wisconsin Constitution

United States Constitution

Wisconsin Publications

Other Authorities

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Petition for Review

JOHNATHAN L. JOHNSON, defendant-appellant-petitioner, hereby petitions the Supreme Court of the State of Wisconsin, pursuant to sec. 808.10(1), Stats., and Rule 809.62, to review the decision in the Court of Appeals, District III, STATE OF WISCONSIN v. JOHNATHAN L. JOHNSON, Case No. 2019AP001398-CR on September 9, 2020, for the reasons hereafter set forth.

Dated at Crandon, Wisconsin, this 6 day of October, 2020

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ISSUES PRESENTED FOR REVIEW

I. Was the administration of an oath fundamentally defective when "so help me God" required by Chapter 734 Laws 1951 Section 34 was omitted from the S.968.12(2) proceeding?

Answered no by the Circuit Court and the Court of Appeals.

II. If the search warrant was not based upon an oath or affirmation as required by Article 1 Section 11 of the Wisconsin Constitution was the search warrant either void ab initio or otherwise unenforceable without good faith?

Not answered by the Circuit Court and not answered by the Court of Appeals.

III. Was the search warrant exforced in good faith for purposes of Article 1 Section 11 of the Wisconsin Constitution when the sole enforcing officer had actual knowledge he was not sworn in for purposes of S.968.12(2); and sought no mentor review as required by State v. Eason, 2001 WI 98 ¶3, 63?

Answered yes by the Circuit Court and not answered by the Court of Appeals.

Brief Statement of Criteria For Review

The petitioner contends the search warrant was not based upon an oath or affirmation as required by Article 1 Section 11. State v. Tye, 248 Wis. 2d 530, 543, 636 NW 2d 473, 2001 WI 142 ¶23. In the case at bar the entire process of placing the witness under oath in a telephone search warrant proceeding authorized by 2017 Act 261 §11m was this: "… **you swear all that's true, right? Yes sir.**" There was no reference to **"so help me God"** found in S.906.03(2) and 990.01(24).

Wisconsin unlike federal courts and other states does not solely rely on the common law or court rules to define what is sufficient to constitute an oath. Instead, legislation at Ch. 261 Laws 1951 §6 and Ch. 734 Laws 1951 §34 requires concluding the oath with **"so help me God"**. This case raises the question if the 1951 legislative mandate makes **"so help me God"** a fundamental component of the oath process.

The petitioner contends **"so help me God"** is fundamental and without it there is no oath. Without an oath the holding in Tye requires the search warrant be declared void.

One aspect of why **"so help me God"** required by the legislature is so fundamental is the level of

accountability through the Third Commandment which is unavailable through courts. Reliance on the Third Commandment is not a first Amendment establishment clause violation because if the 1951 legislation is based upon historical fact. The Third Commandment was recognized since 1890 in State ex rel Weiss v. District Board, 76 Wis. 177, 195, 44 NW 967 (1890). This large timespan overcomes First Amendment constraints on legislation. American Legion v. American Humorist Assn., 139 S. CT. 2067, 2074 (2019).

In Tye the three justice concurrence would have found good faith if the failure to administer the oath was mistake. Good faith can be obtained through judicial error. State v. Kerr, 383 Wis. 2d 306, 328, 913 NW 2d 787, 2018 WI 87 ¶33. Kerr did not involve a search warrant.

In the case at bar the only officer sought no mentor review as required by State v. Eason, 245 Wis. 2d 206, 629 NW 2d 625 2001 WI 98 ¶3, ¶63. Unlike Kerr, the arresting officer knew of the judicial error. United States v. Camou, 773 F.3d 945 (9th Cir. 2014).

This is the first time the final Eason factor (Eason 6) which requires peer review of a search warrant process has been considered by higher courts. It appears Eason 6 applies whether or not peer review would have been productive. In this case peer review is a material

omission. A superior would have required the search warrant affidavit been notarized under oath. That detail would render the subsequent judicial error moot.

This petition satisfies the criteria at 809.62(1r)(a) and (c)3.

STATEMENT OF FACTS AND THE CASE

NATURE OF APPEAL

This is an appeal from the final judgment of the Circuit Court of Vilas County, Hon. Neal A. Nielsen III, presiding which entered a judgment of conviction for operating with a prohibited alcohol concentration as a fifth offense. This is a felony conviction obtained through a no contest plea entered with reservation of rights to appeal the suppression decision. S.971.31(10).

Mr. Johnson disputes the denial of his suppression motion on Article 1 Section 11 grounds but not Fourth Amendment grounds.

The Arrest at McDonalds

At 1:35 AM June 8, 2018 Mr. Johnson paid for a drive through food order at McDonalds in Eagle River. (29). There are no franchise policies addressing reporting of suspected intoxicated drivers. (30). The manager was Karolyn L. Ellis (33-1) who obtained information from Alisha Myshock and Frances Ree. (33-2)(63-44:1-13). Karolyn L. Ellis called dispatch (34-7) at about 1:38 AM (9-3).

Deputy Brook Lewis observed Johnson at 1:41 AM (9-3) and arrested the passenger for controlled substances. (9-4). Officer Mark Collins arrived at 1:43 AM. (9-6). Neither Brook Lewis (63-12:15-16) or Mark Collins (62-19:4-7)(63-

24:25-25:2) talked to anyone at McDonalds. Officer Collins administered field sobriety tests and arrested Johnson. (63-19:22-20:9).

The Search Warrant Process

Officer Collins transported Johnson to Eagle River Memorial Hospital. (9-7). Collins read to Johnson Informing the Accused, but Johnson refused a sample. (63-20:10-13). This started the search warrant process using Tracs. (63-20:23-25). The search warrant affidavit and search warrant were completed by Collins. (62-19:16-18).

The search warrant affidavit was signed at the counter of the emergency room registration. (63-:29:25-30:23)(24, 25, 26). The search warrant documents were generated in Collins's squad car. (63-20:14-18). Those forms came from Tracs. (63-22-24). Collins then contacted dispatch to set up a telephone hearing with the judge. (63-20:18-22).

The time the search warrant affidavit was signed was about 3:10 AM. (26). The time of the call to dispatch asking to set up a telephone hearing was 3:21:45 AM. (27). Collins faxed the documents to the duty judge. (63-22:23-24). There is an indication the fax was received by the Court at 3:33 AM. (22-5). Another transmission to the duty judge is at 3:37 AM. (22-5).

The affidavit page (22-3) was already signed. The notary page for the affidavit was blank. (22-4). The affidavit was not notarized prior to faxing it to the duty Judge and Collins was not under oath when he signed it at the hospital. (63-30:24-31:1).

The telephone call between Mark Collins and the duty Judge lasts in total 124 seconds. (37-2). There is a transcript of the audio recording. (32-9,10). This recording is from a conference call arranged through the Sheriff's Department. (63-22:23-32:3). There was no other conversation between Collins and the duty Judge other than this transcript. (63-26:18-21).

The recording of the hearing is in two pages. (32-9,10). At page one lines 14 and 15 five pages are faxed, delayed by a temporary paper shortage at line 21. The first affidavit comes through at page one line 10 and the warrant is at page two lines 8-11. At page two lines 12-21 the court was going to sign and fax back. The time span between page two lines 12 and 25 is 21 seconds (37-2).

The only reference to any type of oath is at page one line 25; "… **you swear all that's true; right?**" The response is **"Yes, sir."** Officer Collins could not recall if he raised his right hand. (63-32:24-33:1). (63-33:15-21).

Collins maintained he swore to the information supporting the warrant (63-23:12)(63-25:24-26:1) and false information could **"impact on you potentially"**. (63-23:16-19).

When asked if he was sworn in during the telephone hearing, Mark Collins said **"The Judge asked me if I swear to the information and I said yes. I was not sworn in per se."** (63-32:16-17). At 3:39 AM the search warrant is signed. (22-5). The exact time the affidavit is notarized is not known.

At 3:45 AM the search warrant is faxed back. (22-5). With the search warrant, Officer Collins obtained the blood sample. (63-24:13-14). There is a return to the search warrant by Mark Collins. (20-9,10). The test result was .187. (6-1).

The body camera had failed during the time the search warrant was applied for. (31). There is no one who was a witness to the proceedings. (63-34:1-16). Brook Lewis took no part in obtaining the search warrant. (63-15:1-7).

The Circuit Court Decision

Emphasis by the defense was on **"so help me God"** being required to comply with S.990.01(24), as well as to sustain a perjury charge. (33-13). Under Tye, there was no good faith exception to lack of an oath. (33-1).

The State argued once Collins **"swore"** to the affidavit, an oath was administered within the ambit of S.887.03, since Collins believed he was subject to sanctions. (34-5). The State views defendant's arguments as **"semantics"**. (34-6). The reply brief distinguished S.887.03 for the reason no oath was administered. (35-3). The search warrant was upheld on April 1, 2019. (64).

The issue was not easy to decide. (64-14:17-15-9). The word **"swear"** was substantially equivalent to **"take an oath"**. One person administers an oath and one person swears to it. (64-17:6-17). This case did not have a total lack of an oath, unlike Tye. (64-20:2-11). The Court thought, in Tye, the District Attorney personally reviewed the search warrant. (64-20:4-5).

The Court then turned to the good faith exception adopted in Eason paragraph 33 and distinguished Tye on the basis a partial oath was present here. (64-21:20-22:14). The form of the oath is the primary question. (64-23:8-12).

The Court concluded Officer Collins acted reasonably, and denied suppression under Eason. (64-23:13-22).

Entry of Judgment

On July 1, 2019 there was a no contest plea to PAC 5th. (39). The sentence was nine months in the county jail, $2,273 and three years loss of license. (44). The motion

for a stay pending appeal (36) emphasized the broader protection of the state constitution (37-3); **"so help me God"** is required by legislation, not court rule. (37-4). The legislature had the Third Commandment in mind (37-6); in a manner that does not violate the Establishment Clause. (56). Eason's good faith exception does not apply. (37-5).

The stay motion was granted (65-16:25-17:1) (50), and this appeal was promptly filed as required. (65-17:12-14).

The Court of Appeals Decision

The Circuit Court was affirmed on September 9, 2020. One reason for affirmance was construing the **"Yes, sir"** of Officer Mark Collins to constitute an affirmation. ¶9. Johnson's argument Collins had to choose to affirm, after hearing **"so help me God"** was rejected. ¶26.

The Court of Appeals applied its decision In the Matter of Recall of Redner, 153 Wis. 2d 383, 394, 450 NW 2d 809 (Ct. App. 1989), ¶27, rejecting the context thereof materially differed from court proceedings ¶28.

Since the oath is a matter of substance, not form ¶29, the fact Collins swore before the Court was enough substance.

The decision concludes by omitting any reference to Chapter 734 Laws of 1951. Instead, the legislature is said to have provided directory methods at 906.03(2) and (3)

¶33. This position is incorrect as the Supreme Court Order at 59 Wis. 2d R 161-162 enacted S.906.03. Technical corrections at 1991 Act 32 §171 and 172 do not establish legislative intent to render Chapter 734 Law of 1951 §34 directory and not mandatory.

The search warrant was considered based upon an affirmation in compliance with Article 1 §11. The Circuit Court's good faith finding was not reviewed as moot.

ARGUMENT

I. Substantial Compliance with Administering on Oath Requires Legislative Intent of Ch. 734 Laws 1951 §34 Be Honored.

The Court of Appeals overlooked the legislation at Ch. 734 Laws 1951 §34. and Ch. 261 Laws 1951 §6 which repealed and recreated what substantially now is S.990.01(24). The 1951 legislative requirement **"If an oath is administered it shall end with the words So Help Me God"** is mandatory and not directory. The Court of Appeals (115) views the legislature as having provided a directory process at S.906.03(2) and (3).

The origin of S.906.03(2) and (3) is a Supreme Court Order at 59 Wis. 2d R161, 162 (1973). A revisors correction bill at 1991 Act 32 §171 and §172 did nothing to modify the mandatory requirement at Ch. 734 Laws 1951 §34. The interpretation of S.906.03, as a court rule must always include the legislatively mandated component of **"so help me God."**

The Court of Appeals construed a previous decision (113) as limiting its options to accept Johnson's argument. To the extent In the Matter of Recall of Redner, 153 Wis. 2f 383, 394, 450 NW 2d 808 (Ct. App. 1989) has controlled

court administration of an oath, Redner needs to be reviewed.

Supreme Court review should not be downgraded for the reason Collins affirmed for purposes of S.990.01(41) (112). When an oath is administered, **"so help me God"** must be pronounced so someone with conscientious scruples against taking an oath can raise that objection. S.906.03(3). See also (160). If Officer Collins had a personal objection to swearing before God, there would already be such a record from previous years of court cases.

There is no reasonable basis to construe **"swear"** to mean affirm for the basic reason one with conscienscions objections to accountability to a Supreme Being will not **"swear"** to anything. United States v. Brooks, 285 F. 3d 1102, 1105 (8th Cir. 2002). An affirmation does not include swearing (109 ¶18). The State must accept the fact there was not the required strict compliance. Kellner v. Christian, 188 Wis. 2d 525, 532 n5, 525 NW 2d 286 (Ct. App. 1994). While Rednor did not require strict compliance, Kellner did.

An example of someone swearing to a document without being required to be placed under oath is S.801.18(11)(e) enacted at Supreme Court Order 14-03 Section 16. Telephone search warrants are legislatively required to be based upon

a witness being placed under oath. 2017 Act 261 §11m (164, 167).

This petition presents an opportunity for this Court to review the minimum limits of the ministerial act of administering an oath. State v. Johnson, 133 Wis. 2d 261, 267, 394 NW 2d 915 (Ct. App. 1986). Especially in search warrant matters, the statement must be **"sworn to"** after being placed under oath (113-114 ¶29). State v. Baltes, 183 Wis. 545, 551, 198 NW 2d 282 (1924) **"the examination which is far better and safer is made under oath."**

II. Requiring "so help me God" is both fundamental and not in conflict with the First Amendment.

The case next turns to the question if omitting **"so help me God"** is a technical or fundamental violation of S.990.01(24) and S.968.12(2). This is a question of first impression in Wisconsin. Case law from other jurisdictions cannot be relevant unless that jurisdiction has legislation that mandates **"so help me God"** in the oath.

A search warrant issued without a supporting affidavit or testimony under oath or affirmation does not satisfy Article 1 Section 11 of the Wisconsin Constitution. State v. Tye, 248 Wis. 530, 543, 636 NW 2d 473, 2001 WI 142 ¶23.

The question before the court is if omitting **"so help me God"** from the oath is a technical or fundamental

violation of S.990.01(24). The existence of a fundamental defect is a question of law. Am. Family Mut. Ins. v. Royal Ins. Co., 167 Wis. 2d 524, 533, 481 NW 2d 629 (1992). Deciding whether a defect is fundamental or technical is a question of statutory interpretation reviewed de novo. Id. The burden of proof is on the state to show the defect is technical only. Id.

Whether the defect is technical or fundamental is resolved by analyzing the purposes of the statute and the type of action involved. Novak v. Phillips, 246 Wis. 2d 673, 682-683, 631 NW 2d 635, 2001 WI App. 153 ¶17. Defects which are **"central"** to the statutory scheme are fundamental. DWD v. LIRC, 367 Wis. 2d 609, 620, 877 NW 2d 620, 2016 WI App. 21 ¶12.

In election matters, which support political debate, the omission of God is not fundamental. In Matter of Recall of Redner, 153 Wis. 2d 383, 394, 450 NW 2d 808 (Ct. App. 1989), In court proceedings, which seek the truth, the omission of God from S.906.03(2) is fundamental.

The defect is also fundamental due to the inability to sustain a perjury charge without strict compliance with S.990.01(24). WJI-Criminal 1750 n. 3 (33-13). More importantly, omitting the oath process depreciates the solemnity of the proceeding. State ex rel Individual

Subpoenaed v. Davis, 281 Wis. 2d 431, 446, 697 NW 2d 803, 2005 WI 70 ¶.30.

The Supreme Court of Arizona explains the historical purpose of the oath; (in that case the oath also contained so help me God), **"strengthens the social tie by uniting it with that of religion"**. The 16th edition of Blackstone's Commentaries published in London in 1811 was relied on to support this historical fact. Elfbrandt v. Russell, 94 Ariz. 1, 6, 381 P. 2d 554 (1963). Compliance with the third of the Ten Commandments is a religious duty. Stone v. Graham, 449 US 39, 42, 101 S. Ct. 192 (1980).

In 1951, our Legislature had the same intent based upon knowledge of existing jurisprudence. Kwiatkowski v. Capitol Indemnity Corp., 157 Wis. 2d 768, 775-776, 461 NW 2d 150 (Ct. App. 1990).

The purpose of the administration of the oath is to, with dignity and solemnity; impress the witness with the obligation imposed by it. State ex rel Shields v. Portman, 242 Wis. 5, 14-15, 6 NW 2d 713 (1942). The court rule under consideration in Portman was enacted at 241 Wis. v, vi and was a predecessor to S.906.03(2). That rule was effective July 1, 1943 and included **"so help you God"**.

This is consistent with the common law, where the affiant is accountable to God or the Supreme Being. 60 OAG

429 (1971). The State Constitution appears to conflate God and the Supreme Being collectively as Almighty God, in the Preamble, and Art. 1 §18. King v. Village of Waunakee, 185 Wis. 2d 25, 517 NW 2d 671 (1994).

There are Ten Commandments, the third of which directly relates to taking an oath in the name of God. Van Orden v. Perry, 545 US 677, 707, 125 S. Ct. 2854 (2005). When someone swears in the name of God something is true, the name of the Lord is taken in vain when the person lies. Lying under an oath in the name of God invokes a violation of the third of the Ten Commandments. Perjury does not.

Without **"so help me God"** the witness is only accountable to the statutes passed by the legislature. With **"so help me God"** there is additional accountability through the Third Commandment. These are two different types of accountability. Mr. Johnson relies upon the Third Commandment to establish there is additional accountability through an oath based upon God.

In 1890, the Wisconsin Supreme Court extensively considered the significance of the King James Version of the Holy Bible in State ex rel Weiss v. District Board, 76 Wis. 177, 44 NW 967 (1890). In Weiss, judicial notice was taken of the Bible, Id p.191; obeying a Supreme Being is common to all sects, Id p.193, 194; the Ten Commandments

represent a moral code, Id p.195; and are among the Bible's priceless truths, Id p.202.

The Ten Commandments are found in Exodus Chapter 20. An extract of Exodus 20 from a Bible published before 1890 is in the record (57-1, 6, 7). The 1951 legislature is deemed to be aware of the Third Commandment which reads, as of 1890, as follows; **"Thou shalt not take the name of the LORD thy God in vain; for the LORD will not hold him guiltless that taketh his name in vain."** (57-1).

Johnson's position the 1890 recognition of the Third Commandment supports 1951 legislative intent that omission of **"so help me God"** is a fundamental defect does not violate the Establishment Clause for two reasons. The first reason is use in courts of **"so help me God"** in a witness oath does not violate the First Amendment. Zorach v. Clauson, 343 US 306, 313, 72 S. Ct. 679 (1952).

The second reason is based upon historical facts. Weiss was decided 61 years before the legislation; and Chapter 734 Laws of 1951 was in effect 66 years before the arrest. These time spans exceed the 44 years the Ten Commandments display in Van Orden was located at the Texas Capitol. Passage of substantial periods of time create a presumption a religious display has primarily acquired an

historical significance. American Legion v. American Humorist Assn, 139 S. Ct. 2067, 2074 (2019).

Simply put, God in the oath process is **"central"** to the purpose of accuracy in courts. Removing God removes an element of solemnity the legislature cannot duplicate. The state cannot enforce its laws concerning false testimony to the degree the Third Commandment will be ultimately enforced. This point is explained during the PBS interview by Sir David Frost with the Reverend Billy Graham aired January 29, 1993. (A.-Ap. 139-146) (168-175).

Specifically, Reverend Graham concludes (A-Ap. 145) (174). **"He'll take over. And he won't make any mistakes. There's not going to be anybody in hell that wasn't supposed to be there and there's not going to be anybody in heaven that wasn't supposed to be there."** For this reason **"so help me God"** is central to the purpose of S.990.01(24); S.968.12(2) and S.906.03(2).

There is no difference between total lack of an oath or an oath that is fundamentally defective. The result is the same-no oath. Without an oath, the search warrant is void. Tye, supra, ¶11 n. 11, ¶14, ¶19, ¶23.

The position of the Circuit Court an attempt at the oath resulted in a technical defect is harmless error if there is a good faith exception to the exclusionary rule.

III. Eason's Sixth Factor is Met Even If Judicial Error Must Be Combined With Material Lack Of Peer Review.

The Circuit Court found Officer Mark Collins acted in good faith, based upon Eason (64-20:15-16). In Eason, the Wisconsin Supreme Court adopted a good faith exception derivative of United States v. Leon, 468 US 897, 104 S. Ct. 3405 (1984). Eason adopted Leon's good faith jurisprudence, and added two additional obligations the State had to meet.

The State, for purposes of Art 1 §11, must show a significant investigation and review by a police officer trained in, or very knowledgeable of, the legal vagaries of probable cause and reasonable suspicion, or a knowledgeable government attorney. State v. Eason, 234 Wis. 2d 396, 399, 610 NW 2d 208, 2001 WI 98 ¶3, ¶63.

Eason's requirement of review of the proposed search warrant remains in effect. State v. Scull, 361 Wis. 2d 288, 306, 862 NW 2d 562, 2015 WI 22 ¶35. In this case, while the court assigned to itself the responsibility for omitting **"so help me God"**; law enforcement shares the blame by knowingly enforcing a defective warrant. Only Mark Collins processed the warrant. No one else reviewed it, or enforced it. Tye, supra, ¶29.

Collins knew the warrant was not signed under oath at the hospital (63-30:24-31:1) and knew that he was not later

sworn in **"per se"** (63-32:16-17). There is a common law presumption he did not raise his right hand. Bruss v. Milwaukee Sporting Goods, supra. Had the body camera not malfunctioned at that time that presumption may, or may not, be rebutted.

There is enough responsibility attributable to law enforcement the fourth Leon exception applies. Tye, supra, ¶28. There is a common good faith factor in Leon and Eason: a reckless disregard for legal requirements. When only one officer participates in the entire search warrant process, there is actual knowledge of all legal errors. Illinois v. Krull, 480 US 340, 348-349, 107 S. Ct. 1160 (1987).

The burden of proof to show good faith under Leon is on the State. United States v. Diehl, 276 F. 3d 32, 41-42 (1st Cir. 2002). Good faith is reviewed de novo. United States v. Raymonda, 780 F. 3d 105, 113 (2nd Cir. 2015).

The Court of Appeals of Indiana ruled good faith in overlooking the oath is essentially plenary on review. State v. Brown, 840 NW 2d 411, 422 (Ct. App. Ind. 2006). Officer Collins is chargeable with knowledge of the oath process, since he is a sworn officer (64-19:15-19). This situation is not wholly the fault of the judiciary, or wholly subsumed within judicial integrity. The State cannot meet its burden of good faith under Leon.

If good faith is upheld as to Leon, it cannot be upheld under Eason. There was absolutely no review by the District Attorney or any other law enforcement officer. Eason, ¶3. There can be no good faith available for Art. 1 §11 purposes. The State cannot meet its burden of good faith under Eason, ¶3. Good faith is still required when a search warrant is void through judicial error.

This case presents a potential conflict between Eason and State v. Kerr, 383 Wis. 2d 306, 913 NW 2d 787, 2018 WI 87. In Kerr, an arrest warrant was invalid due to judicial error. Suppression, viewed as a deterrent to police misconduct, could not be applied. In the case at bar if no law enforcement misconduct is found under Leon, good faith is still required by Eason due to the differences between search warrants and arrest warrants.

In Kerr, the arrest warrant was not a document which the enforcing officer had to investigate prior to issuance, or could have mentor review prior to issuance. Kerr's position at ¶23 that Eason's good faith ambit need not be considered does not transfer to the search warrant at bar. Unlike in Kerr, the enforcing officer, Mark Collins; was required by Eason to obtain review prior to the telephone hearing as well as investigate for probable cause. A

reviewing officer would have required a notary at the hospital for the search warrant affidavit.

There is a distinction between search warrants and arrest warrants as to the need for preliminary investigation and review by a mentor. State v. Hess, 327, Wis. 2d 524, 552, 785 NW 2d 568, 2010 WI 82 ¶57. Whether void ab initio or unenforceable, the search warrant was ineffective for purposes of Art. 1 §11 unless there was good faith.

Whether through Leon, or the extra protection of Eason ¶3, ¶63; or both, the State is deprived of the privilege of good faith. The search warrant remains in violation of the oath or affirmation clause of Art 1 §11. Hess at ¶37. Suppression is required by Hess at ¶62.

CONCLUSION

The petitioner respectfully requests this Court accept review of this matter.

Respectfully submitted this 6 day of October, 2020.

Robert A. Kennedy, Jr.
Attorney for Appellant
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FORM AND LENGTH CERTIFICATION

I certify that this Petition For Review conforms to the rules contained in §809.62(4)(a) and §809.19(8)(b) and (d) for a Petition For Review produced using the Monospaced font: 10 characters per inch; double spaced; 1.5 margin on left side and 1 inch margins on the other three sides. The length of this Petition For Review is Twenty-four (24) pages. Dated: October 6, 2020

Robert A. Kennedy, Jr.
Attorney For Appellant

CERTIFICATE OF COMPLIANCE WITH RULE §809.62(4)(a)

I hereby certify that:

I have submitted an electronic copy of this Petition For Review, which complies with the requirements of §809.62(4)(a) and §809.19 (12). I further certify that: This electronic Petition For Review is identical in content and format to the printed form of the Petition For Review filed as of this date.

A copy of this certificate has been served with the paper copies of this Petition For Review filed with the court and served on all opposing parties.

Dated: October 6, 2020

Robert A. Kennedy, Jr.
Attorney For Appellant
Kennedy Law Office

CERTIFICATE OF MAILING

I certify that this Petition For Review together with the appendix was deposited in the United States mail at Crandon, Wisconsin for delivery to the Clerk of Court of Appeals by first-class mail on this 6th day of October, 2020. I further certify that the Petition For Review was correctly addressed and postage was prepaid.
I further certify one copy thereof were simultaneously served by mail as follows:

Michael Sanders
Department of Justice Criminal Appeals Unit
PO Bo 7857
Madison, WI 53707

Dated: October 6, 2020

Robert A. Kennedy, Jr.
Attorney for Appellant