STATE OF WISCONSIN
SUPREME COURT
CASE NO. 2020 AP 2006 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTINA MARIE WIEDERIN,

Defendant-Appellant-Petitioner.

DEFENDANT-APPELLANT-PETITIONER'S PETITION FOR REVIEW

PETITION FOR REVIEW OF FEBRUARY 15, 2022, DECISION OF THE COURT OF APPEALS, DISTRICT III, AFFIRMING AN ORDER OF THE CIRCUIT COURT FOR ST. CROIX COUNTY, CASE NO. 19 CF 44, THE HONORABLE R. MICHAEL WATERMAN PRESIDING

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PETITION FOR REVIEW

Defendant-Appellant-Petitioner hereby petitions the Supreme Court of the State of Wisconsin, pursuant to Wis. Stat. § 808.10 and Wis. Stat. § 809.62 to review the decision of the Court of Appeals, District III, in *State v. Wiederin*, 2022 WL 457396, Appeal No 2020 AP 2006-CR, filed on February 15, 2022, and currently pending final publication decision.

ISSUE PRESENTED FOR REVIEW

1. Was the warrantless search of Defendant-Appellant-Petitioner's blood while she was unconscious justified based on exigent circumstances?[1]

   TRIAL COURT RULING: Yes.

   COURT OF APPEALS RULING: Yes.

[1] In the Court of Appeals case, the parties briefed the issue of whether the good faith exception to the exclusionary rule applied to this case, but the Court of Appeals did not address it. For all the reasons stated in the Court of Appeals briefs, the exception does not apply. If Respondent raises this as an alternative ground to affirm the Court of Appeals decision, the issue may be addressed during briefing and oral argument to this Court. The issue can be addressed on the record from the Court of Appeals. This issue does not need further development at the lower courts. Moreover, that exception, while potentially relevant to the resolution of the Fourth Amendment issues, is not relevant to the decision on whether to grant the petition for review.

BRIEF STATEMENT OF CRITERIA FOR REVIEW

This case concerns the warrantless search of an unconscious driver's blood. The blood draw was conducted pursuant to a drunk driving investigation immediately following a severe motor vehicle accident. The lower courts found the warrantless search to be constitutional on grounds of the exigent circumstances exception to the Fourth Amendment's warrant requirement. Unlike many of the cases where exigency has been found to exist in the context of a motor vehicle accident, the driver here was conscious for nearly three hours after the crash, during which time the investigating officer made absolutely no efforts to apply for or obtain a warrant. Of the nearly three hours the driver was conscious, the investigating officer sat in a hospital lobby for 52 minutes before he finally explained the seriousness of the offense he was investigating and asked a nurse to see the driver. By that time, the driver was just beginning to lose consciousness due to medications administered at the hospital to prepare her for surgery. The officer directed the nurse to draw the driver's blood, despite her unconsciousness and lack of consent, and despite the fact that he had no warrant.

This case presents a real and significant question of federal and state law – the degree of intrusion into one's bodily integrity that the Fourth Amendment permits in the context of impaired driving cases. Wis. Stat. § 809.62(1r)(a). "The integrity of an individual's person is a cherished value of our society." *United States v. Schmerber*, 384 U.S. 757, 772 (1966). "Search warrants are ordinarily required for searches of dwellings, and, absent an emergency, no less could be required where intrusions into the human body are concerned." *Id.* at 770.

Moreover, a decision by the Supreme Court will help to develop, clarify, or harmonize the law, and the case calls for the application of new doctrine. *See* Wis. Stat. § 809.62(1r)(c)1. After the unconscious driver provision of Wis. Stat. § 343.305 was invalidated and *Mitchell v. Wisconsin*, 139 S. Ct. 2525 (2019), was decided, the constitutionality of warrantless blood draws of unconscious persons is

uncertain. *State v. Prado* held that to the extent Wis. Stat. § 343.305 allowed warrantless blood draws based solely on a driver's unconsciousness, it was unconstitutional. 2020 WI App 42, ¶ 3, 393 Wis.2d 526, 531, 947 N.W.2d 182, 184. *Mitchell*, on the other hand, held that "[w]hen police have probable cause to believe a person has committed a drunk-driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital," there will almost always be exigent circumstances. *Mitchell*, 139 S.Ct at 2539. In deciding exigency existed in the case at hand, both the Court of Appeals and the trial court relied on language from *Mitchell* indicating that a driver's unconsciousness is often synonymous with exigency. (P-App. 107-108, 116.) In this case, though, Defendant-Appellant-Petitioner ("Wiederin") was conscious for the entire time law enforcement interacted with her up until the blood draw. Wiederin did not become unconscious until nearly three hours after officers first came in contact with her at the scene of the crash. Her unconsciousness occurred simultaneously with the blood draw. That she became unconscious later, in the seconds before the blood draw, must not be considered at all in the exigency analysis. Indeed, if the driver is conscious up until the blood draw, unconsciousness does not justify the officers' lack of efforts to obtain a warrant prior to the draw. A decision from the Supreme Court is needed to make clear that, even post-*Mitchell*, unconsciousness is irrelevant to exigency where the unconsciousness did not occur until the moment of the blood draw.

Harmonization and clarification of the law post-*Mitchell* is of particular import because *Mitchell* was a plurality opinion, and Justice Thomas' concurrence in *Mitchell* specifically disclaimed the adoption of any new rule proposed by the plurality. *Mitchell*, 139 S.Ct. at 2541 (Thomas, J., concurring in judgment only). Because no majority of justices were in agreement as to the adoption of a new rule, *Mitchell* did not adopt a new rule. *See Marks v. U.S.*, 430 U.S. 188, 193 (1977). Nonetheless, Wisconsin Courts are relying on *Mitchell* to find exigency where a driver is unconscious. Clarification from the Supreme Court is needed to establish

that *Mitchell* did not announce a new rule of jurisprudence when it comes to unconscious drivers, and that the rule of *McNeely* still controls, which requires that if police have time to secure a warrant before the blood draw, the Fourth Amendment mandates they must do so. *Missouri v. McNeely*, 569 U.S. 141, 152 (2013).

Unfortunately, motor vehicle accidents involving injured drivers who become unconscious at the hospitals that treat them subsequent to the crash is a phenomenon that is likely to continue to occur indefinitely. The question of whether it is permitted to use unconsciousness as a factor in determining exigency where the driver was not unconscious until the blood draw has state-wide impact, and is likely to reoccur absent the court's interjection. Wis. Stat. § 809.62(1r)(c)2-3.

Finally, the Court of Appeals decision in this case is in discord with other recent Court of Appeals decisions, namely *State v. Hay*, 2020 WI App 35, 392 Wis.2d 845, 946 N.W.2d 190. *See* Wis. Stat. § 809.62(1r)(d). In *Hay*, the Court found that exigency cannot exist in time periods marked by "the lack of complication and absence of chaos." *Hay*, 2020 WI App 35 at ¶ 19. It held that where officers are simply sitting and waiting, there is no exigency. *Id.* Though the initial crash scene in this case was multifaceted and chaotic, that chaos did not persist through the night. After Wiederin was extricated from her vehicle, the scene was cleared, and the chaos abated. One officer was simply sitting and waiting at the hospital to talk to Wiederin, and he did so for 52 minutes (without ever applying for a warrant). The underlying Court of Appeals' decision here impliedly holds that where the scene of an accident is initially chaotic, a warrant is never needed, even if the emergency is subsequently extinguished and one or more officers are just standing around. This is contrary to *Hay*, and runs afoul of the principle announced in *McNeely*, that if officers can reasonably obtain a warrant, they must do so. 569 U.S. at 152.

STATEMENT OF FACTS AND OF THE CASE

This appeal arises from the criminal prosecution of Defendant-Appellant-Petitioner Christina Marie Wiederin, following a motor vehicle accident that occurred in Somerset, Wisconsin, on December 21, 2018. The relevant events of December 21 and 22 are summarized in the following timeline:

11:10 PM St. Croix County dispatch center ("dispatch") receives a report of a wrong way driver on a divided highway. (P-App. 123:25 – 124:8.)

11:17 PM Dispatch receives a report that a head on collision has occurred between the wrong way driver and another vehicle. (P-App. 124:13-18.)

11:18 PM St. Croix County Sheriff's Deputy Jeff Hillstead arrives at the scene of the crash. (P-App. 130:16-21.)

Almost immediately, Hillstead discovers the driver of one of the vehicles is deceased. (P-App. 125:19 – 126:3.)

Efforts to extricate the living driver from her vehicle begin. (P-App. 172:21 – 173:4.)

11:23 PM Hillstead speaks with Wiederin, learns she is the driver of the vehicle that was travelling the wrong way on the highway, learns that she has been drinking (based on her own admission), observes her speech to be "slow and wavering", and observes the neck of a bottle sticking out of a drawstring bag in her vehicle. (P-App. 126:24 – 127:11, 128:1-11, 133:17 – 134:10; 135:17-24.)

Knowing that Wiederin was likely to be transported to a hospital in Minnesota capable of treating her severe injuries, and suspecting Wiederin of impaired driving, St. Croix County Sheriff's Sgt. Thomas Williams researches how to obtain a warrant in Minnesota. (P-App. 173:2-23.)

12:16 AM After being freed from her vehicle, Wiederin is transported by ambulance from the crash scene to Regions Hospital in St. Paul, Minnesota. (P-App. 163:3-4, 173:24 – 174:1.)

Williams conducts more research as to Minnesota warrant procedures. (P-App. 170:16-25.)

1:05 AM Williams arrives at Regions with the purpose of obtaining a sample of Wiederin's blood on suspicion she was operating her vehicle while impaired at the time of the crash. (P-App. 163:3-6, 180:11-14.)

Immediately upon arrival, Williams is informed by Regions' staff that Wiederin was in the imaging department, and that a blood draw could not be conducted during imaging. (P-App. 163:8-16.)

At this point, Williams sits in the hospital lobby and waits. (P-App. 175:9-15.) He does nothing but wait for the next 52 minutes. (*Id.*)

1:55 AM Williams is informed by Regions staff that Wiederin is undergoing surgery imminently and that he would not be permitted to conduct a blood draw on her. (P-App. 164:13 – 165:4, 174:21 – 175:4.) Williams then explains to hospital staff the severity of the case he was investigating, and staff begin to make calls to see if a law enforcement blood draw could be performed on Wiederin while she is still in imaging. (*Id.*)

1:57 AM A Regions nurse advises Williams that he could proceed with a blood draw on Wiederin, escorts him to the imaging department. (P-App. 165:1-4, 175:1-8.)

Once in imaging, Williams begins reading Wiederin the Wisconsin Implied Consent form[2] in an effort to ask her if she will consent to an evidentiary chemical test of her blood. (P-App. 168:22 – 169:11, 178:23 – 179:24.) Due to medications administered to Wiederin to prepare her for surgery, she begins to lose consciousness during the reading of the form. (*Id.*) She does not verbalize consent at any time. (*Id.*)

2:00 AM Williams directs a Regions nurse to take a blood sample from the now unconscious Wiederin. (P-App. 172:15-17.)

[2] The Implied Consent Form is a written document embodying the directives of Wis. Stat. § 343.305, which must be read to impaired driving suspects before seeking their consent to a search of their blood.

Up to a minute or two before the blood draw, Ms. Wiederin was conscious at all times. (P-App. 178:15 – 179:5.)

No law enforcement officer made an effort to obtain a warrant at any time. (P-App. 115.)

In order for a Wisconsin police officer to apply for a search warrant in Minnesota, he would have first had to draft a warrant. (P-App. 177:1-6.) This is done electronically from the laptop in an officer's squad car. (P-App. 140:17 – 141:7, 176:20 – 177:11.) After that, he was to contact the St. Paul Police Department Watch Commander, who would walk him through the next steps and assist with submitting and obtaining a warrant electronically. (*Id.*)

No information was entered into the record whatsoever as to how long the Minnesota warrant application process would have taken Williams to complete. (P-App. 177:16-20.) It could have taken 10 minutes, for all Williams knew. (*Id.*)

Despite having taken time before responding to the hospital and while at the crash scene to research the Minnesota procedure, and despite sitting and waiting at the hospital for nearly an hour with no other task, Williams made no effort to undertake any step in the process. (P-App. 170:1-3.)

Wiederin made a motion to suppress the results of the illegally seized blood evidence, which the trial court denied via written decision on December 27, 2019, finding exigent circumstances justified the warrantless search. (P-App. 114-118; R. 82.) Wiederin appealed the circuit court's denial of her motion to suppress. (R. 221.)

On February 15, 2022, the Court of Appeals affirmed the judgment of the circuit court. (P-App. 112.) Like the circuit court, the Court of Appeals concluded that exigent circumstances existed to justify the warrantless blood draw of Wiederin while she was unconscious. (*Id.*) Wiederin now petitions for review.

Additional facts will be set forth below, where necessary.

ARGUMENT

I. Governing Constitutional Principles.

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures. *State v. Phillips*, 577 N.W.2d 794, 218 Wis. 2d 180, 195 (1998). "Search warrants are ordinarily required for searches of dwellings, and, absent an emergency, no less could be required where intrusions into the human body are concerned." *Schmerber*, 384 U.S. at 770. As such, a blood draw for evidentiary purposes is a Fourth Amendment search that necessitates a warrant, unless the particular facts of the case provide some acknowledged exception to the warrant requirement. *Id.* at 770.

Under the exigent circumstances exception, a warrantless search is allowed only when "there is compelling need for official action and ***no time*** to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (emphasis added.)

The mere dissipation of alcohol is not a sufficient basis alone to permit a warrantless blood draw on grounds of the exigency exception to the warrant requirement. *McNeely*, 569 U.S. at 156.

Moreover, the fact that a suspected impaired driver is unconscious in and of itself does not justify a warrantless blood draw, though it is often a factor. In order to justify a warrantless blood draw, even of an unconscious person, the proper analysis centers on whether exigency justified the search. *See Mitchell*, 139 S. Ct. 2525.

"Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances." *McNeely*, 569 U.S. 141 at 156.

"In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they

do so." *McNeely*, 569 U.S. at 152.

II. The Court of Appeals Erroneously Relied on Ms. Wiederin's Unconsciousness to Find Exigency Existed.

Ms. Wiederin's unconsciousness did not heighten the exigency, because she did not become unconscious until seconds before the blood draw. Her unconscious state therefore had no bearing on whether Sgt. Williams, or any other officer, had time to obtain a warrant for her blood. To the extent the Court of Appeals relied on dicta in *Mitchell* to find Ms. Wiederin's unconsciousness heightened the urgency here and created an exigency, that is simply incorrect. Indeed, it defies logic to hold that a driver's eventual unconsciousness justifies the police's lack of efforts to obtain a warrant during the preceding three hours she was conscious and alert.

III. Officers Had Time to Obtain a Warrant Without Compromising Reliable Evidence.

A. Officers suspected impaired driving and knew there was a need to obtain blood evidence from Wiederin almost immediately upon arriving on scene.

This is not a case where the circumstances required additional time to investigate to gather probable cause. *Compare State v. Tullberg*, 2014 WI 134, ¶ 44, 359 Wis. 2d 421, 447, 857 N.W.2d 120, 133 (finding exigency existed where the investigating officer did not have probable cause to believe the suspected drunk driver operated a motor vehicle until almost three hours after the accident, because it was not until that point that the officer knew that defendant that operated the vehicle). Within minutes of arriving at the crash scene, Hillstead spoke with Ms. Wiederin, confirmed she was the wrong way driver, and obtained an admission that she had consumed alcohol prior to driving. He also observed her behavior to be indicative of drinking (the slow and wavering speech). Finally, he observed what he believed could be an open container of alcohol in the vehicle. Officers had all the information needed to apply for a warrant within five minutes of the accident. That they were on immediate notice of the need for Wiederin's blood as evidence

(and therefore the potential need for a warrant) is evidenced by the fact that Williams began researching Minnesota warrant procedures on scene while Wiederin was still being extricated from her vehicle.

B. After Wiederin was transported from the scene, exigency was extinguished such that there were available officers to work on obtaining a warrant.

It is tempting to look at the facts of the initial accident scene and briskly conclude there must have been exigency: there was a high impact vehicle collision; multiple officers and medical personnel were on scene; one driver was deceased; and another driver was in critical condition and being transported to the hospital, in need of surgery. Yet, it is a mistake of epic constitutional proportions to end the analysis there, because the initial circumstances of the scene did not remain static throughout the night. Deputy Hillstead testified that after Ms. Wiederin was extricated from her vehicle at approximately 12:16 AM, the chaos and emergent situation had, if not dissipated, decreased significantly, and things had "slowed down." (P-App. 129:19-22, 139:14 – 140:13.)

In addition, all evidence-gathering efforts were concluded by 12:30 AM. (P-App. 145:21 – 146:22.)

Nonetheless, the lower courts found that the officers that remained on scene after Wiederin's transport were "fully occupied with high-priority, time sensitive tasks that could not be reasonably postponed for a warrant application." (P-App. 106, 118.) This finding is not supported by the record. No one was at the scene in need of medical care after 12:16 A.M., and all medical personnel had left the scene by then. After 12:30 A.M., officers on scene were engaged in the following duties:

Sergeant Coleman	Sgt. Coleman remained on scene to continue his efforts to conduct crash scene reconstruction, which he described as **taking photographs of the crash scene, looking at the crash scene, and looking at the interior of the vehicles.** (P-App. 155:6-23.) Throughout his crash scene

	reconstruction efforts, though, he was occasionally interrupted by other tasks which he completed before then returning to his reconstruction efforts. (P-App. 151:21 – 152:13, 157:16-22.) There was no argument or explanation offered in the circuit court record as to why Coleman could not have stopped documenting the crash for a period of time to apply for a warrant, just as he had stopped documenting the crash to engage in other duties periodically. Sgt. Williams, too, **took photographs** when he was on scene. (P-App. 161:5-13.) No explanation was given in the circuit court record as to why two officers were required to take photos on scene, or as to why that would have taken precedent over obtaining a warrant.
Deputy Hillstead	Deputy Hillstead's role after Wiederin and medical personnel left the scene was to "**secure the scene, to maintain the chain of evidence, to make sure nobody came onto the accident scene**[.]" (P-App. 130:1-8.) Hillstead also testified that traffic had stopped by then and wasn't an issue, and that all that was left to do after 12:30 A.M. was secure the scene. (P-App. 139:22 – 140:2.)
Officer Olson and Officer Trepczyk	Neither of the Somerset police officers on scene testified at the motion hearing, but Deputy Hillstead testified that that both officers were **diverting traffic** at the time Wiederin was transported. (P-App. 134:19-25.) However, he also testified that traffic had stopped by then and wasn't an issue, so it is unclear why one of the Somerset officers could not have assisted in applying for a warrant. (P-App. 139:22 – 140:2.)
Deputy Kennett	Deputy Kennett was not on scene initially, but showed up some time later to **assist Coleman** with his reconstruction efforts. (P-App. 151:10-20.) No explanation was offered as to why Kennett could not assist with the warrant before assisting Coleman.

When reviewing what each officer on scene was actually doing after the initial chaos had subsided, it becomes clear that none of the tasks being undertaken by the officers on scene were so imperative, time sensitive, or high-priority that a warrant could not have been applied for at that time. Importantly, the question is not whether the officers on scene had anything at all to do other than applying for a warrant, the question is whether they had other duties to complete that were so important that they simply could not apply for a warrant. *See McNeely*, 569 U.S. at 152.

No Wisconsin case has held that where three sheriffs deputies and two city police officers are on the scene of an accident after the initial chaos has subsided, where there is no longer any emergent medical need to attend to, where the defendant has left the scene by ambulance, where traffic has stopped, and where the only thing left to do was secure the scene, that circumstances were such that officers had no time to apply for a warrant. On the contrary, where a scene is marked by the absence of complication or chaos, and where no pressing health, safety, or law enforcement need is occurring, nothing can take priority over starting the warrant application process. *See Hay*, 2020 WI App 35, ¶ 19. *Compare Tullberg*, 2014 WI 134 at ¶ 44; *State v. Howes*, 2017 WI 18, ¶¶ 5, 45, 373 Wis. 2d 468, 497, 893 N.W.2d 812, 826, *cert. denied,* 138 S. Ct. 138, 199 L. Ed. 2d 82 (2017).

C. Sgt. Williams had time to get a warrant during the hour he was sitting at the hospital.

From 1:05 – 1:57 AM, just like the officer in *Hay*, Williams was doing nothing but sitting and waiting during a time period characterized by a "lack of complication and absence of chaos." *Hay*, 2020 WI App 35 at ¶ 19. In such a circumstance, there is no exigency. *Id.*

Williams did not arrive at the hospital and commence a continuous and persistent effort to see Ms. Wiederin, constantly checking in with a nurse at a busy E.R. station. He arrived at 1:05 AM, was told he could not see her, and he sat down

and did nothing more. He did not pick up his phone to start the warrant process, or open his laptop to do the same. He did not contact any of his colleagues to direct them to do so. He sat down and he waited for nearly one whole hour. Only after sitting – just sitting! – for 52 minutes, and only after being approached and told that a blood draw would not be possible, did Williams even explain the severity of the situation to a nurse.

The Court of Appeals excused Williams' utter failure to take action at Regions on grounds that Williams acted reasonably in waiting to see if he could get Wiederin's consent before seeking a warrant.

This exact argument was addressed and rejected in *State v. Hay*: the State in *Hay* argued that it was reasonable for a police officer to assume a defendant would consent to a search such that analyzing whether exigent circumstances exist to justify drawing a suspect's blood only starts from the moment a defendant refuses to submit to a blood draw. *Hay*, 2020 WI App 35 at ¶¶ 14, 15. In other words, the State in *Hay* was attempting to convince the Court of Appeals that an officer investigating a drunk driving offense must first attempt to obtain consent before applying for a warrant, and only after a suspect refuses to consent does the officer need to consider beginning the effort to secure a warrant/whether there is insufficient time to do so. *Id.* The Court rejected this argument, holding that the exigency analysis starts much earlier, possibly from the point when an officer has probable cause to believe a suspect was under the influence. *Id.* at ¶ 15. In so holding the Court specifically warned that the State's proposed interpretation would lead to officer-created exigency:

> Because significant time often passes between the time of arrest and the time of refusal, which frequently occurs, as in this case, after arrival at the health care facility, by the time of refusal, it may be too late to secure a timely warrant, yet had the officer begun the warrant process earlier, a response on the warrant application may well have been received from a judge before a blood sample could be drawn. So, in short, the rule sought by the State—that an officer never needs to consider beginning the warrant application process unless and until a suspect refuses a blood draw—will in some cases create exigent circumstances that would

> not have existed had the process been started earlier. As we have held, however, "the government cannot justify a search on the basis of exigent circumstances that are of the law enforcement officers' own making." *State v. Guard*, 2012 WI App 8, ¶30, 338 Wis. 2d 385, 808 N.W.2d 718 (2011) (citation omitted).

Hay, 2020 WI App 35 at ¶ 14.

Moreover, despite the Court of Appeals and circuit court's reasoning, applying for a warrant while at the hospital and waiting for the chance to speak with Wiederin were not mutually exclusive. The conclusion that Williams would have missed the chance to speak to Ms. Wiederin had he attempted to apply for a warrant is nonsensical. He did not even have to leave his chair in the hospital lobby to apply for a warrant. Williams testified the warrant process would have started with him typing out a warrant. He had a laptop on him that night. The process then would have progressed to a phone call to the St. Paul Watch Commander. He had a cell phone as well. If for some reason he did not want to start the process while he sat, he could have called or emailed another officer to do so. There is no dispute in the record that Williams knew how, and had the technology necessary, to apply for a warrant while he sat.

If Williams found himself in a "now or never" moment of needing the blood just before 2:00 AM, the only reason was that he waited for almost three hours before attempting to secure it. Indeed, according to the record, Williams needed only to explain the seriousness of the situation and the importance of obtaining Ms. Wiederin's blood to a nurse – which he for some inexplicable reason waited to do until almost three hours had lapsed, and after he'd sat at the hospital doing nothing for nearly an hour – and he was immediately given the opportunity to talk to her.

Accordingly, the Court was in error to find that exigency existed because Williams had to wait at the hospital for the opportunity to obtain consent before he could procure a warrant. To be sure, the proper analysis is whether there was time to obtain a warrant, not whether the officer could first make another exception to the warrant requirement stick.

The only circumstance contributing to a delay in securing viable evidence once Sgt. Williams was at Region's Hospital was the dissipation of Ms. Weiderin's blood from her body due to the metabolic process, and that alone is insufficient to constitute exigency and justify a warrantless search. *McNeely*, 569 U.S. at 156.

CONCLUSION

The case at hand involves important issues of federal and state constitutional law. In addition, an opinion from the Supreme Court is needed to help develop, clarify, or harmonize the law post-*Mitchell*. The Court of Appeals decision is also in conflict with other court of appeals' decisions. For these reasons, review should be granted.

Dated: March 17, 2022.

DOAR, DRILL & SKOW, S.C.

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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in §§ 809.62, 809.19(8)(b) and (bm) and (8) for a petition and appendix produced using the following font: Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of a minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4,851 words.

I further certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.62(2)(f) and that contains at a minimum: (1) the decision and opinion of the court of appeals; (2) the findings or opinions of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

I further certify that I have submitted an electronic copy of this brief, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of the certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: March 17, 2022.

DOAR, DRILL & SKOW, S.C.

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