

RECEIVED
07-28-2022
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2021AP708-CR

STATE OF WISCONSIN,

Plaintiff -Respondent,

v.

CATTI J. MEISENHELDER,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

SONYA K. BICE
Assistant Attorney General
State Bar #1058115

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3935
(608) 294-2907 (Fax)
bicesk@doj.state.wi.us

CRITERIA FOR REVIEW

The Petitioner states that this petition satisfies the criteria for granting review because it presents a significant question of state and federal law. (Pet. 5.) This case involves a search incident to a lawful arrest and thus does present a Fourth Amendment question. But Petitioner has not shown that the court of appeals' decision here is in conflict with well-settled law on searches incident to lawful arrest. Nor has she cited even one case that would require a different result on these facts.

As the court of appeals pointed out in its published opinion, the United States Supreme Court has held that “a search incident to the arrest requires no additional justification” because “the fact of arrest alone justifies the search.” (Pet-App. 9 (citing *United States v. Robinson*, 414 U.S. 218, 235 (1973), and *Thornton v. United States*, 541 U.S. 615, 631–32 (2004).) As to the permissible scope of such a search, *Chimel v. California*, 395 U.S. 752, 763 (1969), held that “[t]here is ample justification . . . for a search of the arrestee’s person and the area . . . from within which he might gain possession of a weapon or destructible evidence.”

In her brief to the court of appeals, Petitioner argued that the search at issue was unlawful under *State v. Sutton*, 2012 WI App 7, ¶¶ 2, 7–11, 338 Wis. 2d 338, 808 N.W.2d 411 (holding unlawful a warrantless search of vials police found during a protective search of Sutton’s car during a traffic stop). (Pet-App. 6.) But the court rejected that because *Sutton* was not a search incident to arrest case—it was a vehicle search and Sutton was not even under arrest at the time. (Pet-App. 9–10.) The court rejected a second argument on the grounds that the case on which Meisenhelder relied on did not

concern the same legal issue and in any event was not binding.¹

Petitioner now argues (Pet. 5) that the court of appeals' decision "appears to conflict" with its holding in an unpublished case, *State v. Hinderman*, No. 2014AP17870-CR, 2015 WL 569134 (Wis. Ct. App. Feb. 12, 2015) (unpublished), but *Hinderman* was a vehicle search case too, and at the time of the search of her vehicle and the containers in it, Hinderman was handcuffed in the back seat of the squad car. *Id.* ¶ 3. *Hinderman* has no relevance here.

The court of appeals' decision, which is published, is a routine application of the relevant legal standard. Petitioner's arguments are based on vehicle searches or vehicle searches incident to arrest. Those rules do not apply here.

This Court should deny the petition for review. It satisfies none of the criteria for review. The case is rightly decided and Petitioner has cited no legal authority for concluding otherwise.

1

Meisenhelder also relies on *United States v. Maddox*, 614 F.3d 1046 (9th Cir. 2010), but *Maddox* involved much different facts. It involved the search of a keychain in Maddox's vehicle after Maddox had been handcuffed and placed in the police squad car. *Id.* at 1047. The court held that "this was *not* a search of Maddox's person incident to arrest" because after Maddox was handcuffed and placed in the squad car, the keychain was no longer on his person or in his immediate control. *Id.* at 1048. Additionally, *Maddox* is not binding on this court. See *State v. Mechtel*, 176 Wis. 2d 87, 95, 499 N.W.2d 662 (1993) ("State courts are not bound by the decisions of the federal circuit courts of appeal or federal district courts.").

(Pet-App. 11 n.5 (emphasis added).)

Dated this 28th day of July 2022.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin



SONYA K. BICE
Assistant Attorney General
State Bar #1058115

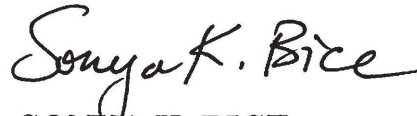
Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3935
(608) 294-2907 (Fax)
bicesk@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 598 words.

Dated this 28th day of July 2022.



SONYA K. BICE
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. §§ (RULES) 809.19(12) AND 809.62(4)(B) (2019-20)

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(12) and 809.62(4)(b) (2019-20).

I further certify that:

This electronic response is identical in content and format to the printed form of the brief filed as of this date.

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

Dated this 28th day of July 2022.



SONYA K. BICE
Assistant Attorney General