STATE OF WISCONSIN

IN SUPREME COURT

No. 2023AP1888-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RYAN D. ZIMMERMAN,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Defendant-Appellant-Petitioner Ryan D. Zimmerman seeks this Court's review of the court of appeals' authored but unpublished opinion affirming his conviction.[1] (Pet. 3.) This is a factually specific Fourth Amendment case about the consensual search of a phone that police had custody of because of prior consent that was never revoked.

Review is unwarranted. This case is fact-intensive and resolved by Zimmerman's consent. The court of appeals assumed without deciding Zimmerman's first issue regarding whether the duration of a seizure must be reasonable yet still affirmed. On these facts, Zimmerman consented to the initial seizure, never revoked that consent or asked for his phone back under Wis. Stat. § 968.20, and then consented to the second search of his phone.

BACKGROUND

In a prior child enticement case, Zimmerman consented to police seizing and searching his phone. (Pet-App. 5.) Zimmerman never revoked his consent or asked for his phone back. (Pet-App. 4–5.)

Three years later, while investigating Zimmerman for repeated sexual assaults of a child, police realized they still had his phone, so they asked for his consent to search it again, which he gave. (Pet-App. 5–6.) Police found child sex abuse materials on his phone. (Pet-App. 6.)

Zimmerman was charged with repeated sexual assault of a child, incest with a child, child enticement, three counts

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[1] Zimmerman says that the decision is recommended for publication. (Pet. 3.) While the court's website initially said the decision was recommended for publication, the decision itself says it is not, and the website was subsequently corrected. (Pet-App. 25.)

of possession of child pornography, sexual exploitation of a child, and exposing a child to harmful material. (Pet-App. 6.) He moved to suppress the evidence, but the circuit court denied his motion. (Pet-App. 6–7.)

He was convicted at trial, and he appealed.[2] (Pet-App. 7–10.)

The court of appeals affirmed the conviction. (Pet-App. 3, 25.) Zimmerman contended that "the seizure of his cellphone transformed from lawful to unlawful sometime between 2015 and 2019." (Pet-App. 10.) This then tainted his consent to the second search. (Pet-App. 10–11.)

Zimmerman cited two United States Supreme Court cases about seizures. (Pet-App. 12.) *United States v. Place*, 462 U.S. 696 (1983), stands for the proposition that, under *Terry*,[3] police can seize property (luggage in a airport) on less than probable cause, but without probable cause, the length of the seizure must be reasonable. (Pet-App. 12.) The second, *United States v. Jacobsen*, 466 U.S. 109, 113 (1984), held that "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on 'unreasonable seizures.'" (Pet-App. 12; quoting *Jacobsen*, 466 U.S. at 124 (citation omitted).)

The court of appeals assumed without deciding "that the Fourth Amendment requires that . . . continued retention of personal property be reasonable." (Pet-App. 14.) Nonetheless, the continued seizure of the phone was reasonable "because Zimmerman never revoked his consent

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[2] Zimmerman also raised claims of ineffective assistance of counsel on appeal, but those do not pertain to the two issues he raises in his petition. (Pet-App. 16; Pet. 3.)

[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

or attempted to regain possession of the device, despite having means to do so." (Pet-App. 14.) Zimmerman could have petitioned the circuit court for the return of his property under Wis. Stat. § 968.20(1). That distinguished the cases he cited. (Pet-App. 14.) The court held that "law enforcement's continued possession of the cellphone was, effectively, authorized by Zimmerman, whereas in those cases the seizure was made either pursuant to *Terry* or incident to a lawful arrest." (Pet-App. 14–15.)

ARGUMENT

Zimmerman argues that this Court should take review because it presents a novel constitutional question with statewide impact. (Pet. 4.) He is incorrect. The question is constitutional, but all constitutional questions without direct binding authority would meet those conditions—that alone does not mean this case merits review. And this case is intensely factual. Assuming that this Court agrees that consensual item seizures may only last a reasonable length of time, the resolution of a reasonable length of time is highly factual.

This case presents a poor vehicle to address the issues Zimmerman wants. Zimmerman cannot say when the seizure of his cell phone became unlawful, in his eyes. (Pet. 22–23.) He seems to think that police are required periodically to review the evidence in their possession and, if the evidence is no longer required, to return it to its owner. (Pet. 22–23.) How often are police required to do this? How are police to determine to whom to return the property, in the absence of any request for it? Most importantly, who gets to decide whether the case is "done" enough such that return is required? Zimmerman points to the fact that he did not pursue postconviction relief as a reason why the retention was unreasonable, (Pet. 23) but that is a red herring—he was on extended supervision for ten years in the prior case, (Pet-App.

5). At any point until the end of his supervision, he could have filed a motion under Wis. Stat. § 974.06[4] and, if successful, had his conviction vacated. If this Court takes this case, the State anticipates arguing that retention of seized property until all of a defendant's possible constitutional, statutory, and federal means to challenge his conviction are exhausted, expired, or otherwise unavailable is per se reasonable.

Finally, there is published authority from the court of appeals about whether the retention of property is unreasonable and how a person can get their property back. In *State v. Gant*, the court of appeals assumed, "without deciding, that the ten-month retention of [a defendant's] computer, despite his two requests for its return, made the seizure [unreasonable]." *State v. Gant*, 2015 WI App 83, ¶ 14, 365 Wis. 2d 510, 872 N.W.2d 137. Police investigated a reported suicide as a homicide and seized Gant's computer. *Id.* ¶¶ 2–3. Twice, Gant went to the police administration building to ask for his computer back. *Id.* ¶ 4. The court of appeals noted that, "Gant never took any formal legal steps available under Wis. Stat. § 968.20 to request the release of his property." *Id.* However, the court of appeals explicitly noted that it did not "hold, impliedly or otherwise, that Gant's only avenue to retrieve his property is found in § 968.20(1)." *Id.* ¶ 14 n. 4. Similarly, the concurrence also went over avenues to seek the return of property. *Id.* ¶¶ 23–24.

This published authority further undermines the need for review. The court of appeals is expressly open to finding continued retention unreasonable *when the defendant makes an effort to have his property returned*. *Id.* ¶ 14. Zimmerman made no such effort—the police were on no notice that

[4] Zimmerman would also not have to show a sufficient reason for not bringing any issue sooner. *State v. Romero-Georgana*, 2014 WI 83, ¶ 35, 360 Wis. 2d 522, 849 N.W.2d 668.

Zimmerman might want his property back. In the absence of that, continued retention was reasonable, so this Court would affirm anyway.

In short, this case does not merit review because the court of appeals reached the right result. Even assuming that the lawful seizure of property by consent can become unreasonable over time, Zimmerman would not be entitled to any relief. He consented to the initial seizure. He gave no indication that he wanted his property back. He consented to the second search of his phone. The touchstone of the Fourth Amendment is reasonableness; police here acted reasonably.

CONCLUSION

This Court should not grant review.

Dated this 6th day of January 2026.

Respectfully submitted,

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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 1,270 words.

Dated this 6th day of January 2026.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 6th day of January 2026.

Electronically signed by:

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