

Appeal No. 2010AP1551-CR

Cir. Ct. No. 2008CF3468

**WISCONSIN COURT OF APPEALS  
DISTRICT IV**

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STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DOUGLAS MEIER WILLIAMS,

DEFENDANT-APPELLANT.

**FILED**

**JUL 14, 2011**

A. John Voelker  
Acting Clerk of  
Supreme Court

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**CERTIFICATION BY WISCONSIN COURT OF APPEALS**

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Before Lundsten, Higginbotham and Sherman, JJ.

We certify this appeal to the Wisconsin Supreme Court to decide whether court commissioners have the power to issue search warrants. Although WIS. STAT. § 757.69(1)(b)<sup>1</sup> appears to grant that power to court commissioners, appellant Williams argues that the legislature may not confer that power by statute because the Wisconsin Constitution does not authorize the legislature to grant judicial powers to court commissioners. Although this case involves the fairly narrow question of whether court commissioners have the power to issue search warrants, we certify it because of the much broader implications. It appears that

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Williams' argument calls into question several other powers conferred by statute on court commissioners.

In this case, police obtained evidence supporting the issuance of a search warrant for Williams' residence. As is common in several Wisconsin counties, they obtained a search warrant from a court commissioner. WISCONSIN STAT. § 757.69(1)(b) authorizes court commissioners to issue search warrants.<sup>2</sup>

Pursuant to the court-commissioner-issued warrant, police searched Williams' residence and found evidence of a large marijuana plant growing operation. The police seized eighty-seven marijuana plants, drug paraphernalia, a large amount of cash, and several weapons.

Williams was charged with three controlled substance crimes. He moved the circuit court to suppress evidence on the ground that the evidence was obtained as a result of an illegal search of his residence. He contended that the

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<sup>2</sup> WISCONSIN STAT. § 757.69(1)(b) provides:

(1) A circuit court commissioner may:

....

(b) In criminal matters issue summonses, arrest warrants or search warrants, determine probable cause to support a warrantless arrest, conduct initial appearances of persons arrested, set bail, inform the defendant in accordance with s. 970.02(1), refer the person to the authority for indigency determinations specified under s. 977.07(1), conduct the preliminary examination and arraignment, and, with the consent of both the state and the defendant, accept a guilty plea. If a court refers a disputed restitution issue under s. 973.20(13)(c)4., the circuit court commissioner shall conduct the hearing on the matter in accordance with s. 973.20(13)(c)4.

search was illegal because the search warrant that authorized the search was issued by a court commissioner and court commissioners lack authority to issue search warrants. The circuit court denied the suppression motion, and Williams entered a guilty plea to one count.

Williams argues that the issuance of a search warrant is an exercise of a judicial power that can be granted only by the Wisconsin Constitution. He contends that our Constitution does not grant court commissioners that power and the legislature may not confer judicial power absent constitutional authority, which does not exist. Therefore, according to Williams, court commissioners do not have the authority to issue search warrants, the warrant to search his residence was invalid, and the evidence obtained in the warrantless search must be suppressed.

In support of this argument, Williams relies first on the constitutional provision granting judicial power, which provides:

The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform statewide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature under section 14.

WIS. CONST. art. VII, § 2. Williams argues that issuance of search warrants is an exercise of judicial power and, because court commissioners are not covered by this constitutional provision, they lack that authority.

Williams also finds it significant that a constitutional provision that seemingly granted the legislature the authority to confer “judicial powers” on court commissioners was repealed in 1977. More specifically, prior to 1977, the Wisconsin Constitution contained the following language:

The legislature may provide for the appointment of one or more persons in each organized county, and may vest in such persons such judicial powers as shall be prescribed by law. Provided, that said power shall not exceed that of a judge of a circuit court at chambers.

WIS. CONST. art. VII, § 23 (1975). As part of the 1977 court reorganization effort, the Constitution was amended to delete this provision. Williams contends that, by deleting this provision, the amendment removed the authority of court commissioners to exercise judicial power.

In response, the State relies on *Shadwick v. City of Tampa*, 407 U.S. 345 (1972), which holds that the Fourth Amendment does not require that warrants be issued by judicial officers. The State also argues that *State v. Van Brocklin*, 194 Wis. 441, 217 N.W. 277 (1927), holds that the issuance of a search warrant is not an exercise of judicial power, at least not judicial power that needs to be constitutionally conferred. And, like Williams, the State points to case law from other jurisdictions.

Additional issues addressed by the parties include whether circuit courts have inherent authority to delegate the power to issue search warrants to court commissioners, whether the exclusionary rule applies if commissioners lack the authority, and whether the “good faith” exception should apply. Depending on how the court resolves the primary issue we certify, it may not be necessary to address these other issues.

We certify this issue because its resolution appears to carry with it enormous statewide implications for litigants and the judiciary. Although this case involves the specific power to issue search warrants, it is apparent that Williams’ argument calls into question several other powers authorized by WIS. STAT. § 757.69(1). In the criminal arena alone, this includes conducting initial

appearances and preliminary hearings. While the parties do not address whether Williams' arguments implicate the duties of court commissioners in other areas, such as family law, it appears to us that, under Williams' view of judicial power, many court commissioner activities are implicated. Therefore, the issue is most appropriately addressed by the Wisconsin Supreme Court.

