FILED
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CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2019AP001404-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GEORGE STEVEN BURCH,

Defendant-Appellant.

MOTION FOR LEAVE TO FILE A NON-PARTY BRIEF

Pursuant to Wis. Stat. § 809.19(7), Legal Action of Wisconsin Inc. hereby moves the Supreme Court of Wisconsin for an Order granting them leave to file a non-party brief in this case.

The grounds for this motion are as follows:

1. This case concerns whether a reasonable person under the Fourth Amendment would understand the scope of their consent to search their cell phone to entail only the terms and conditions they discussed with law enforcement.

2. Legal Action of Wisconsin (LAW) is a non-profit law firm funded largely by the Legal Services Corporation. Since 1968, LAW has provided direct representation to over 400,000 individuals. We engage in systemic litigation impacting the interests of low-income individuals and communities, including the rights of crime victims.

3. Since 2017, LAW and Wisconsin Judicare, Inc. (Judicare) have run the Crime Victims' Rights Project (CVRP). CVRP provides free legal services to crime victims statewide through a Victims of Crime Act (VOCA) grant. Together, our offices serve every county in Wisconsin.

4. We assist reporters of sensitive crimes with the civil rights legal issues they face as crime victims in criminal proceedings. We have provided counsel and representation to hundreds of crime victims across Wisconsin.

5. The CVRP primarily helps crime victims assert their privacy rights, like their rights over their mental health records, school records, or devices like their computers and cell phones. Typically, victims get such requests from defendants, law enforcement, and prosecutors.

6. In our experience, crime victims consent to cell phone searches with the understanding that they are consenting to a scope defined by their discussions with law enforcement – for example, information pertinent to the reported crime, or text messages between them and the accused. In contrast, they have not generally understood their scope of consent to search to include a full download of all their cell phone's data to be retained indefinitely and reviewed in other matters.

7. Through these experiences, CVRP is uniquely situated to comment on what a typical reasonable person in a similar situation would understand the scope of their consent to entail – or not entail – when they consent to law enforcement searching their cell phone.

8. Crime victims enjoy not only statutory and state constitutional rights to privacy, but also rights against unlawful search and seizure under the Fourth Amendment.

9. Based on this and the attached brief, we respectfully ask the Court to hold that the Fourth Amendment requires an unambiguous scope of consent to search or seize cell phone data—for all people, suspects and victims alike.

10. CVRP has a strong interest in the outcome of this action. Our clients, whether crime victims or suspects in a particular matter, would benefit from clarity on the protections provided by the Fourth Amendment when they consent to a search of their cell phones by law enforcement.

Conclusion

For these reasons, LAW asks the Court for leave to file the attached non-party brief.

Dated this 4th day of March, 2021.

Respectfully submitted,

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