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DISTRICT IV

May 6, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Waupaca County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2022AP486-W State of Wisconsin ex rel. Waupaca Co. Sheriff's Office v. Circuit Court for Waupaca County (L.C. # 2020CF265)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, JJ.

The Waupaca County Sheriff's Office, by counsel, has filed a petition for a supervisory writ of mandamus, seeking an order requiring the circuit court to withdraw its finding related to a ***Brady*** violation in a Waupaca County criminal case, ***State v. Klotzbuecher***, Case No. 2020CF265. *See* ***Brady v. Maryland***, 373 U.S. 83, 87-88 (1963). The petition also requests that this court issue an advisory opinion "regarding what principles of due process must be observed by district attorneys in making ***Brady*** determinations." Along with the writ petition, the petitioner also filed a motion for immediate, temporary relief pending disposition of the petition. *See* WIS. STAT. § 808.07(2)(a) and WIS. STAT. RULE 809.12. This court denied the motion for temporary relief in an order issued on April 11, 2022.

The respondent, the Circuit Court for Waupaca County, has filed a response opposing the petition. Counsel for Peter Klotzbuecher, the defendant in the criminal case, also has filed a response in opposition to the petition as an interested party. Both responses assert that the Waupaca County Sheriff's Office, which is not a party to Klotzbuecher's criminal case, lacks standing to pursue a supervisory writ and, moreover, that the petition should be denied on its merits.

We need not address the issue of standing, nor the petitioner's request for an advisory opinion on due process principles, because the petition fails to establish on its face the basic criteria for issuance of a supervisory writ.[1] A supervisory writ of mandamus is a mechanism by which a court may compel a public official to perform a certain act. ***State ex rel. Oman v. Hunkins***, 120 Wis. 2d 86, 88, 352 N.W.2d 220 (Ct. App. 1984). Mandamus is an extraordinary legal remedy, however, and it is only available in limited circumstances. ***State ex rel. Collins v. American Fam. Mut. Ins. Co.***, 153 Wis. 2d 477, 483, 451 N.W.2d 429 (1990). A party seeking the issuance of a supervisory writ must establish four factors: (1) the circuit court violated a plain duty, (2) an appeal is an inadequate remedy, (3) grave hardship or irreparable harm will result if the writ is not issued, and (4) relief was requested promptly and speedily. *See* ***State ex rel. CityDeck Landing LLC v. Circuit Ct. for Brown Cnty.***, 2019 WI 15, ¶30, 385 Wis. 2d 516, 922 N.W.2d 832. Here, the petition for supervisory writ fails to satisfy, at a minimum, factors one and three.

[1] *See* ***Barrows v. American Fam. Ins. Co***., 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) ("An appellate court need not address every issue raised by the parties when one issue is dispositive.")

The writ petition alleges that the circuit court violated a plain duty "to afford adequate due process prior to depriving an individual of liberty or property interests" because employees of the sheriff's office did not have the opportunity to defend themselves against a ***Brady*** determination made by the court in ***State v. Klotzbuecher***, Case No. 2020CF265. The circuit court's determination that there was a ***Brady*** violation and related comments were made after Klotzbuecher's counsel had filed motions to compel discovery and to suppress evidence. The court held an evidentiary hearing and, based on the evidence presented at the hearing, made a determination that a ***Brady*** violation had occurred.

Specifically, the Waupaca County Sheriff's Office challenges the following statements made by the circuit court, Judge Raymond Huber presiding, at a hearing held on February 21, 2022:

> Obviously ***Brady*** violations can be intentional in nature and unintentional in nature. But if there—exculpatory evidence is withheld, it constitutes a ***Brady*** violation.
>
> I guess I'm not at this point in time necessarily inclined to identify an individual in the Sheriff's Department who was involved in a ***Brady*** violation. I'm more inclined to find the Department as a whole from the Sheriff on down.
>
> They believe reports can be changed contrary to the written policy that indicates that reports should be –at least, before any change takes place, it ought to be discussed with the investigating officer.
>
> So I will not make any express findings as to who's involved. There could be lots of dirty hands here. But I will find there has been a ***Brady*** violation.

Based on these statements, the Waupaca County Sheriff's Office asserts in its writ petition that the circuit court found "'that the Department as a whole from the Sheriff on down' was guilty of ***Brady*** violations." We do no read the transcript as containing such a finding. The

circuit court said that "there has been a ***Brady*** violation," questioned in a nonspecific manner policies or practices of the sheriff's office, and explained that it was declining to make an express finding as to any individual. Consistent with our interpretation of these statements, the circuit court later made a clarification on the record at a hearing on April 12, 2022, as follows: "The Court made a finding that there was a ***Brady*** violation. I did not make it as to any particular officer, simply that there had been ***Brady*** violations within the Sheriff's Department. And I think the minutes should reflect there was no order entered."

The Waupaca County Sheriff's Office argues that, before making its finding that a ***Brady*** violation occurred, the circuit court had a duty to give the sheriff's office and its personnel notice that it might issue such a finding, as well as an opportunity to present evidence. However, this argument is not supported with legal authority showing that the court had any such duty, let alone a plain one. To the extent that the petitioner's argument is more focused on the circuit court's nonspecific comments questioning policies or practices of the sheriff's office than on its specific determination that there was a ***Brady*** violation, the petitioner again fails to provide a source of authority for the proposition that the court was obligated to provide notice and an opportunity to be heard before making those comments.

The Waupaca County Sheriff's Office also fails to establish in its petition that grave hardship or irreparable harm will result if the writ is not issued. The petition states that being labelled a "***Brady*** cop" often has negative effects on the careers and livelihoods of law enforcement officers and their ability to perform their duties effectively. As discussed above, the circuit court explained that it was not making a finding that any particular sheriff's office employee had violated ***Brady***, nor did it make a finding that the entire sheriff's department had committed a ***Brady*** violation. The petition alleges that the "list of potential ramifications that

might continue to materialize [if the writ is not issued] is virtually endless," but those alleged "potential ramifications that might" arise are largely speculative and nonspecific.

The petition discusses one alleged harm with more specificity. The petition alleges that, after the circuit court's February 21, 2022 ruling, the Waupaca County district attorney's office informed members of the defense bar and other district attorneys in the state about the circuit court's ***Brady*** ruling, "effectively putting the entire sheriff's office on a statewide '***Brady*** List.'" However, the district attorney is not a respondent to the writ petition. The court of appeals does not have jurisdiction to entertain an original action unrelated to its supervisory or appellate authority over the circuit court. ***State ex rel. Swan v. Elections Bd***., 133 Wis. 2d 87, 97, 394 N.W.2d 732 (1986).

The petition of the Waupaca County Sheriff's Office fails to establish that the criteria for issuance of a supervisory writ have been met.

Therefore,

IT IS ORDERED that the petition for supervisory writ is denied.

Sheila T. Reiff
Clerk of Court of Appeals