

**Criminal Procedure**  
**Search and Seizure – Private Search Doctrine**

*State v. Gasper*, 2026 WI 3 (filed Jan. 14, 2026)

**HOLDING:** The Fourth Amendment was not implicated in this case because the private search doctrine applied.

**SUMMARY:** Law enforcement officers obtained a warrant for Gasper’s cell phone after the National Center for Missing and Exploited Children (NCMEC) forwarded a CyberTipline report (which included a single, flagged, 16-second video) from Snapchat to the Wisconsin Department of Justice (DOJ). No person at Snapchat or NCMEC viewed the contents. Instead, Snapchat scanned its platform and identified the video file it flagged as known CSAM (child sexual abuse material) using a hash-based scanning program. [A hash value is a string of characters obtained by processing the contents of a given computer file and assigning a sequence of numbers and letters that correspond to the file’s contents (see ¶ 7 n.8).]

“The flagged video was first viewed by a person when an employee of the

DOJ did so without a warrant. Then the CyberTip with the flagged video was forwarded to local law enforcement who also viewed the video without obtaining a warrant” (¶ 2).

Gasper (the defendant) was charged with 10 counts of possessing child pornography and nine counts of child exploitation based on the content on the cell phone. The defendant moved to suppress this evidence on the basis that it was obtained in violation of his Fourth Amendment rights. He relied entirely on the argument that the government exceeded Snapchat’s private search because a person in the government was the first to open and view the video and did so without a warrant (see ¶ 5).

The circuit court granted the motion to suppress. In a published opinion, the court of appeals reversed the circuit court. See 2024 WI App 72.

In a majority opinion authored by Justice Ziegler, the supreme court affirmed the court of appeals. It concluded that the private search doctrine applied in this case. “While the private search doctrine most often involves a person who has seen the evidence and then turns it over

to law enforcement, the doctrine itself does not require that a person actually view the evidence. Whether a Snapchat employee viewed the video or not is of no moment to the private search doctrine, because the private search doctrine allows the government to review what a private actor has already searched, so long as there is a virtual certainty that its search will disclose nothing more of significance than what the private party search revealed” (¶ 40).

In concluding that the private search doctrine applied in this case, the majority indicated that “[i]t is undisputed that Snapchat performed a private search when it scanned and flagged the single, 16-second video as CSAM. The government did not exceed the scope of Snapchat’s search when it viewed the video because any expectation of privacy Gasper may have had in the video was frustrated by the private search, and there was virtual certainty that law enforcement would not find anything of significance beyond what the private search revealed. As a result, the Fourth Amendment is not implicated” (¶ 52).

Justice Ziegler, author of the majority opinion, also filed a concurrence. Justice Dallet filed a concurring opinion that was joined in part by Justice Crawford. Justice Hagedorn filed a concurring opinion that was joined by Chief Justice Karofsky and Justice Protasiewicz. Justice Crawford filed an opinion concurring in part and dissenting in part that was joined in part by Justice Dallet. **WL**

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**CASE OF THE MONTH**



**Timothy Osowski v. Michael R. Baxter, et. al.**, No. 25-CV-725, 2026 WL 370955 (E.D. Wis. Feb. 10, 2026). Osowski sued Michael Baxter, Edmond Baxter, and Inland Marine for breach of contract, negligence, and misrepresentation stemming from Osowski’s purchase of a boat. Osowski alleged that when he received delivery of the boat, he observed numerous defects that were not stated in a report signed by Michael and that a certified marine surveyor noted a litany of issues with and inaccuracies contained in the Baxters’ report. Michael moved to dismiss the contract claim asserted against him personally, arguing that he signed the contract only as a corporate representative. Michael further moved to dismiss Osowski’s 100.18 and common law fraud and misrepresentation claim on the grounds that they fail to meet Rule 9(b)’s heightened pleading standard. Magistrate Judge Joseph denied all of Michael’s motions. Under Wisconsin law and

the general rules of agency, unless otherwise agreed, an authorized agent for a disclosed principal does not become a party to a contract and is thus not personally liable to the other contracting party. For this to be true, however, the principal must be disclosed. Whether the contracting party has sufficient notice of the principal’s corporate identity is a question of fact. Osowski alleges there was no business registration for Inland Marine and he believed that this was a trade name used by Michael in the course of operating as a sole proprietorship. Michael’s signature on the Agreement contains his name, with Inland Marine’s name underneath it. It does not state he is signing “on behalf of” Inland Marine, or as a representative of Inland Marine, or anything of that nature that would allow a finding, as a matter of law, that Michael is not personally liable on the contract. Rule 9(b) does not apply to a claim for violation of 100.18. The Court rejected arguments that the common law claims did not adequately plead the “when,” “where,” and “how” requirements of Rule 9(b). The Seventh Circuit has found that an allegation of fraud occurring “sometime in late August or early September 2003” was sufficient to satisfy the “when” requirement. Michael points to no authority requiring a plaintiff to plead the precise medium by which he received the alleged misrepresentations. Osowski asserts that Michael signed the report, attesting to its accuracy, despite never personally viewing the boat and that the report of the certified marine surveyor clearly alerted Michael to the “how” of the alleged fraud. As to fraudulent intent, Rule 9(b) permits “condition of mind” to be alleged generally.

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