
STATE OF WISCONSIN,
Plaintiff;

v.

CASE NO. 2011 CM 0696

VERNON D. HERSHBERGER,
Defendant.

Wis. Stat. § 885.14 Motion

The State of Wisconsin, by Assistant Attorneys General Eric D. Défort and Phillip D. Ferris, respectfully requests that this court issue a subpoena to compel a news person to confirm the factual statements made in his publicly available news report.

This procedure is required pursuant to Wis. Stat. § 885.14.

Facts

Chris Woodard is a news reporter. Woodard's June 3, 2010 video report (a CD of which is supplied herewith) makes reference to the June 2, 2010, DATCP actions of sealing Vernon Hershberger's (the defendant) coolers and bulk tank and order Hershberger to stop selling:

- Woodard observes "Business is booming at Vernon Hershberger's farm."

Woodard June 3, 2010.

- Woodard observes “Customers are lining up in record numbers...” Woodard June 3, 2010.
- Woodard observes: “Orders from the Department of Agriculture, Trade and Consumer Protection to shut the business down. Orders Hershberger is ignoring despite the risk.” Woodard June 3, 2010.
- Hershberger admits on the video “We believe this is our right to do this and we have a lot of families that feel that way. There’s a lot of families that are going to go without food that they need to have for their families if we, if we shut down.” Woodard June 3, 2010.
- Woodard notes “Hershberger promptly cleaned out the tank, broke the seals and started selling again this morning.” Woodard June 3, 2010.

Woodard’s January 11, 2012, news report also makes reference to the June 2nd, 2010, DATCP actions of sealing Vernon Hershberger’s (the defendant) coolers and ordering Hershberger to stop selling food products. According to his reports, Woodard went out to the farm on June 3, 2010, and made the following observations:

- “But we were at Hershberger’s farm the next day when he broke the seals and began selling again.” Woodard, January 11, 2012, 6:54PM.
- Woodard’s report continues with an observation made at the time of the initial appearance, January 11, 2012, that “investigators saw our report, went back to the farm and found evidence that Hershberger had ignored them. So Hershberger says he’s not surprised to find himself in court today.” Woodard, January 11, 2012, 6:54PM.

- “One day after his farm is raided and authorities tell him to shut things down a local farmer is still selling raw milk. He says it’s his right and he’s risking the penalties. Vernon Hershberger doesn’t know what will happen next and he’s very aware he could be in some big trouble. Nevertheless he’s ignoring state orders and reopening his Loganville business.” Woodard, June 3, 2010, 6:45PM.
- “Today customers were once again lining up to get raw milk and other dairy products from Hershberger’s farm despite the fact that yesterday morning the Wisconsin Department of Agriculture, Trade and Consumer Protection got a warrant to search his farm and sealed several coolers, ordering him to stop selling raw milk and close his store.” Woodard, June 3, 2010, 6:45PM.

Wis. Stat. § 885.14

1. There are reasonable grounds to believe that a crime has occurred based on information obtained from a person other than a news person. Wis. Stat. § 885.14(2)(b) & § 885.14(2)(b)1. On January 11, 2012, the court found probable cause, based on the criminal complaint in 2011CM0696 (hereby incorporated by reference), that crimes have been committed. The factual basis of the complaint is based on persons other than news persons, except for an observation that “Hershberger continued his milk sales to customers one day after being told by authorities ‘to shut the business down’” and a statement of Mr. Hershberger obtained by Mr. Woodard. However, the complaint states probable cause without that news report. Therefore, Wis. Stat. § 885.14(2)(b) and § 885.14(2)(b)1 are satisfied.

2. The information, described in the "Facts" section above, is highly relevant to the prosecution. Wis. Stat. § 885.14(2)(c)1. Specifically, Woodard's observations that Hershberger broke the seals and continued to sell speaks directly to the violation of the holding order. Woodard's observations of customers lining up to purchase dairy products also speaks directly to the holding order violation. Additionally, Hershberger's statements that families will go without food and that he is not surprised to find himself in court are tacit admissions that he did violate the holding order.
3. The information is necessary to the proof of an issue material to the prosecution. Wis. Stat. § 885.14(2)(c)2. Specifically, the evidence is necessary to prove motive and intent to operate without the licensure and to violate the holding order.
4. The information is not obtainable from any alternative source for the prosecution. Wis. Stat. § 885.14(2)(c)3. Woodard made personal observations and interviewed Hershberger. There is no alternative source for Woodard's personal observations nor is there an alternative source for the statements Woodard received from Mr. Hershberger.
5. There is an overriding public interest in the disclosure of the information. Wis. Stat. § 885.14(2)(c)4. First, the report and video have already been disclosed to

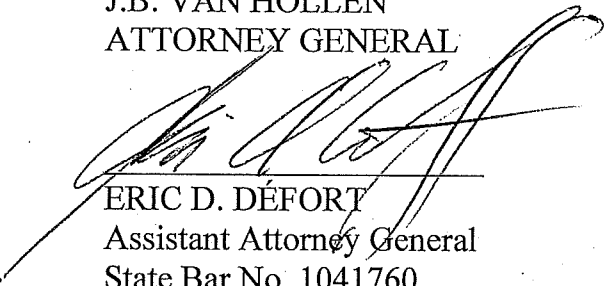
the public and, therefore, is already public information. See attached exhibit and CD containing the video submitted herewith. Second, the United States Supreme Court has discussed the public interest that is triggered by the assertion of a news reporter privilege in *Branzburg v. Hayes*, 408 U.S. 665, 690, 92 S.Ct. 2646, 2661 (1972). *Branzburg* involved a newsreporter who interviewed illicit drug makers, “promised not to reveal the identity of the two” illicit drug makers, and refused to testify about their identities asserting a statutory privilege¹ and a First Amendment privilege. The United Supreme Court said that “Fair and effective law enforcement” is a “fundamental function of government.” *Branzburg*, 408 U.S. at 690, 92 S.Ct. at 2661. The Court stated “we cannot seriously entertain the notion that the First Amendment protects a newsman's agreement to conceal the criminal conduct of his source, *or evidence thereof*, on the theory that it is better to write about crime than to do something about it.” *Branzburg*, 408 U.S. at 692, 92 S.Ct. at 2662 (*emphasis added*). Additionally, the Court said “we cannot accept the argument that the public interest in possible future news about crime from undisclosed, unverified sources must take precedence over *the public interest in pursuing and prosecuting those crimes reported to the press by informants and in thus deterring the commission of such crimes in the future.*” *Branzburg*, 408 U.S.

¹ Kentucky Revised Statutes § 421.100, the statute at issue in *Branzburg*, said the following: ‘No person shall be compelled to disclose in any legal proceeding or trial before any court, or before any grand or petit jury, or before the presiding officer of any tribunal, or his agent or agents, or before the General Assembly, or any committee thereof, or before any city or county legislative body, or any committee thereof, or elsewhere, the source of any in-formation procured or obtained by him, and published in a newspaper or by a radio or television broadcasting station by which he is engaged or employed, or with which he is connected.’ *Branzburg*, 408 U.S. at 669, n.4, 92 S.Ct. at 2650, n.4.

at 695, 92 S.Ct. at 2664 (*emphasis added*). Further, in rejecting a news reporter's assertion of a First Amendment privilege not to testify, the Court said "we perceive no basis for holding that the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial." *Branzburg*, 408 U.S. at 690-91, 92 S.Ct. at 2661 (*emphasis added*). Again, in *Branzburg*, a news reporter claimed a privilege not to reveal information regarding a confidential informant's criminal activities. In the present case, the State only seeks to have the news reporter confirm the facts that he stated in his public news reports. Therefore, in this case, there is an overriding public interest in the disclosure of the information.

Therefore, for the reasons stated herein, the State respectfully requests that the court issue a subpoena for Chris Woodard, pursuant to Wis. Stat. § 885.14.

Respectfully Submitted,
J.B. VAN HOLLEN
ATTORNEY GENERAL



ERIC D. DÉFORT
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Date October 10, 2012

PHILLIP D. FERRIS
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

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Posted: Wed 5:46 PM, Jan 11, 2012 AA  

Reporter: Chris Woodard Email

Updated: Wed 6:54 PM, Jan 11, 2012

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VIDEO REPORT: Sauk County Man Charged With Operating A Food & Dairy Establishment Without A License

POSTED: Wednesday, January 11, 2012 --- 5:30 p.m.

A Loganville Dairy farmer was in court today after ignoring the state's orders to shut down his operation.

Dozens of his supporters showed up on the courthouse steps to show they're behind him.

This is all about raw milk. The state says Vernon Hershberger can't sell it but he's doing it anyway and now it could land him in jail.

One after another the supporters speak, and make something very clear. If Vernon Hershberger goes down he's not going down alone.

Hershberger says, "It's overwhelming to see the support that is here."

Hershberger is met by the show of support on his way into the Sauk County Courthouse.

Many of his supporters do drink raw milk but he says he even has people in his corner who don't.

Dana Schultz and her husband Phil drove more than two hours, from the Milwaukee area, to be here.

Dana says, "The government should not be telling us what we should put in our bodies."

In June of 2010 the Wisconsin Department of Agriculture, Trade and Consumer Protection raided Hershberger's farm, sealing his coolers and tanks and ordering him to stop selling.

They said it's illegal to sell raw milk, and Hershberger shouldn't be selling anything without a dairy license.

But we were at Hershberger's farm the next day when he broke the seals and began selling again.

According to a criminal complaint, investigators saw our report, went back to the farm and found evidence Hershberger had ignored them.

So Hershberger says he's not surprised to find himself in court today.

In court, Assistant Attorney General Eric Defort said, "He repeatedly continued that process as an example."



Despite facing fines and jail time, being booked into jail and released and told again to stop selling Hershberger maintains what he's doing is not wrong .

He says, "We do not sell to the general public but we do not even sell to members. We only distribute to members who voluntarily put money into the farm to keep the farm going because they actually own part of the cow part of the dairy herd."

Hershberger adds, "I definitely do have worries but what I really want, no matter what happens here today and in the future, I'd like to get a message out to people that truth is truth and from biblical times until now truth has always come out on top."

A pretrial conference has been scheduled and Hershberger is due back in court next month.

He's facing four charges, the most severe punishable by up to 10-thousand dollars in fines or up to one year in jail.

UPDATED Thursday, December 8, 2011 --- 9:15 a.m.

From the office of the Attorney General:

MADISON — Attorney General J.B. Van Hollen announced that on December 6, 2011, the Wisconsin Department of Justice, acting as special prosecutor for Sauk County, filed a summons and criminal complaint in Sauk County Circuit Court accusing Vernon D. Hershberger, a Loganville, Sauk County resident, with four counts that relate to the sale of food without a license, as well as producing and processing dairy products without a license and violating a holding order.

According to the criminal complaint, Hershberger was informed in 2007 that the sale of refrigerated or frozen food without a retail food establishment license violated the law but continued to operate a retail food establishment without a license. The criminal complaint further alleged that Hershberger was informed that his milk producer license was going to be considered abandoned if he did not resume shipping milk to a licensed dairy plant. As alleged in the complaint, his license was thereafter revoked. Despite the warning, Hershberger operated as a milk producer without a license. Further, the complaint alleges that Hershberger was operating a dairy plant without a license. Finally, the complaint alleges that a holding order was served on Hershberger which prohibited the sale or movement of specific food products set forth in that holding order. The complaint alleges that Hershberger violated this order by removing food products that were subject to the holding order.

A criminal complaint is a document that alleges that a crime was committed by a person or a corporation. The defendant is presumed innocent unless and until proven guilty.

The matter is tentatively scheduled for an initial appearance on January 4, 2012 at 1:00 p.m.

The charges are the result of an investigation by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Assistant Attorneys General Eric D. Défort and Phillip D. Ferris represent the State of Wisconsin as special prosecutors for the County of Sauk.

A copy of the criminal complaint is available at the following link:

<http://www.doj.state.wi.us/news/files/criminal-complaint-hershberger-vernon-20111207.pdf>

POSTED: Thursday, June 3, 2010 --- 6:45 p.m.

One day after his farm is raided and authorities tell him to shut things down a local farmer is still selling raw milk.

He says it's his right and he's risking the penalties.

Vernon Hershberger doesn't know what will happen next and he's very aware he could be in some big trouble.

Nevertheless he's ignoring state orders and reopening his Loganville business.

Today customers were once again lining up to get raw milk and other dairy products from Hershberger's farm despite the fact that yesterday morning the Wisconsin Department of Agriculture, Trade and Consumer Protection got a warrant to search his farm and sealed several coolers, ordering him to stop selling raw milk and close his store.

Hershberger says, "We believe this is our right to do this and we have a lot of families that feel that way. There are a lot of families that will go without food that they need to have for their families if we shut down."

DATCP Administrator Steven Ingham says, "We're not in the business of shutting down farmers and ruining people's lives but we are a public health agency and the public expects us to look after food."

Hershberger also argues that he is only open to members who pay annual fees, not the general public, so he doesn't need a dairy license.

One thing that is important to note is even if Governor Doyle had signed a raw milk bill into law last month Hershberger would have still been breaking the law because he doesn't have that dairy license.

It will be up to the Sauk County District Attorney to determine if any charges are filed.

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by **Nina** Location: Whitewater on Jan 12, 2012 at 11:15 AM

I live and grew up on a dairy farm, where we drank "raw" milk. I understand where the government is coming from—when there is ecoli or other problems they are obligated to tell us, and we as consumers are the first to point the finger at the next guy for our problems. I think what the government is doing is just what they should be—everyother resturant needs license to operate why not the sauk farmer. But, I do think that we as farmers should be able to sell that whole "raw" milk if we choose. And I also think that if Vernon would have had each of his patrons sign a form stating that they owned a peice of the cows in which the milk came from he would more then likely not be in such hot water. But the truth of the matter is Laws are there to be followed.

[Report Abuse]

by **Mac** Location: Madison on Jan 12, 2012 at 09:39 AM

If you think this is insane, try setting up a moonshine still and see how the gov't cottons to untaxed liquor. This all makes as much sense as the licensing and regulations required to cut and style someone's hair.

[Report Abuse]

by **j** Location: the loo on Jan 12, 2012 at 09:11 AM

the state makes HIS farm a crime scene but needle exchange programs are ok, in other words it's ok to enable intervenus drug use but not to sell milk to people that know what they are buying

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by **JD** Location: Sauk Co. on Jan 12, 2012 at 07:58 AM

I wonder how much "TAX PAYER MONEY" the state has wasted going after this case?? Especially when the state is so broke.... Let him distribute the milk to his farm members

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by **sue** Location: madison on Jan 12, 2012 at 07:20 AM

I an pretty much everyone I grew up with was on a farm. We had no sicknesses like they have today. there are antibodies in raw milk that are not in processed milk. The children are fed way too much processed food and that why I think our kids are so sickly. The few that may get sick from raw milk are few and far between. Let farmers sell the milk, its better than store bought thats for sure.

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by **ShelleyAH** Location: WI Dells on Jan 12, 2012 at 06:39 AM

We grew up drinking raw milk on a daily basis and no one in our household ever became ill from it. I'm not understanding why government is adamant about this issue yet still allows tainted meat and foods from other countries run rampant on our grocery shelves?

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by **Jason** Location: Reedsburg on Jan 12, 2012 at 06:00 AM

Whats next SWAT team to a community garden near you... The state just wants money and using him as an example.. The whole thing is ridiculous especially when the state is SO BROKE how much has it cost the tax payer for the multiple law enforcement that were out to his farm and the legal fees for this case so far. If this goes to a jury trial he will walk

[Report Abuse]

by **Anonymous** on Jan 12, 2012 at 12:11 AM

This is just stupid! Let's clean up all the other criminals first. When you have ALL of them locked up then let's worry about a guy selling milk! Maybe the DA needs to be ousted!

[Report Abuse]

by **A Vernon owner/member** Location: Loganville on Jan 11, 2012 at 09:18 PM

A dozen years ago I was a nonfunctioning being, bed-bound, and in such excruciating pain I was praying to die. For years, conventional doctors could find nothing wrong - their only remedy being prescribed antidepressants which I chose not to take. Via advice of a friend, I changed my diet to include only raw foods - a large part of it being raw dairy products. From that time forward, I have improved healthfully every single day and now enjoy a full and rewarding life. I am again a contributing member of society. Please do anything you can to help myself and others like me to continue to legally obtain the foods that the Lord put on this earth for us to use to healthfully fuel our bodies.

[Report Abuse]

by jul304 on Jan 11, 2012 at 06:25 PM

FDA checks only 2% of our food that comes into this country. And they are worried about something thats is acutally made in our own country and sold. Get off this guys tail. BUY COW MILK

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