STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal Case No. 2020AP001014-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

CHRISTOPHER D. WILSON,

Defendant-Appellant.

On Appeal from an Oral Order Denying Defendant's Suppression Motion Entered in the Milwaukee County Circuit Court, the Honorable Jean M. Kies, Presiding, and a Judgment of Conviction, the Honorable David Borowski, Presiding.

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did Officer Siefert's entry into the backyard to knock on the garage door where Wilson was violate Wilson's Fourth Amendment protection from unreasonable searches and seizures?

Trial court answered: no. The trial court determined that probable cause and the exigent circumstance of hot pursuit justified the police's warrantless entry of Wilson's backyard as well as Wilson's subsequent arrest.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On August 14, 2017, the State charged Wilson with Operating a Motor Vehicle While Intoxicated, Endangering Safety by Use of a Dangerous Weapon, and Possession of Prescription Drug without Valid Prescription for his conduct on January 16, 2017. (R. 1:1-3.) Specifically, at about 1:43 p.m., Police Officer Nathan Siefert and another officer responded to the 1400 block of Rawson Avenue within minutes of receiving a complaint about an intoxicated driver. (R. 42:11-12, 18.)

When he arrived, Officer Siefert saw a silver BMW matching the caller's description parked in a back alley behind 1426 Missouri Avenue, partially on a parking slab and partially on a snowbank. (R. 42:12, 26) Officer Siefert testified that the BMW was parked "very strangely." (R. 42:12). The BMW was running and the back hatch was open. (R. 42:12.) Officer Siefert ran the BMW's license plate number and found that the vehicle was not registered to any address nearby. (R. 42:12.) Officer Siefert saw that the residence's fence was ajar, that the BMW was unoccupied, and no one was around. (R. 42:13.)

Officer Siefert contacted the 911 caller, who said that a gray or silver BMW has been driving erratically on Rawson Ave. and 27th Street, failing to stop for a red traffic signal, suddenly slowing down and accelerating, and weaving in and out of lanes. (R. 42:13.) The caller also told the officer that the BMW pulled into the residence where the officer had found the BMW. (R. 42:13.) The caller described the driver to be a white male wearing bright orange shoes. (R. 42:13) The caller also reported that the driver climbed onto the fence, reached over it, opened it, and entered the backyard. (R. 42:13-14; 32.) Officer Siefert testified that after hearing that driver had climbed onto the fence, he thought that he was dealing with either a burglary or OWI, or both. (R. 42:14.) He further testified that he thought it was a burglary because the BMW did not belong in the area and it was left running. (R. 42:14.) Also, the officer testified that he thought the hatch was open for a quick getaway. (R. 42:14.) Officer Siefert believed the burglary was in progress. (R. 42:28.)

Officer Siefert then entered the fenced backyard. (R. 42:14.) Seeing no one, he knocked on the door to the garage. (R. 42:14.) Christopher Wilson, a white male wearing bright orange shoes, an orange shirt, and a black hat, opened the door. (R. 42:15.) Wilson stated that he had been the person driving, but also stated he was not the person driving. (R. 42:14.) Officer Siefert observed that Wilson slurred his speech and stumbled on the concrete floor of the garage. (R. 42:15.) Wilson said that he had taken prescribed Methadone that day. (R. 42:16.) Wilson asked to go back to the BMW so he could get his identification, and the officers went with him. (R. 42:16.) When they got to the BMW, Wilson tried to open the locked door. (R. 42:16.) Officer Siefert saw a hand gun inside the car, and then patted Wilson down for weapons. During the pat down, the officer found bottle of Methadone in Wilson's pocket. (R. 42:24.)

After finding that Wilson had a revoked driver's license, Officer Siefert arrested Wilson. (R. 42:16-17.) Later, Officer Siefert learned that Wilson lived at the residence. (R. 42:23.) He did not ask Wilson to perform field sobriety tests on scene, but rather conducted them later because it was wintertime, the ground was slippery, and the alley had an incline. (R. 1:3; R. 42:17.)

On March 7, 2018, Wilson filed a motion to suppress all the evidence police obtained after entering Wilson's backyard, alleging that Wilson had been unlawfully seized in the curtilage of his home. (R. 8:1.) On July 6, 2018, the court held a motion hearing on Wilson's suppression motion and received Officer Seifert's testimony and his body camera video. (R. 42:1-2, 42:34.)

The video shows that the fence gate was wide open when Officer Seifert arrived on scene. (R. 50 at 0:17.) Also, the video shows that the garage not only was behind the house but also detached, located several feet away from the house. (R. 50 at 0:34-45.) Further, the video shows that parking block in front of the garage adjoined the back alley. (R. 50 at 0:13 and 9:10.) The body camera video also shows Wilson moving freely, walking past Officer Siefert to retrieve his identification from the BMW (R. 50 at 3:16.)

On August 23, 2018, Milwaukee County Circuit Court, the Honorable Jean Kies presiding, orally denied Wilson's suppression motion. (R. 43:1.) The court concluded that the exigent circumstance of hot pursuit justified Officer Siefert's warrantless entry onto Wilson's backyard and Wilson's subsequent arrest. (R. 43:8.) The court also found that Officer Siefert had probable cause to believe that the jailable offenses of either criminal trespass or burglary was being committed. (R. 43:14.) The court also found that the exigent circumstance of hot pursuit of a suspect justified the entry of Wilson's backyard. (R. 43:16-18.)

Wilson now appeals the circuit court's denial of his motion to suppress.

STANDARD OF REVIEW

When a party asks a court to review an order granting or denying a motion to suppress evidence, the party poses a question of constitutional fact. *State v. Weber*, 2016 WI 96, ¶ 16, 372 Wis. 2d 202, 887 N.W. 2d 554 (citing *State v. Iverson*, 2015 WI 101, ¶ 17, 365 Wis.2d 302, 871. N.W.2d 661). In answering such a question, a court adopts the trial court's findings of fact unless clearly erroneous and then

independently reviews the trial court's application of constitutional principles to those findings of fact. *Id*.

ARGUMENT

I. The Trial Court Properly Denied Wilson's Suppression Motion

A. Legal Principles

Searches affect privacy interests, such as the invasion of places people keep for their personal use. *State v. Drumstrey*, 366 Wis. 64, 77, 873 N.W.2d 502, 507 (citations omitted). Seizures, on the other hand, involve the restriction of personal liberty, whether through preventing someone from moving freely or possessing property. *Id*. There are two types of seizures: investigatory stops and arrests. *Terry v. Ohio*, 392 U.S. 1 (1968).

While the Fourth Amendment of the United States' Constitution and its identical Wisconsin Constitution counterpart generally prohibit warrantless searches and seizures, U.S. Const. amend. IV; *State v. Secrist*, 224 Wis. 2d 201, 208, 589 N.W. 2d 387, 390-91 (1999), not all warrantless searches and seizures are prohibited. For instance, while warrantless searches and seizures in the home are presumed unreasonable, they may be justified by probable cause and exigent circumstances. *Payton v. New York*, 445 U.S. 573, 588-89 (1980). This is because reasonableness is the "touchstone of the Fourth Amendment." *State v. Weber*, 2016 WI 96, ¶ 34, 372 Wis. 2d 202, 225, 887 N.W.2d 554, 565 (citing *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)). "In deciding whether an officer's actions are permissible under the Fourth Amendment, [courts] need only determine that the law enforcement action was reasonable under the circumstances." *State v. Harwood*, 2003 WI App 215, ¶ 17, 267 Wis. 2d 386, 395, 671 N.W.2d 325, 329.

i. Curtilage is generally protected, except for its passageways

The general principles protecting the home from searches and seizures also extends to its curtilage. *State v.*

Martwick, 2000 WI 5, ¶ 26, 231 Wis. 2d. 801, 815, 604 N.W. 2d 552, 558 (citing *Oliver v. United States*, 466 U.S. 170, 180 (1984)). Curtilage is "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life." *Id.* (quoting *Boyd v. U.S.*, 116 U.S. 57, 59 (1924)). Four factors determine whether an area is curtilage: 1) Proximity of the area to the home, 2) whether the area is inside an enclosure surrounding the home, 3) the uses of the area, 4) steps the resident took to protect the area from observation by passersby. *United States v. Dunn*, 480 U.S. 294, 304 (1987).

Using those factors, the Wisconsin Supreme Court in *Drumstrey* concluded that the parking garage underneath an apartment building was not curtilage of the defendant's home in which he had a reasonable expectation of privacy. 366 Wis.2d 64, 72. The court found that the apartment parking garage was not closely proximate to the defendant's home and was a "far cry" from the attached garage of a single family home that courts have held to be curtilage. *Id.* at 88.

However, the boundary of curtilage is not absolute. As this Court has also noted,

> [r]egarding protected areas in residential premises, " '[a] sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectancy of privacy in regard to observations made there.' " " '[P]olice with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public' " and in doing so " 'are free to keep their eyes open....'".

State v. Edgeberg, 188 Wis. 2d 339, 347, 524 N.W.2d 911, 915 (Ct. App. 1994) (internal citations omitted). There, this Court concluded that the officer was permitted to enter the defendant's enclosed porch to conduct a knock-and-talk. *Id*. Because it was permissible for the officer to be there, the marijuana plants were in plain-view, and were not discovered subject to a search. *Id*. at 346-47.

ii. Exigent circumstances permit entry into a constitutionally protected area

One exception to the warrant requirement is exigent circumstances as "it would be unreasonable and contrary to public policy to bar law enforcement officers at the door." *State v. Richter*, 2000 WI 58, ¶ 28, 235 Wis. 2d 524, 540, 612 N.W. 2d 29, 36. There are four categories of exigent circumstances: 1) hot pursuit of a suspect, 2) threat to safety of a suspect or others, 3) risk that evidence will be destroyed, and 4) likelihood that the suspect will flee. *State v. Weber,* 372 Wis. 2d 202, 215 (quoting *Richter*, 235 Wis. 2d 524, 541). The rationale behind the hot pursuit exception includes that a suspect will not be rewarded for fleeing from police and that police will not be penalized for lawfully apprehending suspects who draws the police into their home. *Weber*, 272 Wis. 2d 202, 215.

In order to justify a warrantless search under the hot pursuit doctrine, the state must show two things. First, the State must show that law enforcement had probable cause to believe that the suspect committed a jailable crime. *Id*. at 221 (citing *Richter*, 235 Wis. 2d 524, 541-542) There is no distinction between misdemeanor and felony crimes. *State v. Weber*, 272 Wis. 2d 202. 224. Nor is there a *per se* rule applying the exception to all cases in which fleeing law enforcement gives rise to the pursuit. *Weber,* 272 Wis. 2d 202, 232.

In determining probable cause, courts apply an objective standard that considers the information available to the officer and the officer's training and experience. *State v. Lange*, 2009 WI 49, ¶ 20, 317 Wis. 2d 282, 392-93, 766 N.W. 2d 551, 555. Probable cause requires more than a possibility or suspicion that the defendant committed a crime but less than evidence beyond a reasonable doubt. *State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387, 392 (1999). It is a practical, nontechnical determination made based on the totality of the circumstances. *See Illinois v. Gates*, 462 U.S. 213, 38 (1983); *See Texas v. Brown*, 460 U.S. 730, 742 (1983). When faced with competing reasonable inferences, law enforcement may make a reasonable inference that favors probable cause even though a different inference of innocent conduct could be

drawn. *State v. Nieves*, 2007 WI App 189, ¶14, 204 Wis. 2d 182, 190, 738 N.W.2d 125, 129.

Second, the State must show that law enforcement was in immediate or continuous pursuit of a suspect from the scene of a crime. *Richter,* 235 Wis. 2d 524, 541 (upholding warrantless entry into trailer home where violation was observed by witness, not the officer). For instance, an arrest occurring three weeks after an offense likely will not constitute "hot pursuit." *See e.g. State v. Smith*, 131 Wis. 2d 220, 231-232, 388 N.W. 2d 601, 606 (1986) *abrogated by State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775. Law enforcement need not personally observe the crime or fleeing subject. *Richter,* 235 Wis. 2d 524, 542. The focus is on circumstances known to the officer at the time of entry and officers need not be correct, only reasonable. *Id.* at 546-547. Hindsight does not apply to the exigency analysis. *Id.*

For example, the Wisconsin Supreme Court in *Richter* found hot pursuit where a victim flagged down deputies and told them that the burglary suspect had fled into a trailer across the street. 235 Wis. 2d 524 at 529. The deputies saw signs of a forced entry: an open window and a knocked out screen. *Id*. They woke up the occupants of the trailer, who indicated that the defendant, who was sleeping on their couch, owned the trailer. *Id*. The deputies entered the trailer and woke the defendant. *Id*.

The Court found the officer's entry permissible despite not knowing whether the defendant's entry was to commit a burglary as opposed to a "less serious unlawful entry," noting that difference lies in the subject's *mens rea*. *Id*. at 545. Further, the Court rejected the Court of Appeal's reliance upon the officer's lack of information about the suspect's known dangerousness, stating,

> [t]his expects too much and puts too much at risk. In the course of investigating crimes in progress and pursuing fleeing suspects, police officers are often called upon to make judgments based upon incomplete information.

Id. Therefore, the Court, reaffirming that the reasonableness inquiry is rooted in the "circumstances known to the officer at the time," found the officer's entry permissible. *Id*. at 547.

Similarly, in *Warden v. Hayden*, the Supreme Court of the United States held that exigent circumstances justified the entry and search of a house where officers received information that an armed robbery suspect entered the residence and the officers arrived less than five minutes later. 387 U.S. 294, 297-98 (1967). The court determined that speed was essential and only a search of the house would have ensured that the defendant was the only man in the house and that police had control of all the weapons. *Id*. at 299.

In *Harwood*, officers were dispatched when a tenant reported seeing one man boosting another up to the window of Apartment 206. 2003 WI App 215, ¶ 2, 267 Wis. 2d 386, 389, 671 N.W.2d 235, 326. When they arrived at the apartment complex, the officers saw the defendant and another man exiting Apartment 108. *Id*. They both admitted to being the men the tenant had seen, and the defendant stated that his residence was Apartment 206 but could not produce proof. *Id*. at 389-90. This Court determined that the officers had probable cause to believe that a burglary was in progress, that it was reasonable for the officers to not believe the defendant, and that it was reasonable for the officers to make sure no one else was burglarizing the apartment. *Id*. at 394-395. This Court also determined that, based on the suspicious nature of the facts reported in the call and facts conflicting with the defendant's statement, the officers had probable cause to believe that evidence of the burglary would be found in the apartment. *Id*. at 394. Therefore, this Court held that the officer's entry into the apartment was justified upon both probable cause and exigent circumstances. *Id*. at 399.

iii. There is no warrant requirement for police to conduct a "knock and talk"

Moreover, police neither need a warrant, nor probable cause to effectuate a "knock and talk" at a residence. See, *e.g., State v. Phillips,* 2009 WI App 179, ¶11 n.6, 322 Wis. 2d 576, 588, 778 N.W.2d 157, 164 ("knock and talk" is a proper investigative technique where police go to people's residences,

with or without probable cause, and knock on the door to obtain plain views, to question residents, to seek consent to search, and/or to arrest without a warrant, often based on what they discover in the knock and talk).

Law enforcement officers may knock on a door without a warrant and request the opportunity to speak with the person who answers it. *Kentucky v. King*, 563 U.S. 452, 469 (2011). *See also State v. Robinson,* 2010 WI 80, ¶ 32, 327 Wis. 2d 302, 326-27, 786 N.W.2d 463, 475-76 (there is no legal requirement of obtaining a warrant to knock on someone's door). This is because the occupant has no obligation to open the door, speak with the officers, or allow the officers to enter the premises. *King*, 563 U.S. 452, 460.

This is also because the Fourth Amendment's protection only extends "to what society considers reasonable. If there is no such infringement, there is no search." *State v. Edgeberg,* 188 Wis. 2d 339, 345. (internal citations omitted). For example, in *Edgeberg*, the Court of Appeals of Wisconsin upheld an officer's entry into an enclosed porch to investigate a compliant regarding a barking dog. *Id*. at 342-44. There, the officer opened a wooden screen door to enter the porch, which contained Edgeberg's washer, dryer, and work clothes. *Id*. at 343. Finding the officer's presence did not violate the Fourth Amendment, the *Edgeberg* court noted the plain view doctrine then applied because, "the question is whether the officer had prior justification for his presence or, in other words, had a right to be where he was." *Id*. at 346 (citing *State v. McGovern*, 77 Wis.2d 203, 211, 252 N.W.2d 365, 369 (1977). *See also Florida v. Jardines*, 569 U.S. 1, 8-9 (2013) (noting that visitors have an "implicit license" to approach the home through some kind of path, knock, wait to be received, and then leave unless invited to linger).

B. Hot Pursuit And Probable Cause Justified Officer Siefert's Entry Of Wilson's Backyard.

Here, hot pursuit justified Officer Siefert's entry of Wilson's backyard. The officer had probable cause that Wilson had committed jailable offenses and was in immediate or continuous pursuit of Wilson.

i. Officer Siefert had probable cause to believe that Wilson committed a jailable offense.

Here, Officer Siefert, at the time he entered the backyard, had probable cause to believe Wilson committed either the jailable offenses of criminal trespass or burglary. (R. 43:13.) Furthermore, the facts support probable cause to arrest Wilson for recklessly endangering safety, in violation of Wisconsin Statutes § 941.30, due to the erratic driving witnessed by the 911 caller.

The elements of Burglary, which is a Class F felony punishable for up to 12 years and six months in prison, are 1) entry of any building or dwelling without consent of the person in lawful possession, 2) with intent to steal or commit a felony in any building or dwelling. Wis. Stat. §§ 943.10(1m)(a) and 939.50(3)(f). Criminal Trespass to Dwelling, a misdemeanor punishable by a maximum 9 months of imprisonment, is committed by one who:

> intentionally enters or remains in the dwelling of another without the consent of some person lawfully upon the premises or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling, under circumstances tending to create or provoke a breach of the peace…

Wis. Stat. § 943.14; Wis. Stat. § 939.51(3).

Whether an officer intended to arrest a defendant for criminal trespass prior to a search or whether the defendant was actually arrested and charged with criminal trespass is not dispositive of whether a search was lawful. *State v. Sykes*, 2005 WI 48, ¶ 2, 279 Wis.2d 742, 747, 695 N.W.2d 277, 280 (finding probable cause to arrest for trespass where defendant was in apartment, tenant was not present, unwanted individuals had refused to leave the apartment when asked, and landlord had requested police assistance while changing locks).

The current case is similar to *State v. Harwood,* where there was probable cause to believe a burglary had been committed. 267 Wis. 2d 386, 394-95. Officer Siefert not only had his own observations as the basis for probable cause – he

also called the 911 caller. The 911 caller not only reported erratic driving, but similar to the observations reported in *Harwood*, the caller reported seeing what appeared to be an unlawful entry by circumventing the fence and described the person involved. (R. 42:13-14, 32.) When Officer Siefert arrived at 1426 Missouri Street, he ascertained that the vehicle did not list to anyone in the area and he saw a wide-open fence gate. (R. 42:12; R. 50 at 0:17.) It was a reasonable inference that the driver had entered without consent given the manner of entry and because the BMW did not list to 1426 Missouri St. or any nearby residence. (R. 42:12.) Further, the officer's inference was even more reasonable given the person who saw the driver enter was concerned enough to call 911. Further still, the unoccupied BMW was running with its hatch open, parked "very strangely" on top of a snowbank on the parking block parallel to the garage. (R. 42:12, 26.) The officer drew the reasonable conclusion that the vehicle was being used in a burglary for a quick get-away. (R. 42:14.) Moreover, *unlike* the officers in *Harwood*, Officer Siefert had no conflicting facts to grapple with. Just as the court found in *Harwood*, the circumstances in front of Officer Siefert and their reasonable inferences supported probable cause that a burglary was occurring or, at a minimum, that Wilson had entered a dwelling of another without consent.

Further, like in *Sykes*, Officer Siefert made a reasonable inference from the facts that he had at the time which included, information from a 911 caller that Wilson did not have consent to be there. Therefore, Officer Siefert had probable cause to arrest the defendant for criminal trespass to dwelling.

Furthermore, the facts support that Officer Siefert had probable cause to arrest Wilson for recklessly endangering safety due to the erratic driving reported; the 911 caller told him that the driver of the BMW had been driving erratically, blowing a red light, speeding then quickly slowing down, and weaving in and out of lanes. (R. 42:13.) The driver of the BMW had been driving in a manner that had a citizen concerned enough to follow the vehicle. These facts more than support that Officer Siefert had probable cause to believe that Wilson committed all the elements of second-degree reckless endangering safety though his driving. Officer Siefert reasonably believed that Wilson had endangered the safety of

another human being, that his conduct created an unreasonable, substantial risk of death or great bodily harm, and that he was aware of that risk. *See* Wis JI-Criminal 347.

Wilson argues that the facts do not support the circuit court's finding of probable cause because the trial court incorrectly determined that the fence's gate was locked and that Wilson had jumped the fence. (Wilson Br. 12.) Wilson also argues that the trial court incorrectly relied on how Wilson's BMW was parked. (Wilson Br. 13.) However, even if the fence was "latched," and not "locked" the fact that the gate was closed and that Wilson climbed the fence to open it does support a reasonable inference that he was sneaking into the backyard without permission. Furthermore, other facts support the trial court's finding and reveal that whether the gate was locked as opposed to latched, whether Wilson had jumped or reached over the fence, and whichever direction the BMW is irrelevant because it leads to the same suspicious circumstances. The law only requires that he reach a reasonable conclusion based on what he reasonably knew at the time of the entry. *See Richter,* 235 Wis. 524 2d at 541. Officer Seifert testified that at the time he entered the backyard, he thought he was investigating a burglary for the following reasons:

1) The car did not belong in the area and had been left running;
2) He thought the BMW's hatch had been left open for a "quick get-away";
3) The caller described someone climbing onto fence and going in.

(R. 42:14.) Officer Siefert also saw that the fence gate was open when he arrived and that the BMW was unoccupied. (R. 42:13.) Based on all the facts he knew at the time he entered the backyard, Officer Siefert's conclusion that there was probable cause that Wilson had committed a burglary was a reasonable conclusion.

Wilson also argues that the officers had no probable cause to enter the backyard because the officers would not have been able to arrest Wilson had they waited for him to come out of the residence. However, both of these arguments fail because hindsight is not part of the exigency analysis. *Richter,* 235 Wis. 2d 524 at 546-547. Rather, the focus is on what the

officer reasonably knew **at the time of the entry**. *Id.* Wilson's arguments incorrectly incorporate information that Officer Siefert did not know at the time he entered the backyard. (R. 42:14.)

ii. Officer Siefert immediately pursued Wilson from the scene of the crime.

Officer Siefert immediately pursued Wilson from the scene of the crime. He testified that he arrived a few minutes after the 911 caller left the scene. (R. 42:13.) The circuit court determined that it was a reasonable inference that officers arrived "in a matter of a couple minutes." (R. 43:5.) Wilson claims there was no immediate or continuous pursuit of the petitioner from the scene of the crime. (Wilson Br. 17.) However, Wilson does not point to any facts from the record to support this claim.

Wilson's reliance on *Smith* is misplaced because it is distinguishable. Unlike in *Smith*, Officer Seifert did not stop pursuing the defendant or planned to make an arrest. In *Smith*, the officers conducted an investigation, identified the defendant's residence three hours before the arrest, and testified to a plan to go to that residence and make an arrest. *Id*. at 232. That was not the case here. Officer Siefert and back up arrived within minutes of the caller leaving the scene. (R. 43:5.)

Wilson alleges that the facts in this case are closer to *Larson* and *Welsh*. (Wilson Br. 17.) But they are distinguishable from the facts in Wilson's case. Unlike Officer Siefert, the law enforcement officers in *Welsh* and *Larson* were not faced with a report from a witness that also included that someone had entered the backyard of a residence that did not belong to that person. *State v. Welsh*, 446 U.S. 742, 742-43 (1984); *State v. Larson*, 2003 WI App 150, ¶¶ 2-3, 266 Wis. 2d 236, 240-41, 688 N.W. 2d 388, 340-41. Officers in *Welsh* and *Larson* also knew at the time of the warrantless entry that they were entering the home of the person they were pursuing. *Welsh*, 446 U.S. 742, 732; *Larson*, 266 Wis. 2d 236, 241. In Wilson's case, Officer Seifert did not know that Wilson resided at 1426 Missouri Street until after he entered the backyard and spoke with Wilson. (R. 42:23.) Moreover, in *Welsh*, the Court clearly explained that the *only* potential exigency they were

addressing was the potential dissipation of blood-alcohol content. 466 U.S. 740, 746 ("The State attempts to justify the arrest ... on the need to preserve evidence of the petitioner's blood-alcohol level."). Whereas here, Officer Siefert believed that there was an ongoing burglary occurring. (R. 42:28.)

The facts in Wilson's case are closer to those in *State v. Richter* and *Warden v. Hayden*. Like the officers in both cases, Officer Seifert did not know that Wilson had fled into his home when he entered the backyard. *See Richter,* 235 Wis. 2d 524, 530-32; *Warden v. Hayden*. 387 U.S. 294, 297-98 (1967). Like the deputy in *Richter*, Seifert started investigating a burglary but in the end arrested Wilson for a different charge. 235 Wis. 2d 524, 529-533. Like the deputy in *Hayden*, Seifert arrived "within minutes" at 1426 Missouri St. 387 U.S. 294, 298.

Wilson also argues that hot pursuit of a suspect does not apply because Wilson had no reason to believe he was being pursued by law enforcement. (Wilson Br. 17.) But the hot pursuit doctrine has no such requirement. Also, the exigency analysis does not examine the totality of the circumstances based on the perspective of the defendant. Rather, the analysis focuses on what the officer knew and could reasonably infer at the time of the entry. *Richter,* 235 Wis. 2d 524, 545. Also, as discussed above, whether probable cause that the defendant committed the crime of fleeing or obstructing an officer is not at issue here.

Wilson additionally argues that there must be other exigent circumstances present in order for a hot pursuit argument to succeed. (Wilson Br. 15.) That is not correct. The Wisconsin Supreme Court addressed a similar claim in *State v. Weber*, calling it contrary to case law and reiterating that hot pursuit may stand alone. 272 Wis. 2d 202 at 230. Other exigencies, the court explained, need not be present for hot pursuit, though their presence may be relevant to whether a warrantless entry is permitted. *Id*. at 231.

Therefore, hot pursuit justified Officer Seifert's entry of Wilson's backyard because the officer had probable cause to believe that Wilson had committed a jailable offense and

because Officer Siefert immediately pursued Wilson from the scene of the crime.

C. Officer Siefert's Entry To The Backyard Was A Permissible Knock And Talk.

Alternatively, should this court find the circuit court erred in finding the officer's entry pursuant to hot pursuit, the entry was still reasonable as a permissible "knock-and-talk." The seizure did not occur until Wilson's arrest, which occurred in the back alley, not within the curtilage of his home, and was based on probable cause.

Here, the officer stepped through an already open fence gate of in order to knock on the garage door. (R. 42:14, 21-22.) Officer Seifert did what any private citizen has the implicit license to do, approaching the home through an accessible path, knocking, and waiting to be received. *See Jardines*, 569 U.S. 1 at 9; see also *King*, 563 U.S. 452 at 469. It was further reasonable for the officer to do so given this entrance is where the 911 caller reported Wilson had entered by. Furthermore, Wilson was under no obligation to open the door, speak with the officer, or allow the officer to enter the garage. *See King*, 563 U.S. 452, 460. Wilson was free to move freely, and even walked to his car in order to retrieve his identification card. (R. 42:16.) This isn't a case like *Larson* where the officer placed his foot across the threshold preventing the door from being closed. 266 Wis. 2d 236, 241. Officer Seifert merely knocked and talked.

The parking block on which Officer Seifert arrested Wilson was neither an area that a reasonable person would have a high expectancy of privacy nor an area associated with the sanctity of a person's home and the privacies of life. The fence did not enclose the parking block and only surrounded the yard. (R. 42:14). The parking block adjoined the back alley. (R. 50 at 0:13 and 9:10) Also, the garage which it was near was a detached garage several feet away from the home. (R. 50 at 0:01 and R:50 at 0:34 to 0:35). The parking block is more like the apartment parking garage in *Drumstrey* than the parking garage of a single family home. It was not until here, outside the curtilage of Wilson's home that any seizure occurred.

Furthermore, as this Court noted in *State v. Edgeberg*, because the officer was there for a permissible reason, anything observed fell within the doctrine of plain-view, and did not constitute an impermissible search. Therefore, not only was there probable cause to arrest for the crimes discussed under section (B) of this brief, but also Officer Siefert discovered a violation of Operating after Revocation as well as the firearm that was in the vehicle in plain view from where Officer Siefert was standing outside the curtilage. (R. 42:16-17, 24.) The firearm that was in plain view provided additional probable cause for one of the charges which Wilson was ultimately convicted; Endangering Safety by Use of a Dangerous Weapon. (R. 1:1-3.) These observations were made outside the curtilage following the consensual knock-and-talk and, therefore, did not implicate Wilson's Fourth Amendment rights.

Therefore, Officer Siefert's arrest of Wilson on the parking block was a constitutionally reasonable seizure because the parking block was not curtilage. Alternatively, the doctrine of hot pursuit justified the officer's entry.

CONCLUSION

For the reasons stated above, the State asks that the court affirm the trial court's denial of Wilson's suppression motion and affirm the judgement of conviction.

Dated this _____ day of ***, 2020.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 5590.

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

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