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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2020AP1014-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER D. WILSON,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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ISSUE PRESENTED

Did Officer Siefert's entry into the backyard to knock on the garage door where Wilson was present 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 his subsequent arrest.

Court of appeals answered: no. The appellate court concluded that "Wilson's motion to suppress was properly denied because the officers' entry into the backyard and interaction with Wilson were covered by the 'knock and talk' exception to the Fourth Amendment's warrant requirement." *State v. Wilson*, No. 2020AP1014-CR, ¶ 1 (Wis. Ct. App., May 11, 2021). (Pet-App. 101.)

REASON TO DENY THE PETITION

This Court should deny Wilson's petition because it already has held that "officers may sometimes enter curtilage to further a 'legitimate law enforcement objective' when the restriction upon a person's privacy is limited," and it already recognized that some courts have "defined an exception permitting officers to enter the curtilage when engaging in a 'knock and talk' investigation." *State v. Artic*, 2010 WI 83, ¶ 95, 327 Wis. 2d 392, 786 N.W.2d 430.

Wilson's petition presents the issue overly simplistically when he frames it as whether the police had "implicit license to enter the backyard of Mr. Wilson's home through a gated privacy fence." (Wilson Pet. 3.) Here, officers entered through a gate that was open, though partially obstructed with "a recycling bin that was sort of blocking the entrance to the gate." (R. 43:5.)

If this Court grants the petition, it will have to review atypical facts to decide whether curtilage even existed. *See State v. Martwick*, 2000 WI 5, ¶ 24, 231 Wis. 2d 801, 604 N.W.2d 552 (de novo standard of review for curtilage). The presence of a fence is an important factor in delineating

curtilage and a fenced-in area may be regarded as curtilage in a specific case. *Artic*, 327 Wis. 2d 392, ¶¶ 93–94. But here, officers entered through a gate that was ajar. (R. 43:5, 6.) Complicating the presence of the open gate is the partial obstruction of the recycling bin that “was sort of blocking the entrance to the gate.” (R. 43:5.) The officers entered through the open gate after moving the bin out of the way. (R. 42:20, 31.) Rather than having clear underlying facts of a fully enclosed fenced-in area or a readily open gate, this case involves unique facts unlikely to be present in most circumstances.

Assuming *arguendo* that the fenced-in area accessed by the ajar gate is curtilage, Fourth Amendment jurisprudence already is sufficiently developed such that this Court’s review is unnecessary.

Courts already have resolved that entry through a gate for a “knock-and-talk” is “a reasonable, limited intrusion for legitimate law enforcement objectives.” *United States v. Robbins*, 682 F.3d 1111, 1115 (8th Cir. 2012) (citing *United States v. Weston*, 443 F.3d 661 (8th Cir. 2006)). This Court observed that such precedent recognized a “knock and talk”

as a “reasonable investigative tool when officers seek to gain an occupant's consent to search or when officers reasonably suspect criminal activity.” *Artic*, 327 Wis. 2d 392, ¶ 95 (quoting *United States v. Troop*, 514 F.3d 405, 410 (5th Cir. 2008)).

Likewise, the United States Supreme Court has held that police may lawfully arrest a person within the home's curtilage if the suspect voluntarily answers and opens the door and exposes himself to the public. *United States v. Santana*, 427 U.S. 38, 42 (1976) (arrest of suspect within vestibule following knock and talk did not violate the Fourth Amendment because the suspect “was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house.”).

And, in *State v. Edgeberg*, the court of appeals concluded that police were justified in opening the door to a suspect's enclosed porch and going onto the porch so that they could knock on the door going from the porch to the home. *State v. Edgeberg*, 188 Wis. 2d 339, 344, 348, 524 N.W.2d 911 (Ct. App. 1994). As the court of appeals later recognized, “It is

well settled that the Fourth Amendment is not implicated by an officer's entry on private land to knock on a citizen's door for legitimate police purposes." *State v. Wieczorek*, 2011 WL 5338994, No. 2011AP1184-CR, ¶ 14, (Wis. Ct. App. Nov. 8, 2011) (unpublished) (citing *Edgeberg*, 188 Wis. 2d at 348). (R-App. 101–02.)

This Court should deny the petition. The line of precedent governs the outcome in this case. The absence of a case squarely on point with identical facts to those present here doesn't justify review by this Court. It is precisely the unusual facts of an open gate partially obstructed by a recycling bin that presents a question heavily factual in nature that renders this matter less appropriate for review. *See* Wis. Stat. § 809.62(1r)(c)3. (questions should not be factual in nature). Further review by this court is unnecessary because the court of appeal's decision is in accord with Fourth Amendment precedent.

CONCLUSION

This Court should deny Wilson's petition for review.

Dated this 10th day of September 2021.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b) and 809.62(4) (2019-20) for a response to petition for review produced with a proportional serif font. The length of this response is 862 words.

Dated this 10th day of September 2021.

WINN S. COLLINS
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.62(4)(b)**

I hereby certify that:

I have submitted an electronic copy of this response to petition for review, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(12) (2019-20).

I further certify that:

This electronic response to petition for review is identical in content and format to the printed form of the response to petition for review filed as of this date.

A copy of this certificate has been served with the paper copies of this response to petition for review filed with the court and served on all opposing parties.

Dated this 10th day of September 2021.

WINN S. COLLINS
Assistant Attorney General