STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2020AP1014-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER D. WILSON,

Defendant-Appellant-Petitioner.

On Review of a Decision of the Court of Appeals, Affirming a Judgment of Conviction Entered in Milwaukee County Circuit Court, the Honorable David Borowski, Presiding.

BRIEF OF DEFENDANT-APPELLANT-PETITIONER

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ISSUE PRESENTED

Did police have implicit license to enter the backyard of Mr. Wilson's home through the gate of a tall, solid privacy fence in order to conduct a "knock and talk" investigation?

The circuit court did not address this issue.

The court of appeals answered yes.

POSITION ON ORAL ARGUMENT AND PUBLICATION

By granting review, this Court has deemed this case appropriate for both oral argument and publication.

STATEMENT OF THE CASE AND FACTS

On August 14, 2017, the State charged Christopher D. Wilson with one count of operating a motor vehicle while intoxicated as a second offense, contrary to Wis. Stat. §§ 346.63(1)(a), 346.65(2)(am)2. (Count 1); one count of endangering safety by use of a dangerous weapon while under the influence of an intoxicant, contrary to Wis. Stat. § 941.20(1)(b) (Count 2); and one count of possession of a prescription drug without a prescription, contrary to Wis. Stat. §§ 450.11(7)(h) and 450.11(9)(a) (Count 3). (1:2-3). All three charges were based on events that took place on January 16, 2017. (1:2-3). Mr. Wilson filed a motion to

suppress all evidence derived from his unlawful seizure by police. (8:1).

Suppression Motion Proceedings:

Evidence presented at the motion hearing established that on January 16, 2017, at 1:43 p.m., Christopher Wilson was alone in his garage when the police knocked on the garage's side door. (43:6, 9; App. 18, 21). The garage is detached from the main house, and the only access to the side door is through the backyard enclosed by a tall, solid privacy fence. (42:14, 21-22; App. 48, 55-56). A City of South Milwaukee police squad parked in the alley behind Mr. Wilson's home, entered his fenced-in backyard, knocked on the side door of his garage, and posed numerous questions about his driving and drug or alcohol use before asking him if he lived at that house. (50 at 00:00 to 02:05).

At the time of the police contact with Mr. Wilson at his garage, the garage's overhead door was closed, and his car sat idling in the alleyway just outside of that door, parked in a way that did not obstruct traffic. (50 at 17:30; App. 91). The officers had responded to the site of Mr. Wilson's car based on a reckless driving tip. (42:17; App. 51). The caller told the officer that the car was "all over the roadway … changing speeds" and "driving very erratically." (42:13; App. 47). The caller followed the car to its parking spot in the alley behind 1426 Missouri Avenue where a white male wearing bright orange shoes exited the car, reached over the fence to unlatch the door, and then entered the backyard. (42:13-14; App. 47-48; 43:4-5; App. 16-17). The officer ran the car's plates and saw that it listed

an address in the city of Franklin. (42:12; App. 46). The officer testified that, "[a]t that point in time" he believed "this was possibly an OWI and possibly a burglary," and therefore believed it was necessary to enter the fenced-in backyard. (42:14; App. 48).

The officer knocked on the side door to the garage and spoke with Mr. Wilson. He told Mr. Wilson that someone had reported him for "driving kinda' goofy" and "[blowing] through a red light." (50 at 00:50-01:05). The officer asked Mr. Wilson if he had had anything to drink, if he had smoked marijuana, and if he had taken any pills or heroin, before asking him whether he lived at that address, to which Mr. Wilson answered, "yes." (50 at 01:15-02:05).

The officer questioned Mr. Wilson further about his driving, requested identification, and after about another minute, Mr. Wilson led the officer back to his car to retrieve his ID card. (50 at 03:00 to 03:30). Once at the car, Mr. Wilson attempted to open the passenger side door, which was locked, and "[a]t that point in time [the officer] believed that Mr. Wilson was possibly impaired." (42:16; App. 50). The officer saw a handgun inside the car and patted Mr. Wilson down. (43:7; App. 19). During the pat-down, Mr. Wilson told the officer that he had been driving the car, and officers then placed Mr. Wilson under arrest for operating while intoxicated. (43:7; App. 19).

Following the hearing, the circuit court, the Honorable Jean M. Kies presiding, denied Mr. Wilson's suppression motion. (43:20; App. 32). The court concluded that the warrantless entry into Mr.

Wilson's backyard was "justified by exigent circumstances of a hot pursuit of a fleeing suspect who had committed jailable offenses." (43:8; App. 20). According to the circuit court, "[t]he officer and his partner performed a limited entry into the backyard area and knocked on the garage door" in order to "prevent the continued flight under the circumstances, and the officer's actions were constitutionally reasonable." (43:9; App. 21). The court found that the officers' actions were proper and that "there were exigent circumstances that suggest that Mr. Wilson was trying to evade capture." (43:19; App. 31). The court went on to say, "I can't reward you for jumping over the fence." (43:19; App. 31).

Plea and Sentencing Hearing:

On May 23, 2019, Mr. Wilson pled guilty to Counts 1 and 2, and Count 3 was dismissed and read-in. (24:1-2; 41:3, 17; App. 11-12). Sentencing took place on the same date, the Honorable David Borowski presiding. The court sentenced Mr. Wilson to 90 days in jail on Count 1 and 4 months in jail on Count 2, concurrent with one another. (24:1-2; 41:13-14; App. 11-12).

Appellate Proceedings:

Mr. Wilson appealed and the court of appeals affirmed. *State v. Wilson*, No. 2020AP1014-CR, unpublished slip op., ¶ 1 (Wis. Ct. App. May 11, 2021). (App. 3-4). The court did not address whether probable cause and exigent circumstances justified entry into the backyard. Instead, the court adopted an alternative argument raised by the State: that police

had "implicit license" to enter Mr. Wilson's fenced-in backyard in order to conduct a lawful "knock and talk" investigation. *Id.* at ¶¶ 18-20. (App. 7-8). According to the court:

> "[I]mplicit license" existed for the officers to enter the backyard in the middle of the day from the alley, walk to the side garage door, and knock. Although the backyard was surrounded by a fence, the gate was open. It was not latched or locked shut. As a result, there is no clear indication that visitors were intended to be excluded from entering….
>
> Moreover, there was reason to believe that someone was in the backyard. Prior to entering the backyard, Officer Siefert spoke to the 911 caller who stated that the driver of the car that was "all over the roadway … changing speeds, just driving very erratically" had opened the fence and entered the backyard.

Id. at ¶¶ 23-24. (App. 9).

This Court granted Mr. Wilson's petition for review.[1]

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[1] Because the court of appeals did not address the issue of whether the seizure was justified by probable cause and exigent circumstances as found by the circuit court, Mr. Wilson did not raise this issue in his petition for review. "In cases where this [C]ourt reverses the court of appeals and the court of appeals did not reach an issue, [this Court] will often remand the case for consideration of the issue not reached." *State v. Wilson*, 2015 WI 48, ¶ 86, n. 15, 362 Wis. 2d 193, 864 N.W.2d 52.

ARGUMENT

I. Police did not have implicit license to enter Mr. Wilson's backyard through the gate of a tall, solid privacy fence in order to conduct a knock and talk investigation.

A. General legal principles and standard of review.

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution guarantee the right to be free from unreasonable searches and seizures.[2] Physical entry of the home "is the chief evil against which the wording of the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980) (internal quotation omitted). At the Fourth Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961).

Additionally, the Fourth Amendment protections which apply to the home attach to the curtilage, which is "the land immediately surrounding and associated with the home." *Oliver v. United States*, 466 U.S. 170, 180 (1984). Consequently, the Fourth Amendment generally prohibits a warrantless entry into the curtilage unless it is supported by probable

[2] This Court has interpreted Article I, Section 11 in accord with the United States Supreme Court's interpretation of the Fourth Amendment. *State v. Duchow*, 2008 WI 57, ¶ 18, n. 14, 310 Wis. 2d 1, 749 N.W.2d 913.

cause and exigent circumstances. *State v. Weber*, 2016 WI 96, ¶ 19, 372 Wis. 2d 202, 887 N.W.2d 554; *State v. Dumstrey*, 2016 WI 3, ¶ 21, 366 Wis. 2d 64, 873 N.W.2d 502.

Notwithstanding the above, the United States Supreme Court has recognized the constitutionality of a "knock and talk" exception to the Fourth Amendment's warrant requirement. *Florida v. Jardines*, 569 U.S. 1, 8 (2013). The Court explained that an "implicit license" exists that allows visitors to "approach the home *by the front path*, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id.* (emphasis added). Accordingly, a police officer without a warrant may approach a home and knock because that is no more than what a private citizen may do. *Id.* By contrast, when police obtain information through an unlicensed physical intrusion, "a 'search' within the original meaning of the Fourth Amendment" has "undoubtedly occurred." *Id.* at 5 (*quoting United States v. Jones*, 565 U.S. 400, 406, n. 3).

Where an unlawful search or seizure occurs, the remedy is to suppress the evidence produced. *State v. Carroll*, 2010 WI 8, ¶ 19, 322 Wis. 2d 299, 778 N.W.2d 1; *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). Whether police conduct violates the constitutional guarantee against unreasonable searches and seizures is a question of constitutional fact subject to a two-step standard of review on appeal. *State v. Griffith*, 2000 WI 72, ¶ 23, 236 Wis. 2d 48, 613 N.W.2d 72. A reviewing court upholds the circuit court's findings of historic fact unless they are clearly

erroneous. *State v. Fonte*, 2005 WI 77, ¶ 11, 281 Wis. 2d 654, 698 N.W.2d 594. It must then "apply the constitutional principles to the facts at hand to answer the question of law." *Dumstrey*, 366 Wis. 2d 64, ¶ 13.

B. Police entered the curtilage of Mr. Wilson's home.

Courts use the following four-factor test to determine whether the area in question is curtilage:

> [T]he proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

State v. Martwick, 2000 WI 5, ¶ 30, 231 Wis. 2d 801, 604 N.W.2d 552 (*quoting United States v. Dunn*, 480 U.S. 294, 301 (1987)).

This test is not a mechanical or finely-tuned formula. Rather, the factors are "useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration," which is whether the area in question "is so intimately tied to the home itself that it should be placed under the home's umbrella of Fourth Amendment protection." *Dumstrey*, 366 Wis. 2d 64, ¶ 32 (*quoting Dunn*, 480 U.S. at 301) (internal quotation omitted).

The police trespass in this case occurred in a small, fenced-in yard—a prototypical form of curtilage. *See State v. Walker*, 154 Wis. 2d 158, 184, 453 N.W.2d 127 (1990), *abrogated in part, on other grounds, by*

State v. Felix, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775 (holding that "it is obvious that Walker's fenced-in backyard falls within the curtilage of his home"); *see also United States v. Sweeney*, 821 F.3d 893, 901 (7th Cir. 2016) (listing a "porch, a small fenced-in yard, a gated walkway along the side of a house" as obvious examples of curtilage).

In addition, all four factors from *Dunn* weigh in favor of a finding that Mr. Wilson's fenced-in yard and garage are within the curtilage of his home. *Dunn* involved a barn located within a ranch that was entirely surrounded by a ranch-style fence. *Dunn*, 480 U.S. at 294. The facts from *Dunn* provide a useful point of reference for evaluating the curtilage factors in Mr. Wilson's case.

Proximity. In *Dunn*, the Court found that the area in question was 180 feet from the home and that such a substantial distance did not support an "inference that the barn should be treated as an adjunct of the house." *Dunn*, 480 U.S. at 302. Here, the distance between Mr. Wilson's garage and his house appears to be about 10 to 15 feet. (50 at 00:25-00:50; *see*, *e.g.,* App. 90).

Enclosure (surrounding home). The enclosure factor also supports a determination of curtilage in this case. In *Dunn*, the Court held that, in contrast to a perimeter fence, an interior fence that surrounds the home is a "significant" factor in determining the curtilage. *Dunn*, 480 U.S. at 302. Here, the record reflects that Mr. Wilson's backyard was entirely enclosed by a tall, solid privacy fence.

(42:21-22; App. 55-56). While the gate to the fence happened to be open at the moment police arrived, a garbage can blocked entry through the gate such that police had to physically move the garbage can in order to gain entry into Mr. Wilson's backyard. (42:31; App. 65).

Nature of uses. The third factor also weighs in favor of a finding of curtilage. There is no indication in the record that Mr. Wilson's small, fenced-in backyard was used for anything other than personal and familial activities tied intimately to the home. The officer's body cam video shows children's toys, a child's car, and lawn chairs leaning against the porch. (50 at 00:25-00:50). In contrast, police officers in *Dunn* had evidence that "showed a truck apparently delivering chemicals to the barn, and the officers detected a strong chemical odor emanating from the barn itself." *Dunn*, 480 U.S. at 302–03.

Visibility. Finally, the fourth factor also supports a determination of curtilage. Mr. Wilson's small backyard is entirely fenced-in by a tall, solid privacy fence that prevents passers-by from viewing his yard. (42:21-22; App. 55-56). By contrast, in *Dunn*, the Court observed that the chain link fences functioned to corral livestock rather than block visibility from those passing by. *Dunn*, 480 U.S. at 303.

In sum, Mr. Wilson's fenced-in backyard and garage, in close proximity to his residence, are part of the curtilage of Mr. Wilson's home. Accordingly, police

entered the curtilage of Mr. Wilson's home upon entering his backyard.[3]

C. Police did not have implicit license to enter Mr. Wilson's backyard through the gate of a tall, solid privacy fence.

1. Implicit license did not justify entry into the fenced backyard, as it was not held open to the public.

As noted in Section I.A, police do not violate the Fourth Amendment when they have "implicit license" to enter the curtilage of the home for the purposes of conducting a "knock and talk" investigation. *Jardines*, 569 U.S. 1 at 8. The United States Supreme Court has explained that:

> This implicit license typically permits the visitor to approach the home *by the front path*, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do."

[3] The State did not contest this assertion at the circuit court level nor in the court of appeals. The State should therefore be deemed to have admitted this argument. *See State v. Alexander*, 2005 WI App 231, ¶ 15, 287 Wis. 2d 645, 706 N.W.2d 191 ("Arguments not refuted are deemed admitted.").

Id. (emphasis added) (*quoting Kentucky v. King*, 563 U.S. 452, 469 (2011)).

Here, unlike a home's front door, there was no implicit license for police to enter Mr. Wilson's backyard to knock on the side door of his garage. Most importantly, the record reflects that the perimeter of Mr. Wilson's backyard was surrounded by a tall, solid privacy fence that clearly indicated it was not open to the public. (42:21-22; App. 55-56). And, while the gate to the fence happened to be open at the moment police arrived, a garbage can blocked entry through the gate such that police could not enter without removing it.[4] (42:31; App. 65). Additionally, the police made no attempt to knock on the front door of Mr. Wilson's home, did not approach the home from the front path, and were under no illusion that they were approaching the front of the home. (42:21; App. 55). Thus, the police did not use a pathway that a private citizen would customarily use to approach a stranger's home and, accordingly, they did not have implicit license to enter Mr. Wilson's backyard. *See Jardines*, 569 U.S. 1 at 11 ("One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy.").

[4] *Cf. State v. Davis*, 2011 WI App 74, ¶ 14, n. 6, 333 Wis. 2d 490, 798 N.W.2d 902 ("Leaving a garage door open might reduce the resident's privacy interest and permit plain view observations from outside the garage, but that is a matter distinct from physical intrusion.")

2. Case law does not support the court of appeals' decision.

The court of appeals concluded that implicit license existed for police to enter Mr. Wilson's backyard from the alley, walk to his side garage door, and knock. *Wilson*, No. 2020AP1014-CR, unpublished slip op., ¶ 23. (App. 9). In support, the court analogized to the facts of *State v. Edgeberg*, 188 Wis. 2d 339, 346-347, 524 N.W.2d 911 (Ct. App. 1994):

> Although [Mr. Wilson's] backyard was surrounded by a fence, the gate was open. It was not latched or locked shut. As a result, there is no clear indication that visitors were intended to be excluded from entering. *See Edgeberg*, 188 Wis. 2d at 346-47 (distinguishing the entry of a porch with an unlocked screen door leading to an interior front door from the entry of a locked hallway that was only accessible to a limited group).

Wilson, No. 2020AP1014-CR, unpublished slip op., ¶ 23. (App. 9).

Contrary to the court's reasoning, *Edgeberg* does not support a finding that police lawfully entered Mr. Wilson's backyard. In *Edgeberg*, the area in question was a screened-in front porch with an "unlocked screen door presenting a view of the inner front door." *Edgeberg*, 188 Wis. 2d at 346-47. When the officer approached the home, he gleaned from the "traffic patterns on the lawn" that the door in question was "the main entrance to the house." *Id.* at 343. He was correct. Edgeberg's father confirmed that the wooden door inside the porch was the house's front door. *Id.* The officer testified that "in the course of his duties he

had encountered [similar] porches" and "it was community practice for visitors to knock on the main front door of [such] houses." *Id.* His general procedure was as follows:

> [I]f he can see through the exterior door, and can see another door that appears to lead into the living room, and if that interior door is open, he knocks on the outside door; if the exterior door is closed and it is "obviously a porch type area," he enters the porch and knocks on the door that appears to lead to the living area.

Id. at 344.

Mr. Wilson's case presents a much different factual scenario than *Edgeberg*. First, there is no evidence in the record that it was common practice for members of the public to enter Mr. Wilson's residence through the fenced-in backyard, as police did here. That is, there is no evidence that it was common practice for members of the public to enter the homes of others through backyards enclosed by tall, solid privacy fences. Additionally, while the gate to the fence happened to be open at the moment police arrived, a garbage can blocked entry through the gate such that police could not enter without removing it. (42:31; App. 65). Furthermore, unlike in *Edgeberg*, the police made no attempt to approach Mr. Wilson's front door and knock, nor did they believe that they were approaching the front of the home. (42:21; App. 55). Consequently, *Edgeberg* does not support a finding that police had implicit license to enter Mr. Wilson's backyard.

Due to the absence of any Wisconsin case law authorizing knock and talk investigations in situations in which police enter the curtilage through the private fenced-in backyard of a home, the court of appeals' opinion relied heavily on two federal cases:

> [C]ourts have recognized that there are instances in which officers are justified in approaching by an alternative or back entryway. *See, e.g., Alvarez v. Montgomery Cnty.*, 147 F.3d 354, 356 (4th Cir. 1998) (stating that the Fourth Amendment does not prohibit police from entering into a backyard when circumstances indicate they might find the homeowner there); *United States v. Garcia*, 997 F.2d 1273, 1279-80 (9th Cir. 1993) (stating that "If the front and back of a residence are readily accessible from a public place, like the driveway and parking area ... the Fourth Amendment is not implicated when officers go to the back door reasonably believing it is used as a principal entrance to the dwelling").

Wilson, No. 2020AP1014-CR, unpublished slip op., ¶ 22. (App. 8-9).

The court also analogized Mr. Wilson's case to the facts of *Alvarez*:

> There was reason to believe that someone was in [Mr. Wilson's] backyard. Prior to entering the backyard, Officer Siefert spoke to the 911 caller who stated that the driver of the car that was "all over the roadway … changing speeds, just driving very erratically" had opened the fence and entered the backyard. *See Alvarez*, 147 F.3d at 358-59 (finding that there was no Fourth Amendment violation when officers received a 911 call about an underage drinking party and proceeded to the

> backyard of a residence after seeing a sign indicating the party was in the back).

Wilson, No. 2020AP1014-CR, unpublished slip op., ¶ 24. (App. 9).

However, the federal cases cited above do not support the court of appeals' finding that police lawfully entered Mr. Wilson's backyard. In *Alvarez*, approximately 70-75 people attended a party in which guests congregated on the back patio and in an adjacent recreation room. *Alvarez*, 147 F.3d at 356. Following a complaint of an underage drinking party, police approached the front door of the home and found a sign which read "Party In Back" with an arrow pointing towards the backyard, whereupon officers entered the backyard. *Id.* at 356-357. The court held that there was no unlawful entry into the backyard because "in light of the sign [and] arrow pointing toward the backyard, it surely was reasonable for the officers to proceed there directly as part of their effort to speak with the party's host." *Id.* at 358-359.

In *Garcia*, police entered the back porch of the defendant's apartment and peered through a screened door. *Garcia*, 997 F.2d at 1276. The court noted that, at the time officers entered the back porch area, they had a subjective good faith belief that they were actually approaching the front door of the apartment. *Id.* at 1279. Accordingly, the court found that the police did not violate the Fourth Amendment because they approached an area that was readily accessible to the public and reasonably believed they were approaching the principal entrance of the apartment. *Id.* at 1279-1280.

Mr. Wilson's case is clearly distinct from *Alvarez* and *Garcia*. Unlike in *Alvarez*, there was no sign directing anyone to enter Mr. Wilson's backyard and no indication that the police would be unable to speak with anyone if they knocked on his front door. And, contrary to *Garcia*, the police were under no belief that they were in fact approaching the home's front door. Furthermore, unlike both *Alvarez* and *Garcia*, the record reflects that Mr. Wilson's backyard was enclosed by a tall, solid privacy fence. (42:21-22; App. 55-56). Consequently, these cases do not justify a finding that the police lawfully entered the curtilage of Mr. Wilson's home.

Moreover, case law from other jurisdictions does not support the court of appeals' decision. As in *Alvarez* and *Garcia*, courts that have permitted backyard knock and talks have done so based on a finding that the backyard in question was held open to the public. *See United States v. Titemore*, 437 F.3d 251, 252 (2nd Cir. 2006), ("Because the trooper approached a principal entrance to the home using a route that other visitors could be expected to take," he did not violate the Fourth Amendment); *United States v. James*, 40 F.3d 850, 862 (7th Cir. 1994), *rev'd on other grounds, United States v. James*, 516 U.S. 1022 (1995) ("where the back door of a residence is readily accessible to the general public, the Fourth Amendment is not implicated when police officers approach that door in the reasonable belief that it is a principal means of access to the dwelling.")

Additionally, courts in numerous jurisdictions have noted skepticism at the concept of a knock and

talk investigation that does not begin at the front of the home. *See Carman v. Carroll*, 749 F.3d 192, 199 (3rd Cir. 2014) ("The 'knock and talk' exception requires that police officers begin their encounter at the front door, where they have an implied invitation to go."), *rev'd on other grounds*, *Carman v. Carroll*, 574 U.S. 13 (2014); *United States v. Wells*, 648 F.3d 671, 679 (8th Cir. 2011) ("To the extent that the "knock-and-talk" rule is grounded in the homeowner's implied consent to be contacted at home, we have never found such consent where officers made no attempt to reach the homeowner at the front door."); *State v. Chute*, 908 N.W.2d 578, 587 (Minn. 2018) (same); *Pace v. Commonwealth*, 529 S.W.3d 747, 757 (Ken. 2017) (""knock and talk" procedures are commonly violated when conducted at a back door that is not the main entryway.").

Here, Mr. Wilson's backyard was not held open to the public and the police did not use a pathway that a private citizen would customarily use to approach a stranger's home. Accordingly, the absence of case law in Wisconsin and other jurisdictions authorizing knock and talks in private, fenced-in backyards further underscores that the police did not have implicit license to enter the curtilage of Mr. Wilson's home.

CONCLUSION

For the reasons stated above, Mr. Wilson respectfully requests that this Court reverse the court of appeals' decision and remand for that court to address Mr. Wilson's unresolved arguments.

Dated this 12th day of January, 2022.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in §§ 809.19(8)(b) and (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,433 words.

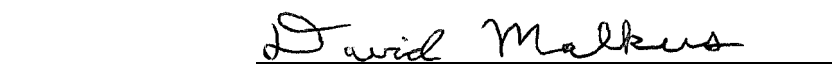
CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, including the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after 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.

Dated this 12th day of January, 2022.

Signed:



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