STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP311-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

DONTE QUINTELL MCBRIDE,

Defendant-Appellant.

On Review from a Decision of the Wisconsin Court of Appeals Reversing and Remanding the Circuit Court's Decision and Order Denying a Motion to Suppress the Evidence Entered in the Milwaukee County Circuit Court, the Honorable J.D. Watts, Presiding

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RESPONSE BRIEF OF DEFENDANT-APPELLANT

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INTRODUCTION

Two City of Milwaukee police officers on routine patrol, pulled into the alley behind Donte McBride's house, observed a parked vehicle with its headlights off and shone the squad spotlight on it, startling the occupants. One of the officers said he saw the passenger, Mr. McBride, move within the vehicle. Within seconds, the officers approached the vehicle, instructed the occupants to put their hands up, and they complied. Police immediately handcuffed Mr. McBride, removed him from the vehicle and searched him. He was subsequently charged with the illegal possession of controlled substances.

The court of appeals found that the circuit court's finding that the SUV was parked "improperly" was clearly erroneous based on its review of the officer's own body-worn camera footage. The court of appeals further found that the officers lacked reasonable suspicion to seize Mr. McBride under the totality of the circumstances here- that the seizure occurred in a high-crime area, at night, of two individuals sitting in an unlit parked car in an alley, one of whom, according to one of the officers, moved in response to a blinding police spotlight being shone upon him. This Court should affirm the court of appeals, find that the circuit court's finding the SUV was improperly parked was clearly erroneous and, under the totality of the circumstances, officers lacked reasonable suspicion to seize Mr. McBride.

ISSUES PRESENTED

1. Whether the court of appeals correctly applied the legal standard of review to the circuit court's denial of Mr. McBride's suppression motion?

The circuit court concluded the seizure was lawful and denied the suppression motion. The court of appeals reversed the circuit court, concluding that its factual findings were clearly erroneous.

2. If the initial seizure was justified, was it lawful for the police to remove Mr. McBride and search him?

The circuit court concluded the police acted lawfully in removing Mr. McBride from the SUV and searching him. The court of appeals did not reach this issue.

POSTION ON ORAL ARGUMENT AND PUBLICATION

In accepting this case for review and scheduling oral argument this Court has determined both are appropriate.

STATEMENT OF THE FACTS AND THE CASE

The State filed a criminal complaint against Donte Q. McBride, alleging possession with intent to deliver controlled substances (heroin) (>3-10 grams), in violation of Wis. Stat. § 961.41(1m)(d)(2) and possession of narcotic drugs, in violation of Wis. Stat.

§ 961.41(3g)(am).[1] (1:1). The allegations were based upon a police seizure and search of Mr. McBride, a passenger in a vehicle police observed stopped in an alley on October 28, 2018. (1:2).

An amended information later charged Mr. McBride with one count of possession with intent to deliver a controlled substance (heroin) (>3-10 grams), second and subsequent offense, in violation of Wis. Stat. §§ 961.41(1m)(d)(2), 939.50(3)(e) and 961.48(1)(b) (Count 1) and two counts of possession with intent to deliver narcotics, second and subsequent offense, in violation of Wis. Stat. §§ 961.41(1m)(a), 939.50(3)(e) and 961.48(1)(b) (Counts 2 (oxycodone) and 3 (fentanyl)). (6:1-2).

Mr. McBride filed a motion to suppress the evidence which alleged the police seizure and search violated the Fourth Amendment. (7). At the hearing on the suppression motion, Milwaukee Police Officer Jose Rivera, who seized, searched and arrested Mr. McBride, was the State's sole witness. (40; 46). Video recorded by police body cameras was introduced as Exhibit 1 (40:14-15; 12).[2]

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[1] All references to the Wisconsin Statutes refer to the version in effect 2021-2022, unless otherwise noted.

[2] All references to the body camera video received as evidence at the suppression hearing will be to the file titled "TRAFFIC_STOP 2" which is the only file on the DVD that was submitted by the court. (40:14-15, 43, 12). Counsel will indicate where specific events happen on the video by citing to the time counter at the bottom of the screen which begins at 0:00:00 and reports elapsed time in the video in the format hours:minutes:seconds.

Officer Rivera testified that while on routine patrol on October 28, 2018, at approximately 11:15 p.m., he and his partner, Officer Eric Kradecki, drove through an alley near 416 East Locust Street in Milwaukee. (40:5-6). The officers were shining the police spotlight into the vehicles they encountered. (43 at 0:00:03-0:00:09). The officers approached a SUV with no headlights on, parked in the alley. (40:6; 43 at 0:00:20).

Immediately upon seeing the SUV, Officer Rivera shone the police spotlight on it and observed two occupants inside - the driver and a front seat passenger. (40:6-7; 43 at 0:00:22). Officer Rivera acknowledged that it was possible that one may be blinded by the spotlight. (40:30).

Officer Rivera testified that upon shining the spotlight into the SUV, he saw the passenger "bend down towards his waist area and begin to reach around in the vehicle." (40:7-8). Officer Rivera admitted that it was difficult to see Mr. McBride's movement on his body camera footage, which was played at the suppression hearing. (43 at 0:00:22 - 0:00:29; 40:41).

Officer Rivera acknowledged that police had no reports of a "ShotSpotter" call or other suspicious activity in the area, nor were they provided any information regarding Mr. McBride or the vehicle he was in specifically. (40:19-20). According to Officer Rivera, it was Mr. McBride's movement which prompted him to believe that "something illegal was going on." (40:20).

Officer Rivera testified the way the SUV was parked would have obstructed traffic, if there was a large vehicle or two-way traffic, and could have been being ticketed and towed. (40:7, 40:20). On cross-examination, however, Officer Rivera acknowledged he was able to maneuver around the SUV and did not take measurements to indicate that it in fact obstructed traffic. (40:20).

The officers got out of their squad car and immediately ordered the SUV's occupants to put their hands up. (40:9; 43 at 0:00:28-0:00:34). Officer Kradecki made contact with the driver, while Officer Rivera approached the passenger, Mr. McBride. (43 at 0:00:33-0:00:41; 40:10). Officer Rivera shouted and repeated "hands up!" as he approached Mr. McBride. (43 at 0:00:28-0:00:34; 40:10). While Officer Kradecki spoke with the driver, Officer Rivera opened the passenger side door. (43 at 0:00:37-0:00:40; 40:11). Not more than 25 seconds passed between the time the officers observed the parked vehicle and when they ordered the occupants to put their hands up. (43 at 0:00:15-0:00:40; 40:23).

Mr. McBride complied with the command to keep his hands up and Officer Rivera handcuffed him while asking what he was reaching for and what he was doing there. (43 at 0:00:28-0:00:55; 40:11, 22-24). Mr. McBride denied reaching for anything and responded that "this is my house right here." (43 at 0:00:53-0:00:58; 40:31). Indeed, the SUV was parked behind the house where Mr. McBride lived. (40:30).

After handcuffing Mr. McBride, Officer Rivera pulled him out of the SUV. (43 at 0:00:57-0:01:02; 40:11). As he did so, Officer Rivera noticed an orange pill bottle without a label on the floor of the front passenger area, in plain view. (40:11-12, 25). Officer Rivera testified that, based on his training and experience, the presence of the unlabeled pill bottle indicated Mr. McBride was unlawfully possessing a controlled substance. (40:12).

Upon removing Mr. McBride from the SUV, Officer Rivera searched him and found another unlabeled pill bottle in his right front jacket packet. (40:12; 46:21; 43 at 0:01:10). He subsequently found a baggie containing suspected heroin, later confirmed to contain a combination of heroin and fentanyl. (1:2). Both the pill bottle and the baggie were removed from Mr. McBride's jacket. (43 at 0:01:10-14, 0:02:20-26). On cross-examination, Officer Rivera admitted that he did not believe the pill bottle was a weapon. (40:25).

Both parties offered argument before the court issued its oral ruling. (40:34-50, 46:2-22). The State argued the police possessed reasonable suspicion to seize and search Mr. McBride, based upon his presence in a vehicle parked in an alley in a high-crime area and his movement upon a police spotlight being directed inside the vehicle. (40:35-36; 46:3-6). Mr. McBride argued Officer Rivera lacked reasonable suspicion to seize and search him pursuant to *Terry v. Ohio,* 392 U.S. 1 (1968). (40:38-40, 46:6-10).

In an oral ruling, the circuit court, the Honorable J.D. Watts, denied the motion to suppress,

finding the police had reasonable suspicion to seize and search Mr. McBride pursuant to *Terry v. Ohio*, *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) and Wis. Stat. § 968.25. (40:40-50, 46:11-23).

In denying the suppression motion, the circuit court noted Officer Rivera had been a police officer for almost 12 years. (40:41). The court found Officer Rivera credible and gave weight to his testimony that he observed Mr. McBride make a furtive movement, despite the lack of corroboration from the body camera recording. (40:42). According to the circuit court, a furtive movement may indicate "consciousness of guilt and action to secrete evidence." (40:49).

Accepting the officer's testimony of his knowledge of the area as "high-crime," the court acknowledged this factor alone would be insufficient to provide reasonable suspicion. (40:46).

However, the court found that the combination of Mr. McBride's furtive movement and his presence in a "high-crime area" created reasonable suspicion justifying the seizure. Additionally, the court found suspicious the presence of two occupants sitting in an improperly parked vehicle without headlights illuminated in an alley. (40:46-47).

Finally, the court found the presence of pill bottles on the floorboard of the car unusual and related to Officer Rivera's inference of suspicious activity. (40:49).

Considering the above factors - the presence of a vehicle allegedly improperly parked in an alley,

occupied by two individuals and without headlights on, in a high-crime area, where the passenger made a furtive movement upon a police spotlight being shone into the vehicle and the observation of a pill bottle on the floorboard - the court found Officer Rivera possessed reasonable suspicion under *Terry* to justify Mr. McBride's seizure and the subsequent frisk of his person, for officer safety. (40:46, 49-50). The circuit court further found Officer Rivera lawfully seized the pill bottle from Mr. McBride's jacket and had probable cause to arrest him. (46:21).

Following the court's denial of his suppression motion, Mr. McBride pleaded guilty to all three counts in the information; in exchange, the State agreed to dismiss and read-in the second and subsequent offense enhancers on all counts. (46:25).

On September 30, 2019, the court sentenced Mr. McBride to a term totaling 6 years imprisonment (3 years confinement and 3 years extended supervision). (42:30; 17).

Mr. McBride timely filed a notice of intent to pursue postconviction relief. (19:1). He appealed the circuit court's denial of his suppression motion pursuant to Wis. Stat. § 971.31(10). On December 20, 2022, the court of appeals issued its decision, reversing the circuit court's denial of Mr. McBride's suppression motion and remanding the matter with instructions. *State v. McBride*, Appeal No. 2021AP311-CR,

unpublished slip op., ¶1 (Wis. Ct. App. Dec. 20, 2022) (unpublished opinion).[3]

The majority of the court of appeals found that officers who observed an unlit SUV in an alley at night in a high-crime area, and illuminated the SUV to discover it occupied by a driver and a passenger who, according to one of the officers, moved about within the vehicle, did not have reasonable suspicion to seize the vehicle or its occupants. *Id.* at ¶¶ 10, 23. The majority noted that, based upon its review of the evidence, the SUV was not improperly parked or clearly violating a traffic law or ordinance and did not consider the manner in which the vehicle was parked suspicious. *Id.* at ¶¶ 21-22. The dissent argued that circuit court's finding that the SUV was improperly parked was not clearly erroneous and therefore officers possessed reasonable suspicion which justified the seizure. *Id.* at ¶¶ 36-37.

[3] Pursuant to Wis. Stat. § 809.23(3)(c), this unpublished opinion is included in the appendix.

ARGUMENT

I. The court of appeals correctly held that Mr. McBride's presence in a vehicle parked in the alley behind his house late at night in a high-crime area, and his movement within the vehicle upon police shining a spotlight into the vehicle did not provide reasonable suspicion for a traffic stop.

Donte McBride sat in the passenger seat of a vehicle parked in the alley behind his own house. Nothing about that is criminally suspicious. The fact that Mr. McBride lives in a "high-crime area" and that the police encounter occurred "late at night" does not change that. *State v. Gordon*, 2014 WI App 44, ¶15, 353 Wis. 2d 468, 846 N.W.2d 483. Individuals living in high-crime areas cannot constitutionally be randomly stopped and searched simply because of where they live; they are entitled to the same level of constitutional protection as everyone else. *Id*. This Court should uphold the decision of the court of appeals, which reversed the circuit court's denial of Mr. McBride's suppression motion.

A. General legal principles and standard of review.

The right to be free from unreasonable searches and seizures without a warrant is guaranteed by the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution. Wisconsin courts generally follow the United States Supreme Court's interpretation of the Fourth

Amendment in construing Article I, § 11. *State v. Betterly*, 191 Wis. 2d 407, 417, 529 N.W.2d 216 (1995).

The Fourth Amendment governs all police intrusions, including investigatory or *Terry* stops. *See Terry v. Ohio*, 392 U.S. 1 (1968). Where an unlawful stop occurs, the remedy is usually to suppress the evidence it produced. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963); *State v. Washington*, 2005 WI App 123, ¶19, 284 Wis. 2d 456, 700 N.W.2d 305 (2005).

An investigatory stop must be based on more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry*, 392 U.S. at 27. To conduct a lawful *Terry* stop, an officer must have reasonable suspicion, based on specific and articulable facts, to believe the person is engaged in criminal activity. *Ornelas v. United States*, 517 U.S. 690, 696 (1996).

Determining whether an officer had reasonable suspicion to stop a defendant involves an objective analysis of the totality of the circumstances, considering the facts in the record and rational inferences from those facts. *Ohio v. Robinette*, 519 U.S. 33, 34 (1996). However, to "accommodate public and private interests some quantum of *individualized* suspicion is usually a prerequisite to a constitutional search or seizure." *United States v. Martinez-Fuente*, 428 U.S. 543, 560 (1976) (emphasis added); *see also Michigan v. Summers*, 452 U.S. 692, 699 n.9 (1981).

In reviewing the denial of a motion to suppress, this Court applies a two-step standard. *State v. Martin*, 2012 WI 96, ¶28, 343 Wis.2d 278, 816 N.W.2d 270. First, it will uphold the trial court's findings of

fact unless they are clearly erroneous. *Id*. Second, it independently reviews whether those facts meet the applicable constitutional standard. *Id*.

B. The court of appeals appropriately reviewed the circuit court's findings of fact under the applicable "clearly erroneous" standard and properly applied the facts to constitutional principles.

It is uncontroverted that the SUV, and Mr. McBride as a passenger in that vehicle, were seized when Officer Rivera instructed him to put his hands up. *State v. McBride*, Appeal No. 2021AP311-CR, unpublished slip op., ¶ 14 (Wis. Ct. App. Dec. 20, 2022). The circuit court found several factors which established Officer Rivera's reasonable suspicion under the totality of the circumstances, and justified the seizure of the SUV and of Mr. McBride. Those factors, as articulated by the court of appeals, were (1) that the SUV was parked in a "high-crime" area; (2); the SUV had its lights off; (3) there were two people sitting inside the SUV; (4) the manner in which the SUV was parked in the alley; and (5) Mr. McBride's movement within the SUV in response to the police spotlight being shone into the SUV. *Id.* at ¶ 16. Additionally, the circuit court found the officer relied upon his training and experience to find the unlabeled pill bottle on the floorboard suspicious. *Id.* at n.5.

The court of appeals reviewed each of the factors above, in light of the evidence in the record, to conclude under the totality of the circumstances that the circuit court's findings were clearly erroneous and that

Officer Rivera did not possess reasonable, articulable suspicion to support the seizure. This Court should do the same.

1. The court of appeals correctly concluded that the record did not support the circuit court's factual findings, which were clearly erroneous.

The State characterizes the incongruity between the circuit court and the court of appeals' determinations as mere disagreement where "a different fact-finder could draw different inferences." (State's Br., p. 22, *citing State v. Wenk*, 2001 WI App 268, ¶ 8, 248 Wis. 2d 714, 637 N.W.2d 417). But this assertion minimizes the obvious discrepancy between the circuit court's findings and the evidence in the record, which the court of appeals relied upon in concluding that the circuit court's findings were clearly erroneous.

The circuit court heard the testimony of Officer Rivera and reviewed the footage of the encounter, captured by Officer Rivera's body-worn camera. (40:14-17, 28). The circuit court then made several findings of fact, critical to its analysis of the reasonableness of the stop.

Regarding the position of the SUV within the alley, the circuit court stated:

> There's an inference that the vehicle is partially blocking the alley, and there was later testimony that the vehicle could have been towed or ticketed,

> at least the consideration thereof. So the vehicle is in an unusual place with the lights out. Now, when the squad illuminates the vehicle with the spotlight, they discovery that there are occupants. And this can be used for reasonable suspicion because the discovery of occupants in an unilluminated vehicle parked in the middle of the alley is suspicious. (40:46-47).

Therefore, the circuit court found that the SUV was parked in the *middle* of the alley. (40:47). But the evidence does not actually support this conclusion.

While a reviewing court is tasked to "search the record not for evidence opposing the circuit court's decision, but for evidence supporting it," and affirm a lower court's findings of fact, it is not to do so "when the finding is against the great weight and clear preponderance of the evidence." *Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶ 12, 290 Wis. 2d 264, 714 N.W.2d 530. As noted by the State, a circuit court's findings are clearly erroneous when they "strike [the court] as wrong with the force of a five-week old, unrefrigerated dead fish." *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988).

Here, the court of appeals searched the record for evidence in support of the circuit court's decision. Its analysis included reviewing the recording from Officer Rivera's body camera, which was included in the record of the suppression hearing. "If a picture is worth a thousand words, a video is a thousand pictures." *State v. Roberson*, 2019 WI 102, ¶ 77, 389 Wis. 2d 190, 935 N.W.2d 813. Officer Rivera's recording of the encounter reveals the circuit court's

findings were clearly erroneous. As stated by the court of appeals, the officer's body cam recording "reflects that the SUV was not in fact parked in the middle of the alley, but rather off to the side with the driver behind the wheel and available to move the SUV." *McBride*, Appeal No. 2021AP311-CR, unpublished slip op. , ¶ 22 (Wis. Ct. App. Dec. 20, 2022).

Similarly, Officer Rivera's testimony contradicts a finding that the parked SUV obstructed traffic, as he "conceded that he was able to maneuver his squad car around the parked SUV." *McBride*, Appeal No. 2021AP311-CR, unpublished slip op. , ¶ 22 (Wis. Ct. App. Dec. 20, 2022).

The burden is on the State to prove that a traffic stop is reasonable. S*tate v. Post*, 2007 WI 60, ¶ 12, 301 Wis. 2d 1, 733 N.W.2d 634. In its search for support that officers here conducted a lawful traffic stop, the circuit court ignored the absence of evidence supporting a perceived traffic violation. The court of appeals did not make the same mistake and instead observed that Officer Rivera conceded "he took no measurements of the alley to determine whether the SUV would have in fact obstructed traffic." *McBride*, Appeal No. 2021AP311-CR, unpublished slip op., ¶ 22. (Wis. Ct. App. Dec. 20, 2022).

The State attempts to minimize Officer Rivera's concession that he was in fact able to maneuver around the parked vehicle, and assails the court of appeals for concluding that the circuit court's factual finding that the vehicle was obstructing traffic was clearly erroneous. (State's Br., p. 24-25). Yet the State

does not suggest that the body camera footage shows anything other than what the court of appeals concluded in its decision: that the SUV was not parked in the middle of the alley such that it was impeding traffic, but was rather off to the side with the driver behind the wheel and able to move the vehicle. *McBride*, Appeal No. 2021AP311-CR, unpublished slip op., ¶ 12 (Wis. Ct. App. Dec. 20, 2022). And, while the State laments that the court of appeals didn't "explain *why*" it found the circuit court's finding on this point clearly erroneous, it fails to explain what more the court of appeals could have said - for what more was needed than its statement that the video refuted the circuit court's finding?

Further supporting the court of appeals' determination that the circuit court's factual findings were clearly erroneous is the circuit court's consideration of the unlabeled pill bottle, discovered on the floorboard of the passenger side of the SUV, after the police had already stopped the vehicle and Mr. McBride. *Id*. at ¶ 16, n.5. As the court of appeals correctly noted, such evidence was irrelevant to the reasonableness of the stop, as it was not known to Officer Rivera prior to the seizure. *Id*. (citing *State v. Genous*, 2021 WI 50, ¶10, 397 Wis. 2d 293, 961 N.W.2d 41).

Here, contrary to the State's claim, the court of appeals did not "insert[] itself as the factfinder and simply replace[] the circuit court's record supported findings with its own." (State's Br. at 25). Instead, the court of appeals fully reviewed the evidence, giving an appropriate amount of deference to the circuit court,

but ultimately – and correctly - concluded that the evidence in the record, including the officer's body camera footage, could simply not support the circuit court's factual findings.

2. Police did not have reasonable, articulable suspicion of criminal activity to justify the seizure of the SUV and Mr. McBride.

The court of appeals reviewed the various factors presented to the circuit court under the totality of the circumstances and, analyzing those factors under the applicable constitutional principles, properly concluded that the seizure of the parked SUV was not supported by reasonable, articulable suspicion.

In its decision, the court of appeals began by noting that police in this case were *not* responding to a call for service or a tip of suspicious or criminal activity. *McBride*, ¶ 15. Here, officers were "on patrol, looking for any suspicious activity, things of that nature." (40:5); *Cf. State v. Norton*, Appeal No. 2019AP1796-CR, unpublished slip op. (Wis. Ct. App. April 14, 2020) (finding it reasonable for officers to shine a spotlight into a parked car when responding to a "shots fired" call for service)[4]; *State v. Nimmer*, 2022 WI 47, ¶¶ 27, 34, 402 Wis. 2d 416, 975 N.W.2d 598 (finding reasonable suspicion where officers responded to a ShotSpotter call within minutes and observed the defendant, and no one else, at nearly the exact location

[4] Pursuant to Wis. Stat. § 809.23(3)(c), this unpublished opinion is included in the appendix.

where gunfire was reported and who, upon noticing the officers, made suspicious movements).

The court of appeals also reviewed the factors cited by the circuit court in support of its finding of reasonable suspicion and applied the constitutional principles applicable to those factors. Cited by the State and the circuit court was the fact that the stop occurred in a high-crime area. (40:35, 46). As the court of appeals recognized, presence in a high-crime area, without more, is an insufficient basis for reasonable suspicion. *See State v. Gordon*, 2014 WI App 44, ¶ 15, 353 Wis. 2d 468, 846 N.W.2d 483.

The State argues that the court of appeals failed to consider the lateness and darkness of the hour. (State's Br., p. 34). In fact, however, the court of appeals acknowledged the time (11:15 p.m.), ¶ 3, and inferentially referenced the darkness in its discussion of two people sitting in a parked SUV with its lights off and of Mr. McBride's movements in response to the police shining of the squad spotlight into the vehicle. *McBride*, ¶¶ 18, 19. That a vehicle's lights are off is plainly only relevant if, in fact, it is dark out. Moreover, the court of appeals considered the darkness, in combination with the high-crime area and Mr. McBride's movements, in referencing *Gordon* in which the defendant, walking late at night in a high-crime area, made a "security adjustment" upon noticing police. *Id.* at ¶¶ 19-20. The court of appeals found the facts of *Gordon* very similar to this case, where Mr. McBride sat in a parked vehicle in an alley in a high-crime area late at night when an officer shone a spotlight into the vehicle and he moved in

response. *Id.* at ¶ 20. Thus, from its review of the facts, and consideration of *Gordon*, it is clear that the court of appeals in fact considered the lateness and darkness of the hour in its evaluation the circumstances of the police seizure of the SUV and Mr. McBride.

3. The SUV was not parked in violation of any criminal law or traffic code.

a. The unlit SUV, parked to the side in an alley and occupied by a driver and a front-seat passenger, did not violate an overnight parking ordinance.

The State argues that Officer Rivera had reasonable suspicion to believe that the unlit, parked SUV in the alley violated an overnight parking ordinance. (State's Br., p. 26). This claim is unsupported. Officer Rivera acknowledged that he drove through the alley while on patrol and had no information regarding the vehicle, the driver or the passenger as suspicious or involved in criminal activity or traffic violation prior his encounter. (40:19). *Cf. State v. Nimmer*, 2022 WI 47 (officers responding to ShotSpotter notification); *State v. Richey*, 2022 WI 106, 405 Wis. 2d 132, 983 N.W.2d 617. Moreover, as evidenced by Officer Rivera's body camera footage (Exhibit 1), his observation of the SUV was less than half a minute. (40:15-16) ("stopp[ing] at 27 seconds."); *cf. Genous*, 2021 WI 50, ¶ 2 (officers observed activity from an unmarked squad car half a block away).

The City of Milwaukee Traffic Code recognizes the need for reasonable exceptions for a parking violation. Milwaukee, Wis. Traffic Code 101-23.2(3), which prohibits vehicles from parking or standing, allows a vehicle to be parked for the purpose of loading and unloading for up to ten minutes. Here, Officer Rivera did not have a reasonably sufficient time (less than half a minute) to assess whether or not the SUV in the alley was stopped for a lawful, temporary purpose.[5]

Moreover, once Officer Rivera illuminated the parked vehicle and observed the driver and front-seat passenger within the vehicle, suspicion of violating an overnight parking ordinance would have been unreasonable, as the vehicle was occupied and could have been moved. *See McBride,* Appeal No. 2021AP311-CR, unpublished slip op., ¶ 22 (Wis. Ct. App. Dec. 20, 2022).

b. The conclusion that the SUV, parked in an alley, obstructed traffic misapplies Wisconsin statutes and City of Milwaukee traffic code.

Rather than acknowledging that the recorded evidence and Officer Rivera's testimony clearly contradict the circuit court's finding that the SUV was parked in the "middle" of the alley, the dissent in the court of appeals and the State's argument here is that the SUV was improperly parked in the alley in such a

[5] The Milwaukee, Wis. Traffic Code, Section 101 is included in the appendix.

manner that a traffic violation has been committed, i.e., that the vehicle obstructed traffic. *Id.*, at ¶¶ 37-38 (J. Dugan, dissenting); (State's Br., pp. 26-28).

Milwaukee, Wis. Traffic Code 101-24.2 declares it "unlawful for any vehicle to be parked or left standing in a highway in such a manner as to obstruct traffic." The State points out that Milwaukee, Wis. Traffic Code, 101-1.2 adopts § 340, Wis. Stats. (State's Br., p.27). Therefore, the appropriate definition of an alley here is found at Wis. Stat. § 340.01(2), which defines an "alley" as "every highway within the corporate limits of a city, village or town, primarily intended to provide access to the rear of the property fronting upon another highway and *not intended for the use of through traffic*." (Emphasis added).

The State notes the use of the term "highway" in the definition of "alley." (State's Br., p. 27). But "such overlap does not create surplusage or render any language meaningless." *Sojenhomer LLC v. Village of Egg Harbor,* 2023 WI App 20, ¶ 32, 407 Wis. 2d 587, 990 N.W.2d 267. Rather,

> [S]tatutes sometimes contain terms that, by definition, overlap in some manner. Both § 346.02(8)(a) and (b) use the terms 'highway,' 'street' and 'alley' in the same sentence. A 'highway' is defined as 'all public ways and thoroughfares and bridges on the same.' Wis. Stat. § 340.01(22)… Likewise, 'alley' is defined as 'every *highway* within the corporate limits of a city, village or town primarily intended to provide access to the rear of property fronting upon another highway and not for the use of through traffic.' Sec. 340.01(2) (emphasis added).

> Therefore, both a 'street' and an 'alley' are a 'highway.'

Id. at ¶ 32, n.9.

Thus, an "alley" is distinct from a "highway" in that the former is not intended for the use of through traffic, while the latter clearly is. An alley is a highway, but with a limited purpose of providing access to the rear of a property fronting another highway; conversely, a highway is not an alley, but is intended for through traffic.

The State asserts that an "alley" is statutorily defined as a "highway" and therefore an ordinance which applies to a highway extends to an alley. (State's Br., p. 27). But the State ignores the difference between these two very distinct types of roadways, their uses and regulation by city ordinance, as pointed out by the court of appeals. *McBride*, ¶ 21, n.6.

The plain language of Milwaukee, Wis. Traffic Code 101-24.2 prohibits any vehicle from parking or standing in a *highway* in such a manner as to obstruct traffic. Notably, omitted from this ordinance is the use of the term "alley" or "street." *Id.* Elsewhere in the Milwaukee Traffic Code, however, "alley" and "street" are used in addition to the term "highway" to permit or prohibit various acts. For example, Milwaukee, Wis. Traffic Code 104-24.5(3) permits the removal and impoundment of any vehicle without an identification number from any alley, street, highway or public place in the city. Additionally, Milwaukee, Wis. Traffic Code 101-24.7 prohibits unregistered motor vehicles from any alley, street, highway, public way or thoroughfare

within the city. By its use of the term "alley" in these ordinances in addition to "highway," it is clear that the city traffic code assigns different meanings to these terms. The code's omission of "alley" in section 101-24.2 can therefore only mean that the city intended that section would not apply to this type of a roadway.

"[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110 (citations omitted).

As observed by Officer Rivera, alleys in Milwaukee "are very narrow." (40:6-7). Despite that fact, however, Officer Rivera conceded that he was able to maneuver the police squad car around the parked SUV and that he took no measurements of the alley to determine whether the SUV would have in fact obstructed traffic. *See State v. Post*, 2007 WI 60, ¶ 12 ("The State carries the burden of proving that the traffic stop was reasonable.").

Conceivably, some large vehicles (i.e. garbage trucks or moving trucks) may drive in an alley and have had difficulty maneuvering around a vehicle parked in an alley, but to presume the presence of such a vehicle at that time of night is not reasonable. Regardless, as noted by the court of appeals, the driver remained seated within the SUV and was presumably capable of moving it, should such a large vehicle appear.

The State argues the court of appeals, in another unpublished case, properly found a violation of Milwaukee, Wis. Traffic Code 101-24.3 in an alley and should do so here. (State's Br., pp. 27-28)(citing *State v. Neal*, Appeal No. 2017AP1397-CR, unpublished slip op. (Wis. Ct. App. April 3, 2018)).[6]

In *Neal*, the court of appeals upheld the stop of a vehicle parked in the middle of an alley which it concluded obstructed traffic in at least one direction. *Neal*, Appeal No. 2017AP1397-CR, , ¶2 unpublished slip op. (Wis. Ct. App. April 3, 2018). There, the circuit court found and the court of appeals concluded that the suspect vehicle was in fact parked in the middle of the alley, blocking traffic. *Id*. at ¶11. However, neither the parties' briefs nor the court's opinion in *Neal* addressed the issue of the definition of an "alley," or the fact that it is not a roadway intended for through traffic. Consequently, *Neal* does not control the outcome of this case, as it simply did not address this distinct issue.

Additionally, this case is factually distinguishable from *Neal*. Here, Officer Rivera did not testify that the SUV was the parking in the *middle* of the alley; he testified that the vehicle was parked in the alley. (40:6). And, the court of appeals found the circuit court's contrary finding that the SUV was parked in the middle of the alley to be unsupported by the body cam video, and was therefore clearly erroneous. (40:47). *McBride*, ¶¶21-22.

[6] Pursuant to Wis. Stat. § 809.23(3)(c), this unpublished opinion is included in the appendix.

Importantly, it was the circuit court, not Officer Rivera, who attributed the violation of an obstructing traffic ordinance to the parked SUV, as a basis for reasonable suspicion for the seizure. (40:7, 16). According to Officer Rivera, it was Mr. McBride's movement following the shining of the police spotlight into the vehicle, which prompted the police seizure of the vehicle and Mr. McBride. (40:20) ("Mr. McBride's actions led me to believe that something illegal was going on…").

Consequently, this Court should reject the State's claim that the police seizure of the vehicle and Mr. McBride was proper because the vehicle was obstructing traffic in the alley pursuant to Milwaukee, Wis. Traffic Code 101-24.3.

c. There could be no reasonable suspicion the SUV obstructed a vehicle parked on a parking slab off the alley.

The State also argues that the SUV was parked in such a manner that it obstructed another parked vehicle on a parking slab off the alley. (State's Br., p. 24); (40:16). Officer Rivera testified that another car, unoccupied and on a parking slab off of the alley (visible at 25 seconds on his body-worn camera footage (Exhibit 1)), was allegedly impeded from moving by the position of the SUV parked in the alley. (40:16).

This claim ignores the fact that a parked vehicle on a parking slab does not constitute *traffic*, pursuant to Wisconsin law. "Traffic" is defined as: "pedestrian, ridden or herded or driven animals, vehicles and other

conveyances, either singly or together, *while using any highway for the purpose of travel*." Wis. Stat. § 340.01(68) (emphasis added); *Cf.* Milwaukee, Wis. Traffic Code 101-24.1 (Blocking a Driveway) and Milwaukee, Wis. Traffic Code 101-24.2 (Blocking Traffic). A parked vehicle on a parking slab is not using a highway for the purpose of travel. The court of appeals rejected this argument, and this Court should do the same.

4. Officer Rivera did not reasonably mistake the law in his seizure of Mr. McBride.

This Court has "adopt[ed] the Supreme Court's holding in *Heien* that an officer's objectively reasonable mistake of law may form the basis for a finding of reasonable suspicion" *State v. Houghton*, 2015 WI 79, ¶ 5, 364 Wis. 2d 234, 868 N.W.2d 143 (adopting *Heien v. North Carolina*, 574 US. 54 (2014)). The State argues that the *Hein* and *Houghton* principles apply here, as Officer Rivera reasonably believed the parked SUV violated a traffic ordinance by obstructing traffic. (State's Br., p. 28).

The State's claim that even if Milwaukee, Wis. Traffic Code 101-24.2 does not apply, Officer Rivera made a reasonable mistake of law in seizing the SUV and Mr. McBride (State Br., p 28) ignores the fact that Officer Rivera testified that his basis for the seizure was Mr. McBride's movement within the vehicle when police illuminated it with the spotlight, not any traffic code violation. (40:20).

Moreover, Officer Rivera testified that he believed the traffic obstructed was the vehicle parked on the parking slab. (40:16). By the officer's own statements and as corroborated by the body cam video, Officer Rivera's basis for the seizure was his belief that Mr. McBride might possess a weapon or contraband. (40:20). That the SUV violated a parking ordinance by blocking in another vehicle or violated an overnight parking prohibition was not objectively reasonable, based on the facts known to the officers at the time of the encounter and his experience as a patrol officer. (40:4-5).

When asked whether the SUV obstructed traffic, Officer Rivera's response was that it would have, if there was a large vehicle or two-way traffic. (40:7). This response, following Officer's Rivera's description of alleys in Milwaukee as "very narrow" suggests the unreasonableness of the belief that alleys in Milwaukee generally, and this alley in particular, support two-way traffic. Officer Rivera did not testify the obstruction of traffic was his basis for seizing the SUV.

For all these reasons, the court of appeals properly reviewed the circuit court's findings of fact, concluded those findings were clearly erroneous, and correctly applied the applicable constitutional principles to the facts, resulting in its reversal of the circuit court's denial of Mr. McBride's suppression motion. This Court should conclude the same.

II. Officers had no lawful authority to remove Mr. McBride and search him, either as a lawful frisk or a search incident to arrest.

Because the court of appeals agreed with Mr. McBride that there was insufficient reasonable suspicion to support his seizure, it did not reach the additional claims regarding his removal from the vehicle, the police search of his person, and the seizure of the pill bottle and baggie from him. *McBride*, ¶ 10. Should this Court disagree with the court of appeals' determination on the initial seizure, Mr. McBride requests remand of his case to the court of appeals to address those questions in the first instance.

However, should this Court decide to address the additional issues of whether police had reasonable suspicion to handcuff and remove Mr. McBride from the vehicle, these issues are addressed below.

A. The police seizure of Mr. McBride from the vehicle exceeded the scope of a *Terry* stop.

Even if the initial seizure of the vehicle and Mr. McBride in it was constitutional, the evidence recovered by police as a result of the search of Mr. McBride should be suppressed because the police exceeded the lawful scope of a *Terry* stop. The officers' actions in ordering Mr. McBride out of the vehicle and subjecting him to a pat-down search constituted an unlawful search in violation of the Fourth Amendment, as it was beyond the permissible bounds of a *Terry* stop.

During an investigative stop, whether police intrusion is reasonable depends on whether the police conduct is reasonably related to the circumstances justifying the initial police interference. *Terry*, 392 U.S. at 19-20; *State v. Griffith*, 2000 WI 72, ¶26, 236 Wis. 2d 48, 613 N.W.2d 72. Under review, an appellate court must determine "whether the officer's action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20.

Prior cases from the U.S. Supreme Court authorized a per se rule, allowing police to remove a driver from a vehicle during a traffic stop. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977). This rule was further extended to passengers. *Maryland v. Wilson*, 519 U.S. 408 (1997). The reasonableness of the officer's decision to remove an individual from a vehicle depends on the balance of the incremental intrusion upon the person and the legitimate concerns for officer safety.

Of concern to the Court in *Mimms* was officer safety from an individual seated in the driver's seat, as well as from passing traffic. *Mimms*, 434 U.S. at 110-111. The officer safety concern present in *Mimms* and *Wilson*, however, is distinguishable from the facts here, which involved a police seizure of a vehicle in an alley, rather than a traffic stop of a vehicle on a roadside.

Moreover, the seizure of Mr. McBride from the passenger seat of a vehicle parked in an alley was not

a "*de minimis*" additional intrusion occurring during a roadside traffic stop. *Cf. Wilson*, 519 U.S. at 412. To the contrary, the whole point of the police contact with the parked SUV was to seize Mr. McBride, who, according to Officer Rivera, moved within the vehicle in response to the police spotlight. (40:20).

Consequently, the handcuffing and removal of Mr. McBride from the parked vehicle exceeded the scope of a *Terry* stop, notwithstanding *Mimms* and *Wilson*.

B. The search of Mr. McBride was unjustified, either as a lawful frisk or a search incident to arrest.

Even if the removal of Mr. McBride from the vehicle was justified, the subsequent search of his person and seizure of a pill bottle and baggie from his pocket were not justified as either a *Terry* frisk, or as a search incident to arrest.

1. The search of Mr. McBride exceeded the scope of a lawful *Terry* stop and frisk.

A *Terry* patdown frisk for weapons is authorized upon "specific and articulable facts" which reasonably warrant a limited search of a person's outer clothing, to determine whether the person is armed. *State v. Applewhite*, 2008 WI App 138, ¶ 6, 314 Wis. 2d 179, 758 N.W.2d 181.

The purpose of a *Terry* frisk is for police safety; therefore, the frisk itself must be "confined in scope to

an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." *Terry*, 392 U.S. at 29. A search and seizure of a drugs is distinguishable from a search for weapons. *Sibron v. New York*, 392 U.S. 40, 63-65 (1968) (finding *Terry* did not justify a police search and seizure of heroin from a defendant's pocket).

A *Terry* stop of an individual by the police does not automatically entitle the police to frisk the individual. *See Arizona v. Johnson*, 555 U.S. 323 (2009). Two conditions must first be met: (1) the investigatory stop must be lawful; and (2) the police must reasonably suspect the person stopped is armed and dangerous. *Id*. at 326-27.

Here, the circuit court relied upon the same factors to justify the seizure of the SUV as well as the search of Mr. McBride's person. That is: it was a high-crime area; Mr. McBride made a movement within the vehicle; the manner in which the car was parked in an alley; the officer's inferences, based on his training and experience; and the presence of an unlabeled pill bottle on the floorboard of the SUV. (46:13-16).

But the presence of an individual or individuals, sitting in a parked car, in a high-crime area at night without the lights on is not suspicious. *See State v. Evans*, 2020AP286-CR, unpublished slip op. (Wis. Ct. App. Jan. 28, 2021) (sitting in a parked car) (unpublished opinion)[7]; *State v. Gordon*, 2014 WI App

[7] Pursuant to Wis. Stat. § 809.23(3)(c), this unpublished opinion is included in the appendix.

44, ¶ 15 (presence in a high-crime area). That an individual makes a suspicious movement, either upon noticing police presence or in response to a spotlight is also not suspicious. *State v. Johnson*, 2007 WI 32, 299 Wis. 2d 675, 729 N.W.2d 182; *State v. Kyles*, 2004 WI 15, 269 Wis. 2d 1, 675 N.W.2d 449.

Further, "at the time of the stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot." *State v. Rutzinski*, 2001 WI 22, ¶ 14, 241 Wis. 2d 729, 623 N.W.2d 516, *citing Terry v. Ohio*, 392 U.S. at 21-22, 27 and *U.S. v. Hensley*, 469 U.S. 221, 226 (1985).

The circuit court found the presence of an unlabeled pill bottle on the floorboard contributed the reasonableness of the officer removing Mr. McBride from the vehicle. But, reasonable suspicion must be based on "the facts known to the officer at the time of the alleged seizure," not after. *State v. VanBeek*, 2021 WI 51, ¶ 22, 397 Wis. 2d 311, 960 N.W.2d 32. The circuit court's reliance upon the unlabeled pill bottle to inform Officer Rivera's reasonable suspicion that Mr. McBride was armed and dangerous was therefore erroneous.

The factors the circuit court cited in reaching its conclusion that officers were justified in conducting a search of Mr. McBride, in total, do not objectively amount to reasonable suspicion to conduct a *Terry* stop and frisk. Instead, the seizure of Mr. McBride,

handcuffing and removal of him from the parked SUV were objectively unreasonable.

Even if the police lawfully seized and frisked Mr. McBride, the scope of that frisk was exceeded when the officer removed a pill bottle from his jacket pocket. In his testimony, Officer Rivera acknowledged that what he felt (the pill bottle) in Mr. McBride's jacket pocket was not a weapon. (40:25). To the contrary, he believed what he felt and subsequently seized was indeed a pill bottle. (40:25).

This Court has acknowledged the "plain touch" exception to the warrant requirement, as an extension of the "plain view" doctrine. *State v. Applewhite*, 2008 WI App. 138, ¶ 14. Under the "plain touch" doctrine, police may remove objects other than a weapon during a pat-down search only if "police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object." *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993); *Applewhite*, 2008 WI App. 138, ¶ 14.

Here, an analysis of all three factors is unnecessary, as the "incriminating character is immediately apparent" factor cannot be met. While Officer Rivera testified he saw an unlabeled pill bottle on the floor of the vehicle and what he discovered in Mr. McBride's jacket pocket was a pill bottle, pill bottles themselves, even unlabeled ones, are not apparently incriminating. *See People v. Alemayehu*, 2021 COA 69, ¶¶ 45, 49, 494 P.3d. 98 (Colo. App. Div. I, May 20, 2021) (unpublished opinion) (providing a

survey and analysis of other state court cases in deciding whether discovery of pill bottles constitute probable cause to associate it with criminal activity or granted police authority to seize the item for further inspection).[8]

Further, the contents of a pill bottle cannot be immediately ascertained without closer inspection, and certainly not by the feel of the bottle itself. Moreover, until Officer Rivera actually removed the pill bottle from Mr. McBride's pocket, he could not have known whether it was unlabeled (and potentially suspicious) or lawfully prescribed to and possessed by Mr. McBride.

Officer Rivera admitted he had no information that the SUV parked in the alley, the driver or Mr. McBride as the front-seat passenger, was engaged in the unlawful possession of controlled substances. Therefore, what he possessed was a "hunch" and not "reasonable, articulable suspicion" which would lawfully justify the search of Mr. McBride pursuant to *Terry v. Ohio*.

2. The search of Mr. McBride was not a search incident to an arrest.

The circuit court found that Officer Rivera lawfully seized and removed Mr. McBride from the vehicle and lawfully searched Mr. McBride. Upon seeing an unlabeled pill bottle in the SUV and discovering a second pill bottle in Mr. McBride's

[8] Pursuant to Wis. Stat. § 809.23(3)(c), this unpublished opinion is included in the appendix.

jacket, the circuit court found probable cause to arrest him. (46:20-22). To the extent that the circuit court referenced a search incident to arrest, such a search of Mr. McBride cannot be justified as such under these circumstances.

A search incident to arrest is a lawful exception to the warrant requirement. *Chimel v. California*, 395 U.S. 752, 755 (1969) (*citing Weeks v. United States*, 232 U.S. 383 (1914)); *State v. Randall*, 2019 WI 80, ¶22, 387 Wis.2d 744, 930 N.W.2d 223; Wis. Stat. § 968.11. But, the presence of an unlabeled pill bottle in the passenger area of a vehicle where Mr. McBride was seated and another one in his jacket pocket, containing an unknown quantity or type of pills, without more, can hardly amount to probable cause for an arrest.

In *People v. Alemayehu*, the Colorado Court of Appeals surveyed various states' analyses of whether discovery of a pill bottle warrants a finding of probable cause for a search or seizure. 2021 COA 69 ¶ 45, (Colo. App. Div. I, May 20, 2021). While one state (Ohio) permitted a probable cause finding, six others (Louisiana, Tennessee, Kansas, Illinois, Indiana and Pennsylvania) "reject the idea that an unlabeled pill bottle, in and of itself, constitutes probable cause for a search or seizure." *Id.* at ¶ 47.

In *Alemayehu*, sheriff's deputies were responding to a collision in a parking lot and speaking with the driver outside of his vehicle when they noticed two prescription pill bottles, one without a label, inside a pocket at the bottom of the driver's side

door. *Id*. at ¶2-3, 5, 26. Colorado joined the majority of states in concluding that:

> [T]he mere observation of an unlabeled prescription pill bottle did not provide the deputies with probable cause to associate it with criminal activity. Consequently, unless there were other unusual circumstances which would have elevated the deputies' suspicion to probable cause, the deputies would have lacked the authority to seize the item for further inspection under the plain view exception.

Id. at ¶49. (App. 32).

This Court should join the majority of other state courts and find the presence of an unlabeled pill bottle fails to give rise to probable cause for a seizure and a search of Mr. McBride.

Officer Rivera lacked probable cause to arrest Mr. McBride for the unlawful possession of a prescription drug based simply upon the unlabeled pill bottle in the vehicle and therefore lacked the authority to search him incident to arrest. Moreover, as argued above, Officer Rivera also lacked justification to seize the pill bottle from Mr. McBride's jacket pocket as part of a *Terry* frisk.

CONCLUSION

The court of appeals appropriately employed the totality of the circumstances standard in reviewing the evidentiary findings and conclusions of the circuit court in this case. That the court of appeals concluded that, based on the record, the circuit court's factual findings were clearly erroneous and contradicted the State's claims does not equate to a conclusion that the court of appeals incorrectly applied the standard of review. Moreover, the court of appeals appropriately applied constitutional principles to the facts and ultimately determined that police lacked reasonable suspicion to seize Mr. McBride. This Court should also so find and affirm the decision from the court of appeals.

Dated this 17th day of July, 2023.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 8,690 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 17th day of July, 2023.

Signed:

Electronically signed by
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