STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2022AP000730-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RYAN D. WILKIE,

Defendant-Appellant.

On Appeal from a Judgment of Conviction,
Entered in the Eau Claire County Circuit Court,
the Honorable Sarah Harless Presiding

BRIEF OF DEFENDANT-APPELLANT

DAVID J. SUSENS
Assistant State Public Defender
State Bar No. 1099463

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-2124
susensd@opd.wi.gov

Attorney for Ryan D. Wilkie

TABLE OF CONTENTS

CASES CITED

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

Wisconsin Statutes

ISSUES PRESENTED

The state charged Ryan D. Wilkie with obstructing an officer and disorderly conduct. Wilkie moved to dismiss the obstructing an officer charge. He argued that police had no authority to enter his home without a warrant. In a separate motion, Wilkie moved for dismissal because the complaint omitted facts that, had they been included, would establish a lack of probable cause.

1. Did the Fourth Amendment prohibit warrantless entry into Wilkie's home such that the police were not acting with lawful authority when they tried to enter?

The circuit court denied Wilkie's motions to dismiss by finding that the police had lawful authority to enter Wilkie's home under the community caretaker function. Wilkie then moved for reconsideration based on *Caniglia v. Strom,* ___ U.S. ___, 141 S.Ct. 156 (2021). The circuit court denied the reconsideration motion and found that exigent circumstances justified the entry. The case went to trial.

2. Was there sufficient evidence for a reasonable jury to find Wilkie guilty of obstructing an officer?

After the state rested, the circuit court denied Wilkie's motion for a directed verdict. The jury later found him guilty of obstructing an officer.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Wilkie does not request oral argument. Publication is not warranted under Rule 809.23(1)(b).

STATEMENT OF THE CASE AND FACTS

Ryan D. Wilkie is the primary caregiver for his teenage daughter, S.W. On December 11, 2019, when S.W. was 15 years old, S.W. engaged in a verbal argument with Wilkie at their home in Eau Claire after Wilkie grounded her and took her phone. (R.73:86, 105-106; App. 29, 45-46). At some point that night S.W. attempted to leave the home in extremely cold weather wearing only sweatpants and a t-shirt. (R.73:105, 113, 118, 125; App. 45, 53, 58, 65). Sometime during the argument, Wilkie and S.W. were yelling and S.W. slammed her bedroom door. (R.73:107, 119; App. 47, 59).

Around the time of the argument, Wilkie's neighbor in the adjoining duplex, Terry McClure, called 911 to report "yelling and banging" coming from Wilkie's residence. (R.73:82; App. 25). Eau Claire Police Department Officer Dominic Meincke was then "dispatched to a possible domestic altercation" and was told that "the caller reported hearing some loud banging noises and yelling and screaming from the residence and heard a female voice yelling 'no' and 'stop.'" (R.73:87; App. 30).

According to Meincke, when he and his partner, Officer Vang, arrived at Wilkie's home he believed there was "possibly" an emergency in the home. (R.73:91-92; App. 34-35). According to an audio recording from the scene, right after contacting Wilkie, Wilkie asked Meincke to "watch the back door, I don't want my daughter bailing out the back door." (R.55:1; App. 69). After Wilkie asked, "is there somebody back there," Meincke replied, "yeah, yep" and confirmed that there was "definitely" someone back there. (*Id.*).

According to the audio recording, Meincke asked if he could enter Wilkie's home to "talk with" Wilkie's family. (R.55:1; App. 69). Wilkie told Meincke that "she" could "come out" but the officers could not "trample through" his house. (*Id.*). Wilkie told Meincke to "get a warrant," and told him there was "nobody hurt in there." (*Id.*). After Wilkie tried to end the conversation, Meincke detained him. (R.55:2, R.73:89-90; App. 32-33, 70). When Wilkie told Meincke he did not have permission to enter the home, Meincke arrested him and placed him in handcuffs. (R.55:3, R.73:94; App. 37, 71). While Meincke was arresting Wilkie, someone came outside the house to talk and Meincke told her to "get back in the house." (R.55:3; R.73:93-94; App. 36-37, 71).

At the time Meincke arrested Wilkie, he had not talked to McClure but he knew that nobody saw anything physical happen. (R.73:92; App. 35). Meincke knew that there was a back door to the home and it was possible the he or another officer could have entered the home through the back door. (*Id.*). Neither

Meincke nor any other officer ever entered the home. (R.73:92-93; App. 35-36). According to Meincke, Wilkie was "standing in the door" but did not otherwise take any physical action to prevent the officers from entering the home. (R.73:91, 95; App. 34, 38).

While he claimed that he believed there may be a medical emergency inside the home, Meincke decided that they could "figure it out" later because Wilkie was the "problem person" that needed to be dealt with. (R.55:3, R.73:95; App. 38, 71). Rather than attempting to enter the home either through the front door or the available back door, and rather than accepting Wilkie's offer to bring S.W. out to talk, Meincke arrested Wilkie because he was "uncooperative." (R.73:94-95; App. 37-38).

After the arrest, the state charged Wilkie with obstructing an officer and disorderly conduct. (R.2:1; App. 5). The complaint alleged that the officers told Wilkie they wanted to "speak with the individuals inside the resident and to make sure everyone was safe." (R.2:2; App. 6). According to the complaint, Vang told Wilkie to "step away from the door so that officers could go inside and verify everyone's safety, but [Wilkie] refused and wanted to go back inside the residence." (*Id.*). According to the complaint, Wilkie "refused" to move, "even when officers attempted to escort him away from the door" when he was "detained." (*Id.*).

The complaint makes no mention of Wilkie's recorded statement or the fact that he immediately

asked the officers to go to the back door so S.W. didn't leave out the back. (R.55:1; App. 69). The complaint says nothing about Wilkie's offer to have S.W. come out to speak with the officers. (*Id.*). The complaint discusses a phone call between Meincke and McClure about McClure's belief that a female was being attacked but omits the fact that the phone call occurred after the officers arrested Wilkie and spoke to S.W. (R.2:2, R.73:92; App. 6, 35). The transcript of the 911 call reveals that McClure never told dispatch that he believed anyone was injured. (R.56:1-2). Instead, the transcript shows that McClure told 911 that he did not "know what they're doing, they fight all the time but it doesn't normally get this loud." (R.56:1).

Wilkie moved to dismiss the criminal complaint for two reasons. First, he moved to dismiss because the complaint did not contain probable cause to establish that Wilkie obstructed an officer. (R.12:1). Wilkie argued that the officers were not acting with lawful authority when they tried to enter his home and when they detained him because they did not have a warrant, did not have probable cause, exigent circumstances did not exist, and the officers were not acting as community caretakers. (R.12:1-2).

Next, Wilkie moved to dismiss under *Franks v. Delaware,* 438 U.S. 154 (1978) and *State v. Mann,* 123 Wis. 2d 375, 367 N.W.2d 209 (1985). Wilkie argued that the state omitted critical information from the complaint that, had it been included, would have resulted in a lack of probable cause. (R.17:1-2). Wilkie offered recorded statements taken from Meincke's

squad audio as proof of the omissions and proof of a lack of probable cause to show that the officers were acting with lawful authority when they tried to enter Wilkie's home and detained him. (R.17:2-3).

At a hearing on Wilkie's motions to dismiss, the circuit court accepted the state's assertion that the "primary focus in entering the home would be to ensure the safety of the occupants." (R.36:6; App. 13). The court held that the officers' "community caretaker function" was "validly executed in this case." (R.36:7; App. 14). The court rejected Wilkie's *Franks-Mann* argument and found that the omitted information would not "change the analysis regarding the community caretaker function." (*Id.*) Thus, the court denied Wilkie's motions because "[t]he indication of banging noises and a person screaming is sufficient in this case for the police to seek to enter into the home under the community caretaker function." (*Id.*).

Wilkie later moved for reconsideration based on the Supreme Court's decidion in *Caniglia v. Strom,* ___ U.S. ___, 141 S.Ct. 156 (2021). Wilkie argued that *Caniglia* abrogated applicable aspects of Wisconsin caselaw on the community caretaker function. (R.37:2-3). At a hearing on the motion to reconsider, Wilkie argued that no exigent circumstances existed that would otherwise grant the officers lawful authority to attempt to enter the home. (R.70:2-3; App. 19-20). The circuit court denied the motion to reconsider and held that "this is the type of situation that exigent circumstances does cover." (R.70:3-4; App. 20-21).

The case proceeded to a jury trial. Relevant trial testimony is discussed above and incorporated into the argument below. After the state rested, Wilkie moved for a directed verdict on the obstructing charge arguing that Wilkie did not prevent the officers from entering the home and the officers could have entered through the back door. (R.73:96-99; App. 39-42). The court noted it was "not the most clear-cut case," but denied the motion. (R.73:99; App. 42).

After the defense case and closing arguments, when instructing the jury on the elements of obstructing an officer, the court explained that "[a] person is not required to help the police accomplish a warrantless entry into their home." (R.73:135, R.53:3; App. 67). The court also included the following language in the jury instruction:

> Police officers act with lawful authority if their acts are conducted in accordance with the law. In this case it is alleged that the officer was making a lawful entry under the exigent circumstances rule. That rule allows an officer to enter a dwelling without a warrant when the entry is necessary to prevent injury to the suspect or another person or to prevent the likelihood that the suspect will escape.

(R.73:135-36, R.53:3; App. 67-68).

The jury found Wilkie guilty of both obstructing an officer and disorderly conduct. (R.51, R.52, R.73:163). Just after the verdict, the court sentenced Wilkie to 40 hours community service and court costs.

(R.73:169-71). The court entered a judgment of conviction reflecting the jury's verdict and the sentence imposed. (R.49:1-2; App. 3-4). Wilkie appeals from that judgment. This court should reverse the circuit court and remand with orders to vacate Wilkie's conviction for obstructing an officer.

ARGUMENT

At its core, this is a case about Wilkie's constitutional right to "retreat into his own home and there be free from unreasonable government intrusion." *Silverman v. United States,* 365 U.S. 505, 511 (1961). Under the Fourth Amendment, "the home is first among equals." *Florida v. Jardines,* 569 U.S. 1, 6 (2013) (internal citation omitted). "Indeed, it is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *State v. Richter,* 2000 WI 58, ¶28, 235 Wis. 2d 524, 612 N.W.2d 29 (internal citation omitted). Without a warrant, any police intrusion into Wilkie's home was presumptively unreasonable. *Id.*

Because the state did not establish lawful authority for the officers to enter his home, Wilkie's conduct could not be considered a crime under Wis. Stat. § 946.41. Because the circuit court erred by denying Wilkie's motion to dismiss on those grounds, this court should order the circuit court to vacate and dismiss the obstruction conviction. And while the jury should have never heard the obstruction charge, because there was insufficient evidence to overcome

Wilkie's presumption of innocence, this court should order a judgment of acquittal.

I. The circuit court erred by denying Wilkie's motions to dismiss because police had no lawful authority to enter his home under the Fourth Amendment.

A. Legal principles and the standard of review.

A criminal complaint must establish probable cause by setting forth facts that are sufficient for a reasonable person to conclude that crime was probably committed and the accused probably committed it. *State v. Adams,* 152 Wis. 2d 68, 73, 447 N.W.2d 90 (Ct. App. 1989). If a defendant proves by a preponderance of the evidence that the complaint omits critical information that, if inserted, prevents a finding of probable cause, the complaint must be dismissed. *Mann,* 123 Wis. 2d at 387. The sufficiency of a complaint is a question of law, reviewed de novo. *Adams,* 152 Wis. 2d at 74.

The complaint here alleged that Wilkie obstructed an officer under Wis. Stat. § 946.41. Thus, the complaint must set forth the essential facts to establish probable cause that: (1) Wilkie knew or believed he was obstructing the officer, (2) Wilkie knew or believed the officer was acting in an official capacity, or (3) Wilkie knew or believed the officer was acting with lawful authority. *State v. Lossman,* 118 Wis. 2d 526, 536, 348 N.W.2d 159.

The central question here is whether the officers had "lawful authority" to enter Wilkie's home. To act with lawful authority, an officer's actions must be lawful. *State v. Ferguson,* 2009 WI 50, ¶14, 317 Wis. 2d 586, 767 N.W.2d 187. "It is black letter law that a constitutional violation is an unlawful act" *Id.* at 15. Thus, in reviewing the sufficiency of the complaint, this court should decide whether police entry into Wilkie's home complied with the Fourth Amendment, a question of constitutional fact. *Id.* at 16. Under that standard of review, this court upholds a circuit court's findings of fact unless they are clearly erroneous. *State v. Hughes,* 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. This court then applies the law to those facts de novo. *Id.*

As discussed below, the state failed to show that Wilkie knew or believed he was obstructing the officers' entry into his home. But even assuming he did know, the validity of the obstruction charge hinges on whether the state established lawful authority for a warrantless entry into his home *and* Wilkie's knowledge of that lawful authority. Because the complaint did not establish lawful authority or Wilkie's knowledge, the circuit court erred by denying Wilkie's motions to dismiss.

B. The community caretaker function does not apply to warrantless entries into homes.

The circuit court first erred by finding that "banging noises and a person screaming is sufficient in this case for the police to seek to enter the home under the community caretaker function." (R.36:7; App. 14). According to the court, even if it considered undisputed evidence that the state omitted, the complaint contained probable cause because the police were operating under a community caretaker exception to the warrant requirement. (*Id.*). But after the court denied Wilkie's motion to dismiss, the United States Supreme Court held that there is no community caretaker exception that justifies a warrantless entry into a home. *Caniglia,* 141 S.Ct. at 1598.

As in *Caniglia,* the police had neither a warrant nor consent to enter Wilkie's home. In both cases the police responded to a call expressing concern that someone may be injured. (R.36:6, R.70:3; App. 13, 20) *Id.* In both cases, the police attempted to enter the home after being told that nobody was injured. (R.55:1; App. 69) *Id.* Here, the complaint omitted the fact that, after police asked Wilkie if they could talk to his family, Wilkie told police they "she can come out, you're not going in my house." (R.55:1; App. 69). Wilkie told police to "get a warrant." (*Id.*). When Wilkie refused to consent to a warrantless entry into his home, police chose to detain Wilkie so they could enter. (R.55:1-2; App. 69-70).

In both cases, rather than arguing exigent circumstances, the state argued that entry was permitted because the officers were acting under the community caretaker exception to "ensure the safety" of those in the home. (R.16:2, R.36:6; App. 13) *Id.* at 1598-99. While the Wisconsin Supreme Court has held that the community caretaker exception to the warrant requirement applies to homes, *Caniglia* expressly rejects that extension of *Cady v. Dombrowski,* 413 U.S. 433 (1973). *See State v. Pinkard,* 2010 WI 81, 327 Wis. 2d 346, 785 N.W.2d 592.

The Court reasoned that, because "[w]hat is reasonable for vehicles is different from what is reasonable for homes," the Fourth Amendment does not permit warrantless entry into the home based on the community caretaker function. *Caniglia,* 141 S.Ct. at 1560. Thus, the Supreme Court's decision in *Caniglia* nullifies Wisconsin's three-step approach, used here, for determining whether the community caretaker function justifies police entry into a home. *See Pinkard,* 327 Wis. 2d 346, ¶29.

After *Caniglia,* there is no community caretaker exception to the warrant requirement when the police seek to enter a home. Without some other constitutionally recognized basis to enter Wilkie's home, the officers were not acting with lawful authority when they tried to enter and the complaint failed to establish an essential element of the offense defined in § 946.41.

C. There was neither probable cause nor exigent circumstances to justify entry into Wilkie's home.

The court erred again by refusing to reconsider Wilkie's motion to dismiss when confronted with binding authority in *Caniglia.* Rather than engaging the broad Fourth Amendment rationale in *Caniglia* and assessing the complaint given the undisputed omitted evidence, the circuit court distinguished *Caniglia* on the facts and accepted the state's rebranding of the issue as "exigent circumstances." (R.70:2-4; App. 19-21). Based on the undisputed facts here, neither probable cause nor exigent circumstances existed to justify a warrantless entry to Wilkie's home under the Fourth Amendment.

While there is no community caretaker exception for a warrantless home entry, an exception to the warrant requirement exists "where the government can show both probable cause and exigent circumstances that overcome the individual's right to be free from government interference." *Hughes,* 233 Wis. 2d 280, ¶17. "The objective test for determining whether exigent circumstances exist is whether a police officer, under the facts as they were known at the time, would reasonably believe that delay in procuring a search warrant would *gravely endanger life,* risk destruction of evidence, or greatly enhance the likelihood of the suspect's escape." *Id.,* ¶24. (emphasis added). It is the state's burden to prove exigent circumstances. *State v. Reed,* 2018 WI 109, ¶79, 384 Wis. 2d 469, 920 N.W.2d 56.

Had the circuit court assessed the totality of the *objective* facts known to the officers at the time, the court would have rejected the officers' asserted belief that a warrantless entry was justified. Like the officers in *Reed,* the officers were aware of a *verbal* argument in Wilkie's home. (R.55:1-2; App. 69-70); *Reed,* 384 Wis. 2d. 469, ¶81. Wilkie came to the door upon the officer's arrival, explained that nobody was hurt, explained that he had had an argument with his daughter, told the officers his daughter could come out to talk to the officers but that they needed a warrant to enter. (R.55:1-2; App. 69-70). Under those circumstances, Wilkie was correct—only a warrant backed by a judicial finding of probable cause would authorize police entry under the Fourth Amendment and article I, section 11.

While the officers wanted to "check on their welfare," they had had no information that would give rise to a reasonable belief that immediate entry was needed to prevent grave danger to anyone's life. (R.73:90; App. 32). Generalized concerns for safety are not enough to establish exigent circumstances. *Id.,* ¶92. As in *Reed,* "[f]inding the existence of exigent circumstances in the instant case would allow the exigent circumstances exception to swallow the warrant requirements of the United States and Wisconsin Constitutions." *Id.,* ¶93. Because neither probable cause nor exigent circumstances existed, this court should reverse and order the circuit court to vacate and dismiss the obstruction charge.

II. There was insufficient evidence to overcome Wilkie's presumption of innocence.

A. Legal principles and the standard of review.

Even assuming the court properly denied Wilkie's motions to dismiss, Wilkie's constitutional rights protect him from a criminal conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship,* 397 U.S. 358, 365 (1970); *State v. Smith,* 117 Wis. 2d 399, 415, 344 N.W.2d 711 (Ct. App. 1983). Thus, because there was insufficient evidence that Wilkie knew the officers were acting with lawful authority and that Wilkie knowingly obstructed their entry into his home, no reasonable jury could be convinced "beyond a reasonable doubt of the existence of every element of the offense." *Jackson v. Virginia,* 443 U.S. 307, 316 (1979).

After reviewing the evidence in the light most favorable to the prosecution, this court should order a judgment of acquittal if the evidence has "insufficient probative value" to prove each element of the charge beyond a reasonable doubt. *State v. Wulff,* 207 Wis. 2d 143, 149, 557 N.W.2d 813 (1997). When the evidence cannot support the verdict, the only available remedy is a judgment of acquittal. *State v. Ivy,* 119 Wis. 2d 591, 608, 350 N.W.2d 622. Because the remedy is dispositive, this court should decide Wilkie's

sufficiency claim even though the circuit court's errors are also grounds for reversal. *Id.* at 609-610.

B. There was insufficient evidence to establish that Wilkie knew the officers were acting with lawful authority.

For the reasons discussed in section I above, the state never established probable cause to believe that the officers were acting with lawful authority and the obstruction charge never should have made it to a jury. But once the matter does reach the jury, "the state must prove beyond a reasonable doubt that the accused knew the officer was acting in an official capacity and knew the officer was acting with lawful authority when he allegedly resisted or obstructed the officer." *Lossman,* 118 Wis. 2d 526, 536-37. Based on the trial record, no reasonable jury could find beyond a reasonable doubt that the officers had lawful authority and Wilkie knew they had lawful authority to enter his home.

For the state to prove that Wilkie knew or believed Meincke was acting with lawful authority, Wilkie's "subjective intent must be ascertained, based on the totality of the circumstances, including what the defendant said or did, what the officer said or did, and any objective evidence which is available." *Lossman,* 118 Wis. 2d. at 542-43. Based on the undisputed objective facts and the undisputed evidence about Wilkie's subjective belief, no reasonable jury could find proof beyond a reasonable doubt.

Wilkie correctly told the officers they needed to get a warrant to enter. (R.55:1; App. 69). Wilkie accurately explained that nobody was hurt and that S.W. would come out to talk to the officers about what happened. (R.55:1-2; App. 69-70). Wilkie then explained that he was done talking to the officers and attempted to exercise his right to end the interaction, (R.55:2-3; App. 70-71). Even after his arrest, Wilkie insisted he had done nothing wrong. (R.55:3; App. 71).

Meincke was wearing a microphone during his interaction with Wilkie. (R.73:88; App. 31). The recording of that interaction was played for the jury and the transcript was entered into the record without objection from Wilkie. (R.73:88-89; App. 31-32). Thus, there was little dispute about the objective facts. Instead, the dispute appeared to revolve around Meincke's subjective belief about his ability to enter the home without consent or a warrant based on the belief that there was "possibly" a potential emergency. (R.73:92; App. 35).

The officers' subjective belief that there was an emergency inside the home is belied by the fact that they knew they could have entered the home through the back door but chose not to. (R.73:92-93; App. 35-36). Instead, the officers identified Wilkie as the "problem person" and focused on arresting him instead. (R.73:95, R.55:1-3; App. 38, 69-71). And, as discussed above—irrespective of the officer's subjective belief—that belief was both factually and legally deficient. Even viewing those facts in the light most favorable to the state, acquittal was the only

reasonable outcome and this court should order a judgment of acquittal on the obstruction charge.

CONCLUSION

For the reasons stated above, this court should order the circuit court to vacate the judgment of conviction on the obstruction charge and enter a judgment of acquittal.

Dated this 5th day of December, 2022.

Respectfully submitted,

Electronically signed by
David J. Susens

DAVID J. SUSENS
Assistant State Public Defender
State Bar No. 1099288

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-2124
susensd@opd.wi.gov

Attorney for Defendant-Appellant

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 3,759 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 5th day of December, 2022.

Signed:
Electronically signed by
David J. Susens
DAVID J. SUSENS
Assistant State Public Defender