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**COURT OF APPEALS**

**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III**

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STATE OF WISCONSIN,  
Plaintiff-Respondent,

vs.

Appeal No. 2022AP002222 CR  
Case No. 2020CF001565  
(Eau Claire County)

ROGER A. MINCK,  
Defendant-Appellant.

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**APPELLANT'S BRIEF  
AND APPENDIX**

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Appeal from the Judgment of Conviction and Sentence entered in  
Eau Claire County Circuit Court  
Honorable John F. Manydeeds, presiding

**SUBMITTED BY:**

ATTORNEY CARL W. CHESSHIR  
State Bar No. 01008915  
S101 W34417 Hwy LO  
Suite B  
Eagle, Wisconsin 53119  
(414) 899-8579  
Attorney for Defendant-Appellant

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
COMPLIANCE CERTIFICATE .....	3
TABLE OF AUTHORITIES CITED .....	4
STATEMENT OF THE ISSUES .....	5
STATEMENT ON ORAL ARGUMENT .....	6
STATEMENT REGARDING PUBLICATION ..	6
STATEMENT OF THE CASE .....	7
STATEMENT OF THE FACTS .....	12
ARGUMENT .....	14
I. THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT MINCK HID THE CORPSE OF T.C. TO CONCEAL A CRIME PURSUANT TO WIS. STAT. § 940.11(2) .....	14
A. The State failed to prove beyond a reasonable doubt that Minck hid the corpse of T.C. ....	15
B. The State also failed to prove beyond a reasonable doubt that Minck was intending on concealing a crime by hiding the corpse of T.C. ....	19
CONCLUSION .....	24
APPENDIX CERTIFICATE .....	25
APPELLANT'S APPENDIX .....	27

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**COMPLIANCE CERTIFICATE**

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I hereby certify that this Respondent-Appellant's Brief and Appendix conforms to the form and length requirements of Rule 809.19(8)(b), (bm) and (c) in that it is typewritten using a proportional font. The length of this Respondent-Appellant's Brief and Appendix is 4, 823 words.

Dated this 7<sup>th</sup> Day of April 2023.

Electronically signed by:

Carl W. Chesshir  
Attorney for Defendant-Respondent,  
Roger Minck  
State Bar No. 1008915  
S101 W34417 Hwy LO  
Suite B  
Eagle, Wisconsin 53119  
(414) 899-8579  
carlchesshir@chesshirlaw.com

## **TABLE OF AUTHORITIES CITED**

	<b><u>Page</u></b>
<b><u>Wisconsin Case Law</u></b>	
<i>Oseman v. State</i> , 32 Wis.2d 523, 145 N.W.2d 766 (1966) . . . . .	15
<i>Alston v. State</i> , 30 Wis.2d 888, 140 N.W.2d 286 (1966) . . . . .	15
<i>State v. Stevens</i> , 26 Wis.2d 451, 132 N.W.2d 502 (1965) . . . . .	15
<i>State v. Badker</i> , 2001 WI App 27, 240 Wis. 2d 460, 623 N.W. 142 . . . . .	20
<b><u>Unpublished Opinions</u></b>	
<i>State v. Kamlager</i> , 2006AP1103 (Wis. App. 2007) . . . . .	20
<i>State v. Nichols</i> , 2008AP940-CR (Wis. App. 2009) . . . . .	21
<b><u>Wisconsin Statutes</u></b>	
Wisconsin Statute § 940.11(2) . . . . .	7, 14, 20, 21
Wisconsin Statute § 961.41(1)(a). . . . .	7
Wisconsin Statute § 961.42(1) . . . . .	7
Wisconsin Statute § 943.10(1m)(a). . . . .	7
Wisconsin Statute § § 940.02(2)(a) . . . . .	19, 22
<b><u>Wisconsin Jury Instructions</u></b>	
Wis. JI-1194 . . . . .	14

**STATEMENT OF THE ISSUES**

1. Was the evidence presented to the jury sufficient to prove beyond a reasonable doubt that Minck hid T.C.'s corpse?

Trial Court: Yes.

2. Did Minck commit a crime that was concealed by hiding T.C.'s corpse?

Trial Court: Yes.

**STATEMENT ON ORAL ARGUMENT**

Defendant-Appellant, Roger Minck believes that because this case involves a determination of what facts are necessary for the application of Wis. Stats. § 940.11(2), Minck contends that oral argument may assist the court in answering this question.

**STATEMENT REGARDING PUBLICATION**

Because this case involves a determination of what facts satisfy the elements for Wis. Stats. § 940.11(2), Appellant, Roger Minck submits that the opinion would be instructive to all circuit courts and therefore has statewide implications that make publication advisable.

### **STATEMENT OF THE CASE**

A Criminal Complaint was filed on December 23, 2020 which alleged one count of Hiding a Corpse pursuant to Wis. Stats. § 940.11(2); one count of Delivery of Schedule I or II Narcotics pursuant to Wis. Stats. § 961.41(1)(a); one count of Maintaining a Drug Trafficking Place pursuant to Wis. Stats. § 961.42(1); and one count of Burglary of a Building or Dwelling pursuant to Wis. Stats. § 943.10(1m)(a) against Roger Minck (“Minck”). (R. 2).

An initial appearance was held on January 14, 2021. (R. 127). The court set cash bail at \$10,000.00. (*Id.* at 5).

A status hearing was held on February 10, 2021. (R. 135). At that time Minck requested a preliminary hearing. (*Id.* at 3). The court also denied Minck’s request for bond modification. (*Id.* at 6).

On March 16, 2021<sup>2</sup> a preliminary hearing was held (R. 133). The court heard testimony from Police Officer Justin Greuel. (*Id.* at 5-15). The court bound the case over for trial. (*Id.*).

An arraignment was held on April 7, 2021. (R. 121). Minck acknowledged receiving the Information, waived its reading and entered a not guilty plea on all counts. (*Id.* at 4). The court also heard Minck’s motion to modify bond and the court denied the motion. (*Id.* at 14).

A status conference was held on June 22, 2021. (R. 132). The court noted that Minck had filed a speedy trial demand on June 14, 2021. (*Id.* at 2). The court set a trial date. (*Id.* at 4). The court also denied Minck's request to modify bond. (*Id.* at 9).

On July 2, 2021 a status conference was held. (R. 131). The court ruled on the pretrial motions filed by the State. (*Id.* at 2-4). The court also denied Minck's request for a bail reduction. (*Id.* at 9).

On August 13, 2021 a status conference was held. (R. 130). At this hearing, the court confirmed that the health of Minck's trial counsel would not affect the trial date. (*Id.* at 3). Minck also requested the court to consider reducing his bail and the court denied the request. (*Id.* at 7).

A status hearing was held on September 8, 2021. (R. 122). The court was advised that Minck's trial counsel was in an auto accident and not able to try this case on the trial date. (*Id.* at 3-4). The court granted the continuance for good cause. (*Id.* at 10). The court also denied Minck's request to modify his bail. (*Id.* at 11).

The jury trial commenced on November 29, 2021. (R. 129). A reserve judge was assigned to the case, and this judge held a pretrial conference before the jury trial commenced. (*Id.* at 1-15). Voir dire of the jury was then started and as jury selected. (*Id.* at 16-50). The court then



instructed the jury. (*Id.* at 50-62). Opening statements were made by both the State and Minck. (*Id.* at 62-75). The jury then heard testimony from the State witnesses, Jennifer Click, Thomas Loader, Kenneth Minck, Daniel Schofield, Heidi Schultz, Detective Mike Osmond and Detective Ryan Greener. (*Id.* at 76-134).

The jury trial continued on November 30, 2021. (R. 128). The jury then heard testimony from Sargent Arthur Jaquish, Officer Tyler Larsen, Marcie Marcelle Rosas, medical examiner, Police Officer Justin Greuel, Stephanie Diepenbrock, substances analyst, Samantha Delfosse, DNA analyst, Sargent Brandon Ring, Lieutenant Mark Pieper, Sargent Bridget Coit, Dr. Robert Corliss, forensic pathologist. (*Id.* at 11- 101). The court then adjourned the trial for the evening. (*Id.* at 112).

On December 1, 2021, the third day of the jury trial was held. (R. 125). The jury heard testimony from Sergeant Brian Trowbidge. (*Id.* at 5-58). The State then rested. (*Id.* at 58). The court then held a colloquy with Minck in regards to his testimony. (*Id.* at 58-61). The court found that Minck had knowingly and intelligently made the decision to testify. (*Id.* at 61). The jury then heard testimony from Minck. (*Id.* at 62-83). The court reviewed jury instructions with the parties and then adjourned for the day. (*Id.* at 84-95).

On December 2, 2021, the jury trial continued. (R. 126). The court first instructed the jury. (*Id.* at 11-23). The jury then heard closing arguments from the State and Minck and a rebuttal argument by the State. (*Id.* at 23-44). The court then gave the jury its final instructions and swore in the bailiffs. (*Id.* at 45-47). The jury was excused for deliberations. (*Id.* at 47). The court was then informed that the jury had reached a verdict. (*Id.* at 53). The jury returned its verdict finding Minck guilty in Count One on the charge of hiding a corpse; guilty in Count Two on the charge of delivery of Schedule I or II narcotics; and guilty in Count Three guilty of maintaining a drug trafficking place. (*Id.* at 54). The court polled the jury. (*Id.* at 55). The court revoked bond and ordered a presentence investigation report. (*Id.* at 57).

Minck was sentenced on March 14, 2022. (R. 56). The court first heard argument from the State and listened to victim statements. (*Id.* at 4-29). The court then heard argument from defense counsel and listened as defense counsel read a letter written by Minck in lieu of making a statement to the court. (*Id.* at 29-34). The court then sentenced Minck on Count 1 to 6 years of initial confinement, 5 years of extended supervision; on Count 2, 6 years of initial confinement, 5 years of extended supervision served consecutively to Count 1; and on Count 3, imposed and stayed one and a

half years of initial confinement followed by 2 years of extended supervision and placed on probation for 3 years consecutive to listened Counts 1 and 2, for a total sentence of 12 years on initial confinement and 10 years on extended supervision with 3 years on probation. (*Id.* at 42-43).

### STATEMENT OF THE FACTS

T.C. went missing on November 5, 2018. (R. 2). T.L., a close friend of T.C., testified that T.C. had a heroin addiction. (R. 129; p. 85). T.L. further testified that on November 5, 2018 that T.C. told him that he was driving to Eau Claire to see Minck and get heroin. (*Id.* at 89). T.L. also testified that T.C. called him from Eau Claire and told him “something was taking longer” and that it would be even longer before he got back home. (*Id.* at 93). Minck, a friend of T.C.’s, testified that he was expecting T.C. to arrive at his residence and T.C. was to drive Minck to purchase a car. (R. 125; pp. 64-65). On November 13, 2018, Minck told the police that T.C. never arrived at his residence to drive him to purchase the car. (R. 92; lines 38-65). Minck also at that time, admitted to the police that he dabbled in illegally selling prescription drugs, namely Oxycodone. (*Id.* at 328-359, 686-695). T.C.’s vehicle was located at Lake Altoona Dam, some 4.5 miles from Minck’s residence, but T.C. or his corpse was not located. (R. 125; pp. 115-116). The police collected DNA samples from T.C.’s car, but since Minck had told the police he had driven this car, the police determined that finding Minck’s DNA in the car would not help the investigation. (R.29; p. 116). On November 2, 2018, K.M., Minck’s brother was incarcerated. (R. 129; p. 98). K.M. lived next door to Minck.

(R. 125; p. 22). On or about November 18, 2018, Daniel Schofield, a friend of T.C.'s, arranged to purchase Oxycodone from Minck. (R. 129; p. 102). On December 6, 2018, the police obtained a search warrant for K.M.'s residence and entered the residence through an open window. (R.29; p. 131). The police found the deceased T.C. inside K.M.'s residence. (R. 128; p. 22). The cause of death was by an overdose of heroin and Fentanyl. (*Id.* at 100).

## **ARGUMENT**

### **I. THE STATE FAILED TO PROVIDE SUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT MINCK HID THE CORPSE OF T.C. TO CONCEAL A CRIME PURSUANT TO WIS. STAT. § 940.11(2).**

Wis. Stat. § 940.11(2) states that “Whoever hides or buries a corpse, with intent to conceal a crime . . . is guilty of a Class F felony.” The State charged Minck with hiding the corpse of T.C. to conceal his illegal drug dealing of Oxycodone. (R. 2.; Criminal Complaint.) To convict Minck of this offense, the State is required to prove two elements:

1. The defendant hid a corpse.
2. The defendant hid a corpse with intent to conceal a crime. This requires that the defendant acted with the purpose to conceal a crime.

Wis. JI-1194.

The trial court held that “the State was able to prove by evidence beyond a reasonable doubt at a jury trial”. (R. 115; p. 345).

Minck contends that the State failed to provide sufficient evidence for the jury to find him guilty beyond a reasonable doubt on both elements of the offense.

**A. The State failed to prove beyond a reasonable doubt that  
Minck hid the corpse of T.C.**

On an appeal from a conviction in a criminal case, the test of the sufficiency of the evidence is whether or not the evidence adduced, believed and rationally considered by the finder of fact was sufficient to prove the defendant's guilt beyond a reasonable doubt. *Oseman v. State*, 32 Wis.2d 523, 531, 145 N.W.2d 766 (1966). In a criminal case, the same test applies whether the trial is to a court or to the jury. *Alston v. State*, 30 Wis.2d 888 100, 140 N.W.2d 286 (1966). The test does not require the appellate court to become equally convinced of the guilt of the defendant beyond a reasonable doubt, but only that the appellate court be satisfied that the finder of fact on the credible evidence submitted could find the defendant guilty beyond a reasonable doubt. *State v. Stevens*, 26 Wis.2d 451, 464, 132 N.W.2d 502 (1965).

T.C. went missing on November 5, 2018. (R. 2). Minck expected T.C. to arrive at his residence and take him to purchase an automobile. (R. 125; p. 64). Minck testified that he never saw T.C. that day. (*Id.* at 65). T.C.'s vehicle was found at Altoona Lake Dam, some 4.5 miles from Minck's residence. (*Id.* at 81). Minck told the police that T.C. had recently loaned his vehicle to him. (*Id.* at 80-81). The police decided to not take

DNA swabs of T.C.'s vehicle because they knew Minck's DNA would be in the vehicle. (*Id.* at 11-12). On December 6, 2018, during the execution of a search warrant for K.M.'s residence, the police found the body of T.C. (R.128; p. 14). K.M., testified that he threw the keys to his residence on the coffee table in front of C.A. and Minck was not present. (R. 129; p. 98). A search warrant executed for Minck's residence did not find any keys to K.M.'s residence. (R. 125; pp, 37-38). The State argued to the jury that Minck had sole access to K.M.'s house keys while his brother was incarcerated. (R. 126; pp. 31-32). However, the State presented no evidence to the jury that Minck actually possessed his brother's keys. In addition, the keys were not needed to gain access to K.M.'s residence. Detective Greener testified that when searching K.M.'s residence, because no keys were found, a locksmith was called and was unable to open the door. (R. 129; p. 131). The police gained access through a window. (*Id.* at 133-134). In actuality, the State's contention that Minck somehow had exclusive access to K.M.'s residence was misplaced. Anyone had access to K.M.'s residence at any time.

T.C.'s body was found wrapped in a tarp and plastic. (R. 128; pp. 14-15). DNA testing of the tarp and plastic found Minck's DNA on both items. (*Id.* at 60-61). The State argued to the jury that the DNA evidence



showed that Minck moved T.C.'s body. (R. 126; p. 32). The State's DNA expert testified that DNA does not determine when the DNA was placed on these items and that the DNA could have been on these items for a long time. (R. 128; p. 62). Minck provided uncontroverted testimony that the tarp was his and he used it for removing leaves, and the plastic was also his and he used it to wrap around the air conditioner. (R. 125; p. 67).

Minck testified that before K.M. went to jail K.M.'s flat screen TV was broken. (R. 125; 72). When asked if he loaned K.M. his daughter's TV, his answer was "We might have loaned him her TV at one point in time and also one of my TVs from my bedroom. (*Id.* at 73). In executing the search warrant on K.M.'s residence, the police found a broken flat screen TV. (R. 128; p. 22). In executing the search warrant on Minck's residence, the police noted that there were two flat screen TVs. (R. 125; p. 36). The State argued to the jury "the only way those flat screens could have gotten back into [Minck's] residence is if [C.A.] and [Minck] went back into residence to get those TVs, which means they would have had access to [K.M.'s] keys." (R.126; p. 30). The State offered no testimony from anyone identifying the broken TV screen or the two TVs in Minck's residence as being the TVs Minck was referencing in his testimony. There was no testimony that either of those two TVs were in K.M.'s residence

after November 5, 2018 and the only time reference is that Minck loaned a TV to K.M. sometime prior to his brother going to jail. The State's argument was asking the jury to speculate about facts not in evidence.

The State argued that Minck had keys to his brother's residence and therefore, Minck had exclusive access to the K.M.'s home. As noted above, not only did Minck testify that he did not possess the keys to K.M.'s home, but the police actions showed that anyone could have gained access to K.M.'s home. (R. 129; pp. 133-134). The State clearly did not prove beyond a reasonable doubt that Minck had sole access to his brother's residence and therefore he was the only one who could have placed T.C.'s body in K.M.'s home.

The State further argued to the jury that the DNA evidence found on the tarp and plastic wrapped around T.C.'s body proved that Minck used these items to move T.C.'s body. (R. 128; pp. 60-61). As shown above, the State's DNA witness testified that Minck's DNA could have been on the tarp and plastic for a long time. (*Id.* at 62). The State offered no evidence to counter Minck's testimony that he used the tarp to move leaves and the plastic to cover an air conditioner. (R. 125; p. 67). As such, the State failed to present evidence to the jury to prove beyond a reasonable doubt that the tarp and plastic were used by Minck to move T.C.'s body.

The police found a broken flat screen TV in K.M.'s residence during the execution of the search warrant. (R. 128; p. 22). Minck testified that at some time he may have loaned his brother one of his flat screen TVs. (*Id.* at 73). During the search of Minck's residence, the police noticed two flat screen TVs. (R. 125; p. 36). As a result, the State argued that Minck must have been in his brother's home to take back his TV. (R.126; p. 30). However, there was no evidence presented to the jury showing that Minck's TV was in K.M.'s residence after K.M. went to jail. The State's argument was uncorroborated and therefore failed to establish that Minck had been in his brother's home by proof beyond a reasonable doubt.

For all of these reasons, Minck contends that the State failed to prove beyond a reasonable doubt that Minck hid the corpse of T.C.

**B. The State also failed to prove beyond a reasonable doubt that Minck was intending on concealing a crime by hiding the corpse of T.C.**

The State argued to the jury that Minck hid T.C.'s body "to conceal a crime, specifically, his illegal Oxycodone sales". (R. 129; p.72). T.C.'s cause of death was an overdose of Heroin and Fentanyl. (R. 128; pp. 97-98). Recovered from T.C.'s body was Heroin and Fentanyl. (R. 128; p. 42). Whoever delivered the heroin and Fentanyl to T.C. would be guilty of a Len Bias-type homicide pursuant to Wis. Stat. § 940.02(2)(a). This is the

crime that would have been concealed by hiding T.C.'s corpse. The application of Wis. Stat. § 940.11(2) in this manner is consistent with Wisconsin case law.

In *State v. Badker*, 2001 WI App 27, 240 Wis. 2d 460, 623 N.W. 142, the defendant was convicted of Wis. Stat. § 940.11(2). *Id.* at ¶ 1. The defendant strangled the victim to death in a parked truck outside a locked gate leading into the Necedah Wildlife Refuge and then, he rolled the body onto a blanket, then pulled the blanket over to a ditch inside the Necedah Wildlife Refuge and dumped the corpse into the water. Photographs of the location entered into evidence at trial reveal that it is a wooded, secluded spot. A locked gate prevents cars from driving into it. Except for trappers, members of the public are not allowed past the gate until twenty-four hours before the opening of gun deer hunting season. The secluded nature of the spot where the corpse was discovered by a fur trapper, as well as defendant's actions in dragging it to the ditch and rolling it down into the water, provided sufficient evidence from which the jury could have concluded beyond a reasonable doubt that he hid the corpse. *Id.* at ¶¶ 3 and 26. Clearly, the defendant hid the corpse to conceal his crime of strangulating the victim to death.

In *State v. Kamlager*, 2006AP1103 (Wis. App. 2007), an unpublished opinion without legal precedence, the defendant was convicted of Wis. Stat. § 940.11(2). *Id.* at ¶ 1. On December 23, 2001, the victim's body was found covered with branches and brush in a secluded wooded area close to both the victim and defendant's homes in Walworth, Wisconsin. The victim died as a result of gunshot wounds to the abdomen and blunt-force trauma to the head. *Id.* at ¶ 8. The victim had gone missing on November 24, 2001. *Id.* at ¶ 14. The defendant owned a Ruger .22 gun. *Id.* at ¶ 35. The defendant owed the victim approximately \$35,000 to \$36,000. *Id.* at ¶ 41. Three unfired .22-caliber bullets were found in the defendant's jacket pocket and a .22 caliber bullet was taken from the victim's body. *Id.* at ¶ 47. In this case the defendant clearly hid the corpse to conceal his crime of shooting and killing the victim.

In *State v. Nichols*, 2008AP940-CR (Wis. App. 2009), an unpublished opinion without legal precedence, the defendant was found guilty of second-degree intentional homicide and guilty of hiding a corpse pursuant to Wis. Stat. § 940.11(2). *Id.* at ¶ 1. The police found the victim's body covered with a log and leaves. An autopsy revealed that the victim had been shot with a shotgun, with pellets striking him in the face, neck, upper chest, right arm and shoulder, and the right side of his upper back. He

also sustained a stab wound to the face and five stab wounds to the front of his neck, severing both jugular veins. *Id.* at ¶ 12. Police recovered the single shot, twelve-gauge shotgun that the defendant used to shoot the victim, which still contained the fired shell casing. They also recovered the knife the defendant used. *Id.* at ¶ 13. Here, the defendant hid the body to conceal the crime of shooting and stabbing the victim.

In each of these three cases, the hidden corpse provided evidence of the victim's homicide. Similarly, T.C.'s corpse provided evidence of his homicide which was the delivery of heroin/fentanyl pursuant to Wis. Stat. § 940.02(2)(a). The State provided no evidence that Minck delivered heroin/fentanyl to T.C. The State conceded during a jury instruction conference that Minck did not deliver heroin. (R. 125; p. 90). Since T.C.'s corpse did not implicate Minck in any crime, Wis. Stat. § 940.11(2) does not apply in this case and Minck's conviction for violating Wis. Stat. § 940.11(2) should be vacated.

The State's argument that Minck hid T.C.'s corpse to conceal his drug dealing of Oxycodone must also fail. (R. 129; p. 72). The police spoke to Minck two times before T.C.'s body was discovered and both times Minck admitted to selling Oxycodone. (R. 92; Ex. 26; R. 93; Ex. 28). During the first police interview Detective Trowbridge told Minck, "I work

general crimes. I ask questions about drugs but that's not my main---". (R. 92; Ex. 26, lines 686-687).

In addition, Daniel Schofield testified that on or about November 18, 2018 he purchased 60 Oxycodone pills from Minck for \$300 and consumed all of them. (R. 129; p. 102). The transaction was not a controlled buy. (*Id.* at 105). The State offered no corroboration for this transaction, only Schofield's testimony. The evidence offered by the State was not sufficient to prove the transaction beyond a reasonable doubt. However, when Minck was asked about this transaction, he admitted that he had sold Schofield Oxycodone. (R. 125; pp. 79-80). The statements made by Minck during the investigation and trial belie any attempt to conceal his Oxycodone dealings. The State provided no evidence to prove beyond a reasonable doubt that Minck had any intention to conceal his illegal selling of Oxycodone. As a result, Minck's conviction for hiding a corpse pursuant to Wis. Stat. § 940.11(2) should be vacated.

### **CONCLUSION**

For all of the reasons stated above, the State simply failed to present sufficient evidence to the jury that could be believed and rationally considered by the jury to prove Roger Minck's guilt beyond a reasonable doubt of the offense of Hiding a Corpse pursuant to Wis. Stats. § 940.11(2). As such, Roger Minck requests this court to vacate his conviction pursuant to Wis. Stats. § 940.11(2) in Count One of the Judgment of Conviction and remand the case back with instructions to adjust the sentencing accordingly.

Dated this 7<sup>th</sup> Day of April 2023.

Electronically signed by:

Carl W. Chesshir  
Attorney for Defendant-Respondent,  
Roger Minck  
State Bar No. 1008915  
S101 W34417 Hwy LO  
Suite B  
Eagle, Wisconsin 53119  
(414) 899-8579  
carlchesshir@chesshirlaw.com