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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,
Plaintiff-Respondent,

Case No. 2024AP001249-CR

v.

PETER J. LONG
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM DEFENDANT'S DENIED MOTION TO
SUPPRESS AND DISMISS AND JUDGMENT OF CONVICTION
ENTERED IN THE WINNEBAGO COUNTY CIRCUIT COURT, THE
HONORABLE TERESA BASILIERE, PRESIDING

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Table of Contents

Statement of Issue Presented for Review	1
Statement on Oral Argument and Publication	1
Statement of the Case	1
Argument	2
Conclusion	8
Certification	9

Cases Cited

<u>State v. Ray</u> , 2005 WI 68, 281 Wis.2d 339, 697 N.W.2d 407	2
<u>State v. Gallion</u> , 2004 WI 42, 270 Wis.2d 535, 678 N.W.2d 197	2
<u>State v. McCleary</u> , 49 Wis. 2d 263, 182 N.W.2d 512 (1971)	2

Statutes Cited

Wis. Stat. 19.36(6) (Wisconsin Open Records Law)	6
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I. Statement of Issues Presented for Review

- 1) Whether the trial court erroneously exercised its discretion in denying the Defendant-Appellant's Motions to Suppress and Dismiss
- 2) Whether the trial court committed a manifest error of law and fact in denying Defendant-Appellant's Motion for Reconsideration.
- 3) Whether the trial court erred by requesting a copy of Deputy Wildeman's unredacted body camera video.

II. Statement on Oral Argument and Publication

The State is requesting neither publication nor oral argument.

III. Statement of the Case

Recognizing that the Defendant-Appellant is representing himself, despite his tendency to make arguments and include information that was unknown to law enforcement at the time, e.g., that the front door was unlocked and the reporting party was 10 years old, the State believes that his recitation of the facts of the case is sufficient at this juncture, and pursuant to Wis. Stat. 809.19(3)(a)(2), omits a repetitive statement of the case.

IV. Argument

1. The trial court did not erroneously exercise its discretion in denying the Defendant-Appellant's Motions to Suppress and Dismiss.

“An erroneous exercise of discretion may arise from an error in law or from the failure of the circuit court to base its decisions on the facts in the record.” *State v. Ray*, 2005 WI 68, 281 Wis.2d 339, 6978 N.W. 2d 407. “Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning.” *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197 (quoting *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971)).

Here, the trial court did not erroneously exercise its discretion when it determined, in light of the facts and circumstances of this case, that AW's actions at the sliding patio door were non-verbal consent for the officers to enter and follow her inside. Before the circuit court denied the Defendant-Appellant's Motions to Suppress and Dismiss, the court first heard officers testimony and saw some of their body camera videos. Then the court adjourned proceedings for a separate oral decision date to allow the court the opportunity to review the transcript of the motion hearing and hear and

see the video recordings better. The court also had the benefit of the parties submitting written arguments in their briefs.

As documented in the transcript of the motion hearing, Winnebago County Sheriff's Deputy Wildeman testified that AW opted not to come outside, although he requested that, but rather she moved back inside the house and left the door open. (Motion Tr. 14:9-20, February 23, 2024)

When asked if he entered under the emergency aid exception, Dep. Wildeman answered, "I entered under consent." (Id., 26:17-19) Deputy Wildeman testified that a 10 year old child can give consent to enter their home, and that she reported a crime occurred in a residence that she was legally able to be in and invited me in. (Id., 31:22-24 and 32:1-3) Deputy Wildeman also testified that the residents of a home can give consent for others to enter. (Id., 33:8-15)

Deputy Wildeman's testimony was essentially consistent with the unredacted recording from his body camera that night. In Dep. Wildeman's unredacted body camera recording of November 22, 2023 starting at 10:31:14pm, 10 year old AW unlocks the sliding glass patio door with an audible "click" of the lock . She then stands just inside of the door while Deputy Wildeman motions for her to step outside, saying, "Come on, come

on out, come on out.” Instead of exiting AW remains inside, and says, “they’re hiding in the room with us,” while she simultaneously gestures with her right thumb right pointing over her right shoulder to the interior of the residence.” She stands a few (3-4) seconds longer before turning and retreating back inside, leaving the sliding glass patio door open, thereby consenting for the officer to enter the premises.

Based on Winnebago County Sheriff’s Deputy Wildeman’s testimony and his unredacted body camera recording, it was not an erroneous exercise of discretion for the trial court to find that Deputy Wildeman reasonably believed AW consented to his entering the residence. Her actions of unlocking the sliding glass patio door, declining his request for her to exit and instead telling him “they were hiding,” while simultaneously gesturing over her shoulder before walking away in that direction leaving the door standing open for him to follow her indicate her implicit non-verbal consent. Thus, there was no 4th Amendment violation and no evidence should be suppressed, nor the complaint dismissed.

The trial court explained its reasoning, having considered the facts and circumstances in the record and read arguments from both parties to

reach its decision. As such the trial court properly exercised its discretion in denying the Defendant-Appellant's Motions to Suppress and Dismiss.

Indeed, the record shows that the trial court engaged in a rational thought process based on an examination of all facts and an application of those facts to the relevant law. Thus, there is no basis to find that the trial court erroneously exercised its discretion when it denied Defendant-Appellant's motions.

2. The trial court did not erroneously exercise its discretion, nor make an error of law and fact by denying Defendant-Appellant's Motion to Reconsider.

On May 13, 2024, when the trial court denied the Defendant-Appellant's Motion for Reconsideration, the Court provided very similar reasoning to that of her April 30, 2024 oral ruling. Specifically, the Court, as it had previously indicated in the earlier oral ruling, because the video was not very clear, the Court supplemented that information with the officer's testimony regarding the opening of the door. (Motion (Reconsideration) / Plea and Sentencing Tr. 11:6-7, May 13, 2024) In conclusion, the Court reiterated that she had considered all factual circumstances and arguments here. (Id., 11:8-9) The trial court did not

erroneously exercise its discretion, nor make an error of law and fact when it denied Defendant-Appellant's Motion for Reconsideration.

3. The trial court did not err by requesting a copy of Deputy Wildeman's unredacted body camera video.

The Defendant-Appellant never paid the \$15.00 cost to receive discovery from the District Attorney's Office as he was notified of on 01/29/2024. Apparently he chose instead to obtain Deputy Wildeman's body camera video by making an open records request of the Winnebago County Sheriff's Office, which resulted in his copy being redacted (with blurring to preserve juvenile confidentiality) per Wisconsin Open Records Law, Wis. Stats. §19.36(6).

At the Motion Hearing, the State relied on law enforcement officers testimony, while the Defendant-Appellate chose to play Dep. Wildeman's redacted body camera video. Unfortunately the blurring done to maintain juvenile confidentiality covered not only the child's face, but also included the area of the door handle. The Court inquired whether the video being played was a copy of the "full" tape, and sought clarification as to whether the "blocked out portions" took time out of the recording or only blocked faces. (Mtn. Tr. 77:1-9, February 23, 2024) With the blurred area

obscuring not only the child's face, but also her hand on the door, the redaction was concealing visual information that existed about the child and Dep. Wildeman's interaction at the patio door. Similarly, because the Court was having difficulty hearing the video of Lieutenant Haag's body camera, the Court stated that she "may just have to get a copy so that she can listen to it myself because having a hard time [hearing it.]" (Id., 80:19-21) The Court's request for the unredacted version of Deputy Wildeman's body camera video which he had testified existed was not an ex parte communication or submission because the Defendant-Appellant was present and did not object when the Court said that she wanted "to watch that tape again," and, upon the State seeking clarification, confirmed that the intent was to watch both body camera videos again. (Id., 87:18-20)

V. Conclusion

The trial court correctly exercised its discretion in denying the Defendant-Appellant's Motions to Suppress and Dismiss. The trial court heard testimony, reviewed body camera videos, read briefs and explained the reasoning used to reach her decision in her oral ruling and reiterated that same analysis as to the Defendant-Appellant's Motion for Reconsideration. In denying the Defendant-Appellant's Motions to Suppress and Dismiss, as well as his Motion for Reconsideration, the trial court consistently referenced the need to supplement the body camera video with the officer's testimony regarding the opening of the door. Therefore, this Court should affirm the trial court's order.

Dated at Oshkosh, Wisconsin this March 4, 2025

Electronically signed by:

Stephanie A. Stauber

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 1351 words.

Dated at Oshkosh, Wisconsin this March 4, 2025

Electronically signed

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