

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
CASE NO. 2024-AP-1249-CR**

FILED

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

State of Wisconsin,

Plaintiff-Respondent,

-vs-

Peter J. Long,

Defendant-Appellant.

**ON APPEAL FROM THE CIRCUIT COURT FOR WINNEBAGO COUNTY
THE HONORABLE TERESA S. BASILIERE, PRESIDING**

BRIEF OF DEFENDANT-APPELLANT

Respectfully Submitted By:

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Brief of Appellant Table of Contents

	<u>Page(s)</u>
Table of Authorities.....	3-4
Statement of Issues	5
Statement on Oral Argument.....	6
Statement on Publication.....	6
Statement of the Case	6-10
Statement of Facts	11-30
Standard of Reviews.....	31-32
Arguments	
I. The trial court erroneously exercised its discretion by denying the Defendant-Appellant's, Peter J. Long's ("Long"), Motion to Suppress and Dismiss based upon the Constitutional Protections under the Fourth Amendment to the United States Constitution. (R8).	32-40
II. The trial court committed a manifest error of law and fact by denying Long's Motion for Reconsideration. (R30).	40-44
III. The trial court erred by allowing the State to submit into the Record and cite in its brief elements of Deputy Wildeman's [unredacted] body camera video ("BCV") from Long's home on 11/21/23 even though the BCV was [not] shown or admitted into evidence in open court during the evidentiary hearing held on 2/23/24.	44-48
Conclusion.....	49
Certification of Form and Length.....	49

Table of Authorities

<u>Wisconsin Cases:</u>	<u>Page(s)</u>
<i>Franke v. Franke</i> , 2004 WI 8, 268 Wis. 2d 360, 674 N.W.2d 832	31
<i>In Re the Paternity of B.J.M.</i> , 386 Wis.2d 267, 925 N.W.2d 580.....	45
<i>Jocius v. Jocius</i> , 218 Wis.2d 103, 580 N.W.2d 708 (Ct. App. 1998)	45
<i>Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.</i> , 2004 WI App 129, 275 Wis. 2d. 397, 685 N.W.2d 853	31
<i>McCoy v. May</i> , 255 Wis. 20, 38 N.W.2d 15 (1949)	46
<i>State v. Filtz</i> , 2004 WI App 186, 276 Wis.2d 572, 687 N.W.2d 549	35, 39
<i>State v. Hart</i> , 2001 WI App 283, 249 Wis.2d 329, 639 N.W.2d 213	41
<i>State v. Kieffer</i> , 217 Wis.2d 531, 577 N.W.2d 352 (1998).....	passim
<i>State v. Kimberly B.</i> , 2005 WI App 115, 283 Wis.2d 731.....	33
<i>State v. Matejka</i> , 2001 WI 5, 241 Wis. 2d. 52, 621 N.W.2d 891	40
<i>State v. Monahan</i> , 2018 WI 80, 383 Wis.2d 100, 913 N.W.2d 894	48
<i>State v. Phillips</i> , 218 Wis.2d. 180, 577 N.W.2d 794 (1998)	32, 40
<i>State v. Rodgers</i> , 119 Wis.2d. 102, 349 N.W.2d 453 (1984).....	40
<i>State v. Sarnowski</i> , 2005 WI App 48, 280 Wis. 2d 243, 694 N.W.2d 498	47
<i>State v. Sonnenberg</i> , 117 Wis.2d 159, 344 N.W.2d 95 (1984)	49
<i>State v. Tomlinson</i> , 2002 WI 91, 254 Wis. 2d. 502, 648 N.W.2d 367	passim
<i>State v. Turner</i> , 136 Wis.2d 333, 401 N.W.2d 827 (1987)	32
<i>State v. Tyler T.</i> , 2012 WI 52, 344 Wis.2d 1, 814 N.W.2d 192.....	46
<i>Virgil v. State</i> , 84 Wis.2d 166, 191, 267 N.W.2d 852 (1978).....	48
 <u>Other State Cases:</u>	
<i>Doyle v. State</i> , 633 P2d 306 (Alaska Ct. App. 1981).....	39, 44
<i>Mears v. State</i> , 533 N.E.2d 140 (Ind. 1989)	39, 44
<i>Rose v. State</i> , 601 So.2d 1181 (Fla. 1992).	39, 44
<i>State v. Folkens</i> , 281 N.W.2d 1 (Iowa 1979)	39, 44
<i>State v. Griffin</i> , 756 S.W.2d 475 (Mo. 1988)	39, 44

Federal Cases:**Page(s)**

<i>Bumper v. North Carolina</i> , 391 U.S. 543 (1968).....	40
<i>Schneckloth v. Rustamonte</i> , 412 U.S. 218 (1973)	40
<i>United States v. Matlock</i> , 415 U.S. 164 (1974).....	39

Wisconsin Statutes:

Wis. Stat. § 901.01	46
Wis. Stat. § 901.03(1).....	47
Wis. Stat. § 911.01(2).....	46
Wis. Stat. § 971.23	45
Wis. Stat. § 971.23(1) and (7)	46

Other Authorities:

Article I, Section 11, of Wisconsin's Constitution.....	<i>passim</i>
Fourth Amendment to the United States Constitution	<i>passim</i>

Statement of Issues

- I. Whether the trial court erroneously exercised its discretion by denying the Defendant-Appellant's, Peter J. Long's ("Long")¹, "Motion to Suppress and Dismiss based upon the Constitutional Protections under the Fourth Amendment to the United States Constitution" ("Defendant's Motion to Suppress and Dismiss – 4th Amendment" (R8))? The trial court erred by finding that, applied to the facts in this case. In addition, the trial court erred by finding that a 10-year-old child has the authority to [consent] to law enforcement's entry into Long's home even though the child's mother and Long were both home and awake at the time.
- II. Whether the trial court erroneously exercised its discretion by denying Long's Motion for Reconsideration (R30)? The trial court committed a manifest error of law and fact by finding that *State v Tomlinson*, 2002 WI 91, 254 Wis. 2d 502, 648 N.W.2d 367, applied to the facts in this case. In addition, the trial court erred by finding that a 10-year-old child has the authority to [consent] to law enforcement's entry into Long's home even though the child's mother and Long were both home and awake at the time.
- III. Whether the trial court erred by allowing the State to submit into the Record and cite in its brief elements of Winnebago County Sheriff's Deputy Gabriel Wildeman's ("Deputy Wildeman") [unredacted] body camera video ("BCV") from Long's home on 11/21/23 (R23) even though the BCV was [not] shown or admitted into evidence in open court during the motion evidentiary hearing held on 2/23/24?

Statement on Oral Argument

Oral argument is not necessary. Long believes that his issues and arguments can be adequately presented through briefs to the Court.

Statement on Publication

Long believes that this case should be published because the specific issues involved in this appeal regarding the lawfulness of a 10-year-old child's consent for law enforcement to enter a home while two adults were present inside the home has never been litigated before in the higher Courts.

Statement of the Case

On November 21, 2023, at approximately 10:15 p.m., law enforcement responded to a 911 call from a 10-year-old child regarding an alleged disturbance at Long's primary residence located in Fox Crossing, Wisconsin. (R1 & R8). After knocking on the *unlocked* front door for 16 minutes with no response, [four] law enforcement officers [unlawfully] entered Long's residence with guns drawn *without a warrant* in violation of Long's Constitutional Rights provided by the Fourth Amendment to the United States Constitution and Article I, Section 11, of the Wisconsin Constitution. (R8:1). Subsequently, they [unlawfully] arrested Long for disorderly conduct due to a verbal landlord/tenant argument he had with his temporary roommate, Trisha L. Bales ("Bales"). (R1 & R8).

On November 22, 2023, the Criminal Complaint was filed against Long for a Class B criminal misdemeanor – disorderly conduct (“DC”). (R2). On that same day, Long had his initial appearance in Court. (R7). Long received a \$500 signature bond with the condition of no contact with Bales. *Id.* However, Long did not sign the signature bond because he remained in custody in the Winnebago County Jail (“WCJ”) on a PO hold. *Id.* Long represented himself *pro se* for this entire case. *Id.*

On November 29, 2023, Long filed a motion to dismiss with prejudice based upon protected speech under the First Amendment and that the two elements of disorderly conduct are not met (“Defendant’s Motion to Dismiss – 1st Amendment and Elements Not Met”). (R5).

On December 4, 2023, Long filed a motion to dismiss based upon the constitutional protections under the Fourth Amendment to the United States Constitution (“Defendant’s Motion to Suppress and Dismiss – 4th Amendment”). (R8).

On February 23, 2024, a 3½ hour long Motion Evidentiary Hearing was held in the trial court regarding Long’s two previously filed motions to dismiss. (R5 & R8). Long called two law enforcement witnesses to testify at this hearing: Winnebago County Sheriff’s Deputy Gabriel Wildeman (“Deputy Wildeman” or “Wildeman”) and FCPD Lieutenant Corey Haag (“Lt. Haag” or “Haag”). (R24:1-92 – **Transcript:** Motion Evidentiary Hearing on 02/23/24). During the hearing, Long entered four exhibits to include two police reports (Exhibits 1 & 2), the

[redacted] body camera video (“BCV”) of Wildeman on a DVD from the WCSO (Exhibit 3)¹, and the unredacted BCV of Haag on a zip drive from the FCPD (Exhibit 4)¹. *Id.* The State presented and entered [no] exhibits to the trial court during this Motion Evidentiary Hearing. *Id.* The trial court summarized with the State that the hearing was about the issues of consent and exigent circumstances. (R24:10, LL 1-3). However, the State clearly stated during the beginning of the hearing that it was *only relying on the* [consent of AW] to legally enter the residence. (R24:8, LL 18-25).

At the end of the hearing, the trial court requested that the transcript from the motion evidentiary hearing be prepared and filed. (R24:87). The trial court ordered the State to file a brief summarizing its arguments within two weeks after the transcript was filed. (R24:88-89). The trial court ordered Long’s response brief to be filed within two weeks after the State’s brief was filed. An Oral Ruling was scheduled for April 30, 2024. *Id.*

On March 8, 2024, the court reporter filed the Transcript of the Motion Evidentiary Hearing held on February 23, 2024. (R24:1-92).

On March 22, 2024, the State filed its Brief Opposing the Defendant’s Motion to Suppress and Dismiss (“State’s Brief”). (R25:1-3; **See App. P. 22-24**).

¹ Pursuant to Rule 809.15(4)(a), the record in the above referenced appeal [does] include items that are not electronically maintained. On October 11, 2024, these items were transferred to the Court of Appeals include: Defendant-Appellant’s Exhibit 3 (DVD) filed 2/23/24 *and* Defendant-Appellant’s Exhibit 4 (Zip Drive) filed 2/23/24. Exhibits 3 & 4 contain body camera video (“BCV”) of law enforcement officers from 11/21/2023 at Long’s residence.

On April 8, 2024, Long filed Defendant's Brief Supporting Defendant's Motions to Suppress and Dismiss. (R27:1-44; **See App. P. 25-41**).

On April 30, 2024, the trial court conducted an Oral Ruling on Long's two motions to dismiss. The trial court **denied** Long's Motion to Dismiss – 1st Amendment and Elements Not Met. (R46 – Order & Transcript – R66:1-10; **See App. P. 60-69**).

The trial court also **denied** Long's Motion to Suppress and Dismiss – 4th Amendment. (Order – R47:1-2; **See App. P. 7-8** & Transcript – R66:1-10, **See App. P. 60-69**). The trial court [erred] by denying Long's Motion to Suppress and Dismiss – 4th Amendment by finding that *State v Tomlinson*, 2002 WI 91, 254 Wis. 2d 502, 647 N.W.2d 177, applied to the facts in this case. *Id.* (**See State v Tomlinson, App. P. 110-124**). In addition, the trial court [erred] by finding that a 10-year-old child, who is in *special education* classes in the [fourth] grade, has authority to [consent] to law enforcement's entry into Long's home even though the child's mother and Long were both home and awake. *Id.*

On May 10, 2024, Long filed a Motion for Reconsideration. (R30:1-7; **See App. P. 70-76**).

On May 13, 2024, the trial court [erred] by denying Long's Motion for Reconsideration by finding that *State v Tomlinson*, 2002 WI 91, 254 Wis. 2d 502, 647 N.W.2d 177, applied to the facts in this case. (Order – R45; **See App. P. 9** & Transcript – R67:1-11; **See App. P. 77-87**). In addition, the trial court erred by finding that a 10-year-old child has authority to [consent] to law enforcement's

entry into Long's home even though the child's mother and Long were both home and awake. *Id.*

On May 13, 2024, Long pled no contest to the DC and was sentenced to 45 days in the WCJ concurrent to his ES revocation sentence. (JOC – R31:1-2; *See App. P. 5-6* & Transcript – R67:12-27). At sentencing, Long already had 175 days of sentence credit since his arrest on November 21, 2023, so he was granted “time served” on this case. *Id.*

On May 17, 2024, the Judgment of Conviction was filed. (R31:1-2; *See App. P. 5-6*).

On June 14, 2024, the trial court signed and filed a written Court Order **denying** Long's Motion to Dismiss – 1st Amendment and Elements Not Met. (Court Order – R46:1).

On June 14, 2024, the trial court signed and filed a written Court Order **denying** Long's Motion for Reconsideration. (Court Order – R45:1; *See App. P. 9*).

On June 17, 2024, the trial court signed and filed a written Court Order **denying** Long's Motion to Suppress and Dismiss – 4th Amendment. (Court Order – R47:1-2; *See App. P. 7-8*).

On June 25, 2024, Long filed his Notice of Appeal. (R50).

On September 20, 2024, the three Transcripts were filed by the court reporter. (**Three Transcripts: R24** – Motion Evidentiary Hearing on 02/23/24; **R66** – Oral Ruling on 04/30/24; & **R67** – Motion Hearing/Plea and Sentencing Hearing on 05/13/24).

Statement of Facts

Long is the sole owner of his primary residence located at 1761 Butte des Morts Beach Road in the Village of Fox Crossing, Wisconsin. (R8:2, ¶ 1; *See App. P. 11*). Long's master bedroom suite with office, bathroom, and walk-in closet is on the southern end of his ranch style home. *Id.* The other two bedrooms are on the far northern end of his home. *Id.*

During the middle of September 2023, Trisha L. Bales ("Bales"), called Long stating she and her three young daughters were [homeless] and urgently needed a place to stay. (R8:2, ¶ 1; *See App. P. 11*). Bales daughters were 7, 10, and 12 years of age and they had a Pocket Pitbull dog named Violet. *Id.* Long is a Christian and was kind enough to allow them to move in and occupy the northern two bedrooms and bathroom of his house because his son had vacated to go to college. *Id.* Long was helping Bales "get back on her feet" financially until she could afford her own residence. *Id.* After the first free month, Bales agreed to pay Long \$750 per month plus half the monthly WE Energies' bill. *Id.*

On November 21, 2023, at around 10:00 p.m., Long began a landlord / tenant [conversation] with Bales regarding her and her children's lack of cleaning, vacuuming, taking out the garbage/recycling, and her refusal to purchase her own laundry soap, dishwasher detergent pods, and cleaning supplies. (R8:2, ¶ 3; *See App. P. 11*). This conversation only lasted approximately 3 minutes. *Id.*

Long left the kitchen and went to use the North bathroom. (R8:3, ¶ 3; *See App. P. 12*). Coming out of the bathroom Long passed Bales heading to her

bedroom in the small hallway outside the three girls' bedroom door which was mostly closed. *Id.* Long told Bales that if nobody wanted to help clean the house then he would have to hire a cleaning service and they would split the bill in half. *Id.* Bales became upset and was adamantly against the idea. *Id.* This landlord/tenant conversation turned into an argument with [both] Long and Bales gradually raising their voices until they were [both] yelling at each other. *Id.* & (R2:3, ¶ 1). This argument was also short and only lasted approximately **2 minutes**. *Id.*

Towards the end of this short landlord/tenant argument in the small hallway outside the girls' bedroom in which they were already sleeping, Bales' Pocket Pitbull dog named Violet ran towards Long suddenly and attached him. (R8:3, ¶ 5; **See App. P. 12) and** (R11 & R12 – Dog Bite Pictures of Long's Lower Right Leg taken on 11/27/23 by PO). Long was knocked off balance when Violet bit him and locked onto Long's lower right leg pulling on it. *Id.* Long was yelling and screaming in pain during the dog attack. *Id.* Long fell backwards into Bales [incidentally] knocking her down and falling on top of her. That was the **yelling** that the dispatcher referenced on page 2, ¶ 1 of the Criminal Complaint. (R2:2, ¶ 1). That is also the noise that AW (age 10 – fourth grader) heard which woke her up, frightened her, and motivated her to call 911. (R8:3, ¶ 4; **See App. P. 12**).

FCPD Lt. Haag's body camera video ("BCV") was played in open court during the evidentiary hearing. (R18). It was on a zip drive which Long entered as Exhibit 4. *Id.* The importance of this BCV was that it caught Lt. Haag's interview

with AW in which she stated that, “I didn’t really see it the whole time because I was over there hiding on the other side of the bed.” (R24:80-81 *and* BCV at 10:42:20). Therefore, the 911 call is [not] *inherently credible* because AW later told FCPD Lt. Haag that she could [not] see the incident because she was hiding on the other side of the bed. *Id.* A 10-year-old [child’s], a fourth grader in *special education classes*, (“AW’s”), [misinterpretation] of a situation she could [not] see cannot support probable cause for law enforcement officers to enter Long’s home [without] a warrant and *with guns drawn*. *Id.* & (R8:4, ¶ 6; **See App. P. 13**). That is an excessive show of force and an [unlawful] governmental intrusion into Long’s home at approximately 10:34 p.m. *Id.*

In the present case, the police knew that Long was/is the sole owner of the home. (R2:2, ¶ 1, LL 5-6 P 4, ¶ 3, LL 7-8). Bales was Long’s temporary tenant along with her three young daughters: ages 7, 10, and 12. All the responding officers already knew that Long lived at this residence from prior contacts. (R27:11; **See App. P. 35**). In addition, the FCPD officers ran the plates to Bales green minivan parked in the driveway confirming it was her vehicle. (R19 & R21 & R27:11; **See App. P. 35**). FCPD officers also recognized Long’s red Dodge Ram 2500 pickup truck parked in the driveway. *Id.* They testified that the dispatcher informed all officers that Long and Bales were home possibly involved in a domestic argument. *Id.* No children were [ever] left alone or “in charge” of Long’s home. *Id.* Long and/or Bales were always home if the young children were there. *Id.* Therefore, only Long or Bales could [lawfully] give consent to enter into

their residence, contrary to the erroneous interpretation of State law and misguided testimony of Deputy Wildeman. *Id.*

Fox Crossing Police Department (“FCPD”) Officer Kurczek (“Kurczek”) and Deputy Gabriel Wildeman (“Wildeman”) of the Winnebago County Sheriff’s Office (“WCSO”) were the first to arrive at Long’s house the evening of November 21, 2023, at approximately 10:18 p.m. (R8:4, ¶ 8; **See App. P. 13 and R24:18, LL 8-13**). **On February 23, 2024, Deputy Wildeman testified** that “the reason for knocking and not going in immediately was waiting for somebody to come to the door to answer it.” (R24:18, LL 18-21). Upon arrival at Long’s home, Wildeman believed there were [at least] two adults inside the residence. (R24:19, LL 3-5). Also, Wildeman testified that he didn’t know how many children were home, who the actual juvenile reporting party was, and how old the she was. (R24:19, LL 6-15).

After observing and walking around the residence looking in windows, Kurczek and Wildeman *observed* a [quiet home] with [no] activity and [no] noise coming from inside. (R24:19-21). There was [no] corroborated probable cause of the report of a physical fight. *Id.* Therefore, there was [no] corroborated probable cause to call two more officers, FCPD Lt. Haag and Officer Jack, to Long’s residence because Kurczek’s and Wildeman’s observations indicated that a 10-year-old’s (AW’s) 911 call was [not] confirmed by anything. *Id.*

Deputy Wildeman testified that he was walking around the residence tapping on, and shining in, the windows with his flashlight and [nobody] came to

the windows and cried for help or stated that they needed medical attention. (R24:21, LL 10-15). He testified that the windows were open and the interior lights were on. (R24:13, L 21 → P 14, L 4; R24:20, L 6 → P 21, L 22). Wildeman also testified that “while peering into windows, looking through patio doors, and the living room picture window, he did [not] *hear any yelling, banging, arguing, cries for help, or complaints of pain coming from anyone inside the residence.*” (R24:21, LL 16-22). Furthermore, dispatch had informed the responding officers that there were [no] prior calls at Long’s address. (R2:2, ¶ 1). **Long has [no] criminal history of violence or domestic abuse.** *Id.* During the 911 call, dispatch also confirmed with AW that [no] ambulance was needed because nobody needed medical attention. *Id.*

After 16 minutes of [violent] and [excessive] pounding on Long’s unlocked front door nobody answered the front door. (R8:4, ¶ 9; **See App. P. 13 and** R24:18, LL 4-21; R24:40, L 15 → P 44, L 18). Although awake and in their bedrooms, *neither* the reporting party, AW, *nor* her mother, Bales went to the front door to answer it. *Id.* Nobody talked to the police or gave them [consent] to enter the home. *Id.* During this time, law enforcement could have easily spent the 20 minutes that Wildeman testified it would have taken to procure a warrant to enter Long’s home had they actually had probable cause. (R24:21-23). Lt. Haag was the officer in charge of the scene. (R24:22, LL 6-7). Deputy Wildeman was on the scene to assist the FCPD officers, Lt. Haag, Officer Kurczek, and Officer Jack. (R24:11; R24:22, LL 1-5).

After more time passed without noise or incident, AW (age 10) and her older sister, EW (age 12), left their bedroom and went into the kitchen to look out the glass patio door to see who was walking around the house late at night shining flashlights into their bedroom windows. (R8:4-5, ¶ 9; **See App. P. 13-14**). Deputy Wildeman saw the two girls standing in the kitchen looking at him. (R24:13, LL 4-15). They did [not] indicate that they were in danger, grave danger, distress, or needed immediate medical attention. (R24:21, LL 2-22). They actually just calmly looked at him through the glass patio door and said nothing. (R24:13, LL 4-15; R24:23-25).

Deputy Wildeman [falsely] testified that AW opened the rear glass patio door and gave him consent to enter. (R24:40, L 15 → P 44, L 10). **Highly relevant excerpts of Deputy Wildeman's testimony from the transcript (R24) are typed in verbatim as follows: (R24:23-44).**

P 23 L 16 BY THE DEFENDANT:

L 17 Q How many search warrants have -- have you attempted to
L 18 procure while employed by the Fox -- by Winnebago County
L 19 Sheriff's Office with respect to -- not talking about
L 20 OWI's and blood draws.

L 21 A None. (Wildeman).

L 22 Q So it's correct to say you entered my home through the
L 23 rear patio door?

L 24 A Correct. (Wildeman).

L 25 Q Okay. At that time, why did you enter my home?

P 24 L 1 A Because Aleasha invited me in. (Wildeman).

L 2 Q Did she say come inside?

L 3 A Not in those words. (Wildeman).

L 4 Q Did she say it in any type of words?

- L 5 A **Yeah. She said they're hiding in the bedroom with us. (Wildman).**
- L 6 Q You're saying that means - - that equates to come inside?
- L 7 A **Yes. It's quite common for me to knock on a door and**
- L 8 **say, hey, I'm here to find so-and-so, and somebody says,**
- L 9 **oh, they're in this room, and then we go in. It's quite**
- L 10 **common. (Wildeman).**
- L 11 Q Did you say you're Officer So-and-So at that time by the
- L 12 patio door?
- L 13 A **I don't believe I stated my name and agency, no, but I**
- L 14 **was in full duty uniform. (Wildeman).**
- L 15 Q Did you even tell the - - do you know how old Aleasha is?
- L 16 A **I believe now she is about 10. (Wildeman).**
- L 17 Q Well, when she opened the patio door, did you ask the
- L 18 child if anyone needed medical attention?
- L 19 A **I didn't really get the time to. I asked her, can you**
- L 20 **step outside and talk to me? Because those were**
- L 21 **questions that I was going to ask. But then she said - -**
- L 22 **I think even she shook her head and said, they're in the**
- L 23 **room - - they're hiding in the room with us, and walked**
- L 24 **away, and that is when we entered. (Wildeman).**
- L 25 Q Once inside my residence, did you hear any yelling?
- P 25 L 1 A **No. (Wildeman).**
- L 2 Q Did you hear any arguing?
- L 3 A **No. (Wildeman).**
- L 4 Q Did you hear any banging?
- L 5 A **No. (Wildeman).**
- L 6 Q Did you hear any cries for help?
- L 7 A **No. (Wildeman).**
- L 8 Q Do [sic] you hear any complaints of pain?
- L 9 A **No. (Wildeman).**
- L 10 Q Once inside my residence, what did you do?
- L 11 A **We started towards the bedroom where - - or down the**
- L 12 **hallway where I had seen Aleasha come from. We started**
- L 13 **searching the rooms there for individuals. (Wildeman).**
- L 14 Q Were all the lights on so you could easily see?

L 15 A I believe so in most of the rooms. The bedroom and
L 16 bathroom I think were off - - or at least one of the
L 17 bedrooms and bathroom the lights were off. (Wildeman).
L 18 Q Did you say anything?
L 19 A Yeah. We announced police department, sheriff's office. (Wildeman).
L 20 Q Did you draw your firearm?
L 21 A I did. (Wildeman).
L 22 Q Did you ask if everyone was okay?
L 23 A I never came in contact with the victims until the very
L 24 end. (Wildman).
L 25 Q What I'm saying is when you announced police department.
P 26 L 1 A No, I did not yell out, are you okay.
L 2 Q Okay.
....
P 26 L 17 Q Did you enter the residence under the emergency aid
L 18 exception?
L 19 A I entered under consent. (Wildeman).
L 20 Q Did you enter the residence under the community caretaker
L 21 function of the police?
L 22 A Not at that time. (Wildeman).
L 23 Q So there's only one entry; right?
L 24 A Yes. (Wildeman).
L 25 Q So it's a yes or no question.
P 27 L 1 A No. (Wildeman).
L 2 Q So when you yelled sheriff's department, I presumed, did
L 3 you yell sheriff's department and then followed up with
L 4 is everyone okay?
L 5 A No. (Wildeman).
L 6 Q Did you ask if anyone - - or yell if anyone needed medical
L 7 attention?
L 8 A I did not. (Wildeman).
L 9 Q Did you observe anything suggesting that there had been a
L 10 fight or disturbance?
L 11 A Not that I can recall. (Wildeman).

L 12 Q Did you let any other officers inside my home?

L 13 A **Well, Officer Haag followed me, and then we opened the**
L 14 **door for Officer Kurczek. (Wildeman).**

L 15 Q Did you open the door?

L 16 A **I don't recall exactly who opened the front door. I just**
L 17 **know that Lieutenant -- or, sorry -- Officer Kurczek was**
L 18 **allowed through the front door. (Wildeman).**

....

P 30 L 17 Q Okay. Let's just, for a moment here, go back to the --
L 18 the point of entry, the time of entry through the -- the
L 19 unlocked patio door. So you testified that 10-year-old
L 20 child, AW, Aleasha, opened the rear patio door.

L 21 A **Yes². (Wildeman).**

L 22 Q Did you -- at -- did you believe I was home at the time?

L 23 A **Yes. (Wildeman).**

L 24 Q Did you believe that Trisha Bales was home at the time?

L 25 A **Yes. (Wildeman).**

....

P 31 L 10 Q Did she (AW) appear calm and speak in a normal tone?

L 11 A **Yes. She was very quiet, though, which I thought was**
L 12 **odd. (Wildeman).**

L 13 Q At that time did you believe that Aleasha had authority
L 14 over the premises?

L 15 A **Yes. (Wildeman).**

L 16 Q Why?

L 17 A **Because she was inside the residence. (Wildeman).**

L 18 Q No, I mean authority over the premises; the one in
L 19 charge.

L 20 A **I guess I'm not used to somebody being, quote, unquote,**
L 21 **in charge, of a residence. (Wildeman).**

² **Perjury**; Deputy Wildeman's BCV from 11/21/23 starting at 22:30:31 [shows] that while he was standing on the rear deck, [he] reached out with [his hand] and slid open the glass patio door to the kitchen while the juvenile, Aleasha, just watched him.

- L 22 Q Can a 10-year-old child give you consent to enter my
L 23 home?
- L 24 A **Yes. (Wildeman).**
- L 25 Q Based on what?
- P 32 L 1 A **She was the reporting party of a crime. She reported a
L 2 crime occurred in a residence that she was legally able
L 3 to be in and invited me in. (Wildeman).**
- L 4 Q Well, We already - - you already testified she didn't say
L 5 come in; correct?
- L 6 A **Not in those words. (Wildeman).**
- L 7 Q Why don't [sic] you ask AW to go get her mom to come to her [sic]
L 8 patio door?
- L 9 A **Because she walked away. (Wildeman).**
- L 10 Q But you're yelling inside the house. You could have
L 11 yelled at her, go get your mom. Right?
- L 12 A **Yes, I could have done a lot of things, but I didn't. (Wildeman).**
- L 13 Q At the time you entered my home, did you believe that
L 14 anyone inside the residence was in grave danger of
L 15 physical harm?
- L 16 A **Or - - yes. Or the threat of it. (Wildeman).**
- L 17 Q Who?
- L 18 A **The victim of the crime. (Wildeman).**
- L 19 Q Okay. It's an alleged crime; correct?
- L 20 A **If you want to use the word alleged crime, yeah. (Wildeman).**
- L 21 Q Well, you're - - you're not the judge and jury. It's an
L 22 alleged crime.
- L 23 A **She reported a crime. (Wildeman).**
- L 24 Q Was it corroborated by any firsthand evidence by you at
L 25 the scene?
- P 33 L 1 A **Not - - not at that moment, no. (Wildeman).**
- L 2 Q At any moment? At the time prior to entry?
- L 3 A **No. (Wildeman).**
- L 4 Q Did you believe that procuring a warrant would cause
L 5 some - - someone inside the home such grave danger to
L 6 physical harm?

L 7 A I would have to say I have yet to think of that. (Wildeman).

L 8 Q Okay. Lastly, at - - on November 21st, 2023, at 10:32 at
L 9 night, which was the approximate time of entry, who could
L 10 have legally given consent to allow you to enter my home?

L 11 A The residents of that home. (Wildeman).

L 12 Q So you're saying children can give consent when - - even
L 13 when their parents are home?

L 14 A If no parents come to speak to me and the child has
L 15 reported a crime, yes. (Wildeman).

....

P 35 L 1 THE DEFENDANT: I - - I am going to play the
L 2 DVD - - (R18 – Exhibit 3: DVD of Deputy Wildeman's BCV from 11/21/23)

L 3 THE COURT: Okay.

L 4 THE DEFENDANT: - - that show what
L 5 Deputy Wildeman did when he responded to my home - -

L 6 THE COURT: Okay. Pull it up.

....

P 38 L 17 BY THE DEFENDANT:

L 18 Q Does your police report say you got consent to enter?

L 19 A Not in the exact words of I got consent to enter. (Wildeman).

L 20 Q Does it say - - I - - I - - I guess I don't know what you
L 21 mean by those exact words. Does it say anywhere that
L 22 you - - the word consent?

L 23 A No. (Wildeman).

L 24 Q Is it fair to say that based on the timeline you were
L 25 there approximately, at, like 14 minutes before you
P 39 L 1 entered?

L 2 A Sounds correct to me. (Wildeman).

L 3 Q You testified you didn't know how many children were in
L 4 the residence - - or juveniles. Why would you assume the
L 5 one that came to the door was the reporting party?

L 6 A Because at that time I had seen one juvenile female and I
L 7 made the assumption that there was only one juvenile
L 8 female. (Wildeman).

L 9 Q Okay. But I believe that - - isn't it correct that you - -
L 10 while you were looking in the windows you said there was [sic]
L 11 multiple people, multiple kids in that room?

L 12 A **In the room, no. I only saw one female in the room. I**
L 13 **guess if you're referring to when I saw the two females**
L 14 **walking out. (Wildeman).**

L 15 Q Mean the juveniles?

L 16 A **Yes. (Wildeman).**

L 17 Q Was the first one younger or older than the second one?

L 18 A **I - - I guess I don't know which one walked in front of**
L 19 **the other. I just know the one that answered the door**
L 20 **was Aleasha. (Wildeman).**

L 21 Q Was - - was - - was the one behind her Erikha?

L 22 A **That sounds correct. Sounds like the correct name. (Wildeman).**

L 23 Q Erikha is much taller than Aleasha; right? And older?

L 24 A **I do know she is older. (Wildeman).**

L 25 Q Why would you assume - - how could you determine between
P 40 L 1 those two juveniles, why would you assume that the
L 2 younger, shorter one was the reporting party and not her
L 3 older sister behind her?

L 4 A **Because reporting parties tend to come and speak with law**
L 5 **enforcement.**

L 6 Q Okay. Does my house have a basement?

L 7 A **I did not see any evidence that I recall, but I don't**
L 8 **know for a fact. (Wildeman).**

L 9 Q But you didn't know for sure did - - you're assuming - -
L 10 you assumed - - did you - - you - - did you assume that a - -
L 11 Aleasha was the reporting party because - - based - - I
L 12 mean, it was - - was it an assumption? Because she didn't
L 13 tell you she was the reporting party; correct?

L 14 A **Correct. Correct. (Wildeman).**

L 15 Q Did you open the patio door to my house?

L 16 **A** **I did not³. (Wildeman).**

L 17 THE DEFENDANT: I would like to play back the

L 18 tape. (R18 – Exhibit 3: DVD)

....

P 42 L 5 THE DEFENDANT: - - time - - well, date,

L 6 11/21/23, time, 22:30 and 17 seconds

L 7 THE COURT: Okay.

L 8 (Video plays.)³

L 9 THE DEFENDANT: Okay. I am stopping at 22:11

L 10 and 20 seconds.

L 11 BY THE DEFENDANT:

L 12 Q Officer, I will ask you again, who opened the rear patio

L 13 door?

L 14 **A** **The juvenile. My hand was on the - - (Wildeman).**

L 15 Q Should - -

L 16 THE COURT: Hold - - hold on. Don't talk over

L 17 each other because the court reporter can't take down two

L 18 voices at one time. Let him finish his answer, and then

L 19 the witness will let you finish your question. Okay?

L 20 Sir, go ahead and answer what you were going to

L 21 say.

L 22 **THE WITNESS: The door was already open - - was**

L 23 **already opening before I put my hand on the door. I**

L 24 **was - - (Wildeman).**

L 25 THE DEFENDANT: What?

P 43 L 1 **THE WITNESS: - - just guiding it open. (Wildeman).**

L 2 BY THE DEFENDANT:

L 3 Q I'll remind you you're under oath. We just saw it on the

L 4 video. What are you - - why would you be lying?

L 5 **A** **I'm not lying. (Wildeman).**

³ **Perjury;** Deputy Wildeman's BCV from 11/21/23 starting at 22:30:31 [shows] that while he was standing on the rear deck, [he] reached out with [his hand] and slid open the glass patio door to the kitchen while the juvenile, Aleasha, just watched him.

L 6 Q Did you have a - - did you talk to the district
L 7 attorney - - assistant district attorney here prior to
L 8 your testimony today?

L 9 A **Yes. (Wildeman).**

L 10 Q How many times?

L 11 A **Just once. (Wildeman).**

L 12 Q How long?

L 13 A **Five minute phone call. (Wildeman).**

L 14 Q Did she tell you what to say?

L 15 A **Negative. She asked me what I thought of this case, what
L 16 my testimony would be. (Wildeman).**

L 17 Q Okay.

L 18 THE DEFENDANT: Your Honor, I don't know if you
L 19 want me to play it again, but I believe the officer - -

L 20 THE COURT: You can play it again.

L 21 THE DEFENDANT: He is lying.

L 22 THE COURT: Sir, play it again. Where are you
L 23 starting again?

L 24 THE DEFENDANT: Okay. I am - - geez - - I'm
L 25 starting at 22:31 - - 22:30 and 31 seconds.

P 44 L 1 (Video plays.)²

L 2 THE DEFENDANT: Stopping at 22:32:37.

L 3 BY THE DEFENDANT:

L 4 Q Correct me if I'm wrong, I didn't see Aleasha's hand on
L 5 the door.

L 6 A **It's kind of hard to tell when it's blurred out. (Wildeman).**

L 7 Q Do you want me to play it again?

L 8 THE COURT: Sir, you have made - - you can make
L 9 your point in argument. The witness has given their
L 10 answer - - the answer here.

L 11 THE DEFENDANT: Are officers allowed - -

L 12 THE COURT: Do you - - do you have any more
L 13 questions for this witness or not?

L 14 THE DEFENDANT: They're not allowed to lie.

L 15 THE COURT: Sir, I'm going - - again, I'm going

L 16 to allow you to make your arguments in final argument
L 17 here. But at this point, right now, you're here to ask
L 18 questions only.
L 19 THE DEFENDANT: No more questions.

Then, [without] a warrant and [without] consent, Deputy Wildeman slid open the glass patio door. (R24:21, LL 23-24; R24:42, L 5 → P 44, L 19). Erikha (EW – age 12) calmly walked back towards her bedroom. (R24:16, LL 5-10; R24:23, LL 16-21). Then Wildeman asked Aleasha (AW – age 10) to exit the residence. (R24:14, LL 5-20). AW declined and walked back towards her bedroom. *Id.* AW **did [not] close** the patio door on Deputy Wildeman because she was [not] the one that slid it open. *Id.*

Then, [without] a warrant and [without] consent, Deputy Wildeman entered Long's kitchen through the patio door and Lt. Haag followed right behind him. (R24:14, LL 21-22; R24:16, LL 11-15; R24:23, LL 16-21). Once inside, Lt. Haag proceeded to the front door to let Officer Kurczek inside although the front door was unlocked the entire time. (R24:14, LL 23-25). They all pulled their guns and began searching Long's entire house; [not] just the part rented by Bales and her children. *Id.*

It is important to take judicial notice of the fact that Deputy Wildeman initially [perjured] himself when testifying at the Motion Evidentiary Hearing held on February 23, 2024. (R24:42, L 5 → P 44, L 19). Initially, he lied and testified that AW had slid open the glass patio door to Long's home. *Id.* Long showed Wildeman's BCV (at 22:30:31) during the hearing and even replayed his unlawful

entry into Long's kitchen several times for the trial court. *Id.* Then Wildeman's testimony changed and he lied that he and AW must have slid open the glass patio door [together] at the same time. *Id.* However, the BCV at 22:30:31 clearly showed Wildeman opening the patio door by himself. *Id.*

On February 23, 2024, Lt. Haag testified about his personal involvement in the incident at Long's house on November 21, 2023. (Motion Evidentiary Hearing on 02/23/24 Transcript – R24:58-91; **See App. P. 42-59**). Lt. Haag testified that [he] was the officer in charge of the scene that evening. (R24:60, LL 12-13; **See App. P. 44**). Lt. Haag testified that he knew Peter Long and was [very] familiar with Long's residence. (R24:56, LL 12-14). Lt. Haag further explained that he had been at Long's residence multiple times for Dennis Strong (tenant) while Long was in jail on a "PO Hold." (R24:56, LL 15-25).

After Lt. Haag arrived on the scene he made contact with Kurczek and inquired as to what information he had gathered since being on the scene. (R24:57, LL1-3). Then Lt. Haag began knocking on the front door but never checked to confirm that it was unlocked. (R24:57, LL 4-9). Lt. Haag testified that [nobody] came to the front door to answer it. (R24:57, LL 8-9). Importantly, Lt. Haag testified that he was [waiting] for somebody at the front door to answer it and give him [consent] to enter the residence. (R24:57, LL 10-14). At that time, Lt. Haag testified that he believed there were *at least* one juvenile and two adults, Long and Bales, inside the residence. (R24:57, LL 15-18). Furthermore, he testified that he *didn't know exactly* how many children were inside the residence nor did he know

[who] the reporting party was and [how old] she might have been. (R24:57, LL 19-25).

Lt. Haag testified that he was walking around the residence tapping on, and shining in, the windows with his flashlight and [nobody] came to the windows and cried for help or stated that they needed medical attention. (R24:58, L 10 → P 59, L 13; **See App. P. 42**). He testified that the windows were open and the interior lights were on. (R24:58, LL 10-16; **See App. P. 42**). Lt. Haag also testified that “while peering into windows, looking through patio doors, and the living room picture window, he did [not] *hear any yelling, banging, arguing, cries for help, or complaints of pain coming from anyone inside the residence.*” (R24:59, LL 7-13; **See App. P. 43**). Furthermore, dispatch had informed the responding officers that there were [no] prior calls at Long’s address. (R2:2, ¶ 1). Long has [no] criminal history of violence or domestic abuse. *Id.* During the 911 call, dispatch also confirmed with AW that [no] ambulance was needed because nobody needed medical attention. *Id.*

Lt. Haag further testified that he began observing and walking around the residence looking in windows. (R24:58; **See App. P. 42**). Haag testified that he *observed* a [quiet home] with [no] activity and [no] noise coming from inside. *Id.* He testified that there was [no] corroborated probable cause of the report of a physical fight. (R24:58, LL 1-9 and R24:61, L 25 → P 62, L 4; **See App. P. 42**). Lt. Haag’s observations indicated that a 10-year-old’s (AW’s) 911 call was [not] confirmed by anything on the scene. *Id.*

Lt. Haag testified that he did [not] attempt to procure a search warrant at this time. (R24:59, LL 15-15; **See App. P. 43**). Lt. Haag testified that there was an on-call district attorney and judge available to get a warrant from. (R24:59, L 14 → P 61, L 8; **See App. P. 43**). Lt. Haag testified that “he can get a warrant at any time of the day.” (R24:60, LL 9-11; **See App. P. 44**).

Lt. Haag testified that approximately 20 minutes elapsed between his arrival at my residence and his entry into my residence. (R24:60, 18-21; **See App. P. 44**). Haag testified that “Deputy Wildeman informed him that a juvenile female had come to the door and opened the sliding glass door.” (R24:61, LL 9-21; **See App. P. 45 and R24:68, LL 4-5; See App. P. 52**). However, Haag never actually [saw] AW allegedly “open” the sliding glass door. *Id.* Lt. Haag testified that “while we were debating whether or not we were going to enter the residence. Deputy Wildeman had informed me that he had contact at the back of the residence. We were still gathering information.” (R24:73, LL 4-10; **See App. P. 57**).

Once inside Long’s residence Lt. Haag testified that “[nothing] stood out to him suggesting there had been a fight or disturbance.” (R24:63, LL13-15; **See App. P. 47**). Furthermore, [none] of the four officers with guns drawn inside Long’s residence yelled out to inquiry if anyone needed help of medical attention. (R24:63-65; **See App. P. 47-49**). In fact, Lt. Haag testified that he ordered the other officers to “go lethal.” (R24:65, LL 8-18; **See App. P. 49**). Subsequently, Lt. Haag testified that soon after entry there were four officers in the house with weapons drawn, pointed at a door where Bales and her three children were behind. (R24:66, LL 10-

14; **See App. P. 50**). Lt. Haag testified that Long was located on the complete opposite end, the South end, of the residence in his master bedroom. (R24:66, L 24 → P 67, L7; **See App. P. 50**). Lt. Haag further testified that Long was friendly, talkative, and peaceful when confronted. (R24:67, LL 11-13; **See App. P. 51**). However, Long did ask the officers why they were inside his house, who let them in, and indicated that they should leave. (R24:67, LL 14-21; **See App. P. 51**).

Lt. Haag testified that he did [not] enter Long's residence under the community caretaker function. (R24:73, LL 11-14; **See App. P. 57**). Lt. Haag testified that law enforcement officers *entered* Long's home under the *emergency aid exception to the warrant requirement* [after] knocking on Long's *unlocked* front door **for 16 minutes**. (R24:14, LL 21-22). The emergency aid exception to the warrant requirement means that someone was in *grave danger* or in need of [immediate] *medical attention*. (R24:8-9). Since law enforcement [failed] to *immediately enter Long's unlocked front door* to provide immediate medical attention to someone, that Fourth Amendment **warrant exception** [was forfeited]. (R8:8, ¶ 16)⁴. Furthermore, the State forfeited the exigent circumstances argument when it chose [not] to brief it to the circuit court. (R25:1-3; **See App. P. 22-24**).

Law enforcement *testified* that although Long's house was messy, there was [no signs] *of a struggle or physical fight*. (R24:19-21).

⁴ The State did [not] develop and present the **emergency aid exception** to the warrant requirement argument in its Brief Opposing the Defendant's Motions to Suppress and Dismiss. (R25:1-3; **See App. P. 22-24**). The State only argued that Wildeman had [consent] to enter Long's home from AW at the rear kitchen patio door.

When listening to and reviewing the 911 call from the **10-year-old** reporting party, AW, it is significant to note that she did [not] actually see the alleged physical altercation she was reporting based upon her interview statements with Lt. Haag that evening. (R8:3, ¶ 4; **See App. P. 12 and R24:78-81**). She only [heard] a physical fight which was between Long and the Pitbull. *Id.* However, it appears that the trial court failed to account for the testimony of Lt. Haag with respect to interviewing the **10-year-old** reporting party, AW. *Id.* Lt. Haag **testified** that AW had told him that “she didn’t really see the whole thing because she was over on the other side of the bed hiding the whole time.” *Id.*

The fact is, AW [heard] a “fight” outside her bedroom in the hallway and thumping on the hallway walls. (R8:3, ¶ 4; **See App. P. 12 and R24:78-81**). However, since she had awoken to hearing her mom and Long yelling at each other, AW [assumed] that the physical fight was between the two adults. *Id.* In fact, the fight was between Long and the Pocket Pitbull dog named Violet. AW’s further descriptions of her observations of the alleged physical altercation between Bales and Long was based upon her imagination and love for her mom because she had already told Lt. Haag that she didn’t actually see anything because she was hiding. *Id.* Long has [no] history of violence and has [never] assaulted anyone. (R8; **See App. P. 10-21 and R27; See App. P. 25-41**).

Standard of Reviews

I. Argument I – Standard of Review

The question of whether a search or seizure is reasonable under the Fourth Amendment is a question of constitutional fact. The Court of Appeals (“We”) employs a two-step standard when reviewing a trial court’s conclusions concerning constitutional challenges. *See State v. Phillips*, 218 Wis.2d 180, 190, 577 N.W.2d 794 (1998). We will not upset a trial court’s findings of evidentiary or historical facts unless they are contrary to the great weight and clear preponderance of the evidence. *Id.* Our review of a constitutional fact on the grounds of established historical fact, however, is de novo. *State v. Turner*, 136 Wis.2d 333, 344, 401 N.W.2d 827 (1987).

II. Argument II – Standard of Review

“To prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact.” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶ 44, 275 Wis. 2d 397, 685 N.W.2d 853. We review a circuit court’s decision on a motion for reconsideration using the exercise of discretion standard of review. *Id.*, ¶ 6. Under that standard, we will affirm a discretionary decision as long as the court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a reasonable conclusion. *Franke v. Franke*, 2004 WI 8, ¶ 54, 268 Wis. 2d 360, 674 N.W.2d 832.

III. Argument III – Standard of Review

In reviewing a trial court's decision to admit evidence, the question is not whether the Appellate Court would have allowed admission of the evidence in question; instead, if the trial court examined the relevant facts, applied a proper standard of law, and, using a demonstrative rational process, reached a conclusion that a reasonable judge could reach, the Appellate Court will affirm its decision.

State v. Kimberly B., 2005 WI App 115, 283 Wis.2d 731.

Argument

- I. The trial court erroneously exercised its discretion by denying Long's "Motion to Dismiss Based upon the Constitutional Protections under the Fourth Amendment to the United States Constitution" ("Defendant's Motion to Suppress and Dismiss – 4th Amendment" (R8)). The trial court erred by finding that *State v Tomlinson*, 2002 WI 91, 254 Wis. 2d 502, 648 N.W.2d 367, applied to the facts in this case. In addition, the trial court erred by finding that a 10-year-old child has the authority to [consent] to law enforcement's entry into Long's home even though the child's mother and Long were both home and awake at the time.**

After review of testimony from the February 23, 2024 motion evidentiary hearing, the [redacted] BCV's viewed in the trial court and admitted into evidence, and applicable case law holdings, Long submits to the Court that Deputy Wildeman and Lt. Haag [unlawfully] entered Long's residence based upon the

constitutional protections under the Fourth Amendment to the United States Constitution and Article I, Section 11, of Wisconsin's Constitution.

As documented in the transcript of the Motion Evidentiary Hearing (R24), Deputy Wildeman and FCPD's Lt. Haag both testified that the community caretaker function did [not] apply to their entrance into Long's home on 11/21/23. (R24:26, L 20 → P 27, L 1; R24:57, LL 4-14). Lt. Haag testified that he was the officer in charge of the scene that evening. (R24:60, LL 12-13; **See App. P. 44**). Haag also testified that [officers] entered Long's home "under the emergency aid exception" that evening. (R21:3).

Conversely, Deputy Wildeman testified that he was the [first to enter] Long's residence through the rear glass patio door and **entered the home under [consent] from a 10-year-old child (AW)**, and [not] under the emergency aid exception to the warrant requirement. (R24:26, LL 16-19).

They both cannot be correct because Lt. Haag entered Long's home directly behind Deputy Wildeman who was there only to assist FCPD. FCPD officers were dispatched to Long's residence; [not] WCSO deputies. Long's home is located in the Village of Fox Crossing so FCPD has primary jurisdiction over this incident and the WCSO has secondary jurisdiction.

Deputy Wildeman and Lt. Haag both testified that while outside Long's residence they had [no] idea how many children were inside and believed there to be at least two adults; Long and Bales. Therefore, Wildeman had [no idea] who the reporting party was when he [unlawfully] opened the rear sliding glass patio

door into the kitchen. (R18: Exhibit 3 – Wildeman’s BCV at 22:31:15). The Court should be aware that Wildeman initially lied on the witness stand and committed perjury by testifying that AW [opened] the rear sliding glass patio door for him when the BCV shown in the trial court showed that he reached out with his gloved hand and slid the rear glass patio door to the kitchen open. *Id.* That alone calls into question the credibility of his entire testimony. Even when Long replayed the BCV for everyone in the trial courtroom to see, Deputy Wildeman again lied to the circuit court by testifying that he and AW opened the patio door “at the same time.”

Furthermore, on 11/21/23 during the time frame of this incident, Long’s front door and all three sliding glass patio doors were [unlocked]. In fact, none of Long’s patio doors even have functioning locking mechanisms. They must be secured by placing a wooden dowel in the track on the bottom threshold. AW never bent over to remove the wooden dowel in the video because the patio doors were all unsecure to let both dogs in and out.

AW did [not] physically open the sliding glass patio door from her position standing in the kitchen; Deputy Wildeman [unlawfully] slid open the patio door. Just because AW could see Wildeman through the sliding glass patio door doesn’t mean she intended to open it. If she wanted to open it, she would have, but she didn’t. She was probably curious as to who had been knocking on the front door, tapping on her and her mom’s bedroom windows, and peering inside the blinds

[without] announcing themselves as police officers. **Therefore, consent was never given.**

Should the Court find that AW somehow gave Deputy Wildeman [consent] to enter Long's residence *without* opening the patio door, *without* identifying herself as the reporting party, *without* appearing harmed, scared, or distressed, and *without* giving any verbal consent to enter, **then the legal analysis of this Constitutional challenge focuses on whether a 10-year-old minor child who is in Fourth Grade (AW) in *special education classes* has the legal authority to give the police [consent] to enter Long's residence while he was home and AW's mother was home.** The answer is [NO] pursuant to the legal analysis in *State v. Filtz*, 2004 WI App 186, 276 Wis.2d 572, 687 N.W.2d 549. The facts in *Filtz* are distinguishable from the facts in the present case. Mainly, the *Filtz* case involved her (the mother) being passed out on the living room couch in plain view of the door and her son being 16-years-old and in high school. (***See Appendix Exhibit – State v. Filtz***, 2004 WI App 186, 276 Wis.2d 572, 687 N.W.2d 549 (unpublished opinion); ***See App. Pages 88-95***).

A third person can only give [consent] to search the premises when he or she has *actual authority* or *apparent authority*. *See State v. Kieffer*, 217 Wis.2d 531, 548, 577 N.W.2d 352 (1998). Courts must determine whether “the information available at the time of the search would justify a [reasonable] belief that the party consenting to the search had the [authority] to do so.” *Id.* (*See*

Appendix Exhibit – *State v. Kieffer*, 217 Wis.2d 531, 548; *See App. Pages 96-109*).

Since the officers saw Bales, calmly sitting on her bed holding her coffee cup, while they peered through the bedroom windows from outside, they already knew that AW's mother was home and awake at the time. Thus, Deputy Wildeman and Lt. Haag knew that AW did [not] have the *actual or apparent authority* [to consent] to an entry and a search of Long's home. Deputy Wildeman was [not] trained in the law of consent because he testified that basically anybody who resided at Long's home could give consent for law enforcement to enter regardless of their age and maturity. Wildeman's testimony is [not] supported by Wisconsin's law of the case doctrine as follows.

A minor child may "reasonably possess the authority to consent to a search, or to consent to police entry, of a parent's home." *State v. Tomlinson*, 2002 WI 91, ¶ 31, 254 Wis. 2d. 502, 648 N.W.2d 367. (***See Appendix Exhibit – State v. Tomlinson*, 254 Wis. 2d. 502, ¶ 31; App. Pages 109-123**).

"Whether the child possesses such authority will depend on a number of factors, and courts must look at the totality of the circumstances to make such a determination. The primary factors to be considered are the child's age, intelligence, and maturity, and the scope of the search or seizure to which the child consents. To a lesser extent, **the court should also consider the extent to which the child has been [left] in charge**, and the extent to which the parent has disclosed his or her criminality to the child." *Id.* (citations omitted; **emphasis added**). *Id.*

In the present case, the police knew that Long was/is the sole owner of the home. Bales was Long's temporary tenant along with her three young daughters: ages 7, 10, and 12. All the responding officers already knew that Long lived at this

residence from prior contacts. (R2:2, ¶ 1, LL 5-6; R2:4, ¶ 3, LL 7-8). In addition, the FCPD officers ran the plates to Bales green minivan parked in the driveway confirming it was her vehicle. (R19 & R21). FCPD officers also recognized Long's red Dodge Ram 2500 pickup truck parked in the driveway. They testified that the dispatcher informed all officers that Long and Bales were home possibly involved in a domestic argument. No children were [ever] left alone or "in charge" of Long's home. Long and/or Bales are always home if the young children are there. Therefore, only Long or Bales could [lawfully] give consent to enter into their residence, contrary to the erroneous testimony of Deputy Wildeman.

The law required the police to get consent to enter the residence from one of the two adults inside the residence. Based upon the 911 call, both Bales and Long were home. The police were required to get a [warrant] to enter Long's residence or remain outside without a warrant and simply ask AW to "go get your mother please." (*See Kieffer and Tomlinson; App. P. 96-124*).

The *Tomlinson* case cited by the State in its trial court brief (R25) differs in facts from the case at bar. First, Tomlinson was convicted of PTAC of first-degree reckless homicide which is far more severe than Long's Class B misdemeanor for disorderly conduct ("DC"). In *Tomlinson*, "before coming to the house, the police knew that Tomlinson had two teenage daughters, later shown to be 14 and 15 years old, who themselves were suspects in the crime." In the instant case, Wildeman and Haag testified that they had [no idea] how many children were inside the home, what ages they were, and who was the actual reporting party.

Furthermore, **AW was a 10-year-old in fourth grade in *special education classes*** and [not] a suspect in the alleged crime.

In addition, the State cited *United States v. Matlock*, 415 U.S. 164 (1974) in its trial court brief. (R25). *Matlock* does [not] apply to the instant case. *Matlock* involves an [adult], 21-year-old daughter, third party; [not] a minor child age 10. Adults [can] give consent, minor 10-year-old children [cannot] give consent when a parent is inside the premises at the time by law.

In *Tomlinson*, the court ruled that a [high school-aged] child will likely have at least [some] authority to allow limited entry into the home. Absolutely [no] courts have ever ruled that a 10-year-old, elementary school-aged, child in *special education classes* has any authority to allow entry into a home while a parent and the home owner are both [present]. See *Tomlinson*, ¶ 33; e.g., *Doyle v. State*, 633 P2d 306, 309 (Alaska Ct. App. 1981); *Mears v. State*, 533 N.E.2d 140 (Ind. 1989); *State v. Folkens*, 281 N.W.2d 1, 4 (Iowa 1979); *State v. Griffin*, 756 S.W.2d 475, 484-85 (Mo. 1988).

In *Tomlinson*, the search was limited to the hallway and kitchen. Whereas, in the instant case four police officers searched the entire premises “going lethal” with guns drawn even though Bales and her children only rented the northern two bedrooms and bathroom. Also, in *Tomlinson* the officers [asked permission] to come inside *versus* **Deputy Wildeman [not] even identifying himself as law enforcement and [not] asking AW for permission to enter the residence.** AW did [not] close the rear sliding glass patio door when she calmly walked back to

her bedroom because she [never] opened the patio door. The BCV shown in the trial court proved that Deputy Wildeman physically [opened] the patio door to talk to AW and should have closed it when she calmly went back to join her mother and sisters.

AW's gesture of turning and leaving the patio door open could [not] reasonably be interpreted in the present case as [consent] to enter the home since Deputy Wildeman physically slid open the glass patio door to the kitchen *unlawfully and unconstitutionally* to talk to AW. (*See State v. Filtz*, 2004 WI App 186; App. Pages 88-95). Given the young age (10) and lack of maturity of AW being a fourth grader in *special education* classes, lack of consent, and the full house scope of entry with guns drawn, the Court of Appeals must differentiate this case from *Filtz* and conclude that the police officers' warrantless entry of Long's home was [unlawful] and [unconstitutional]. *Id.*

Here, the police entered Long's home to search it and arrest him without a warrant. Searches conducted without a warrant are presumptively unreasonable. *State v. Matejka*, 2001 WI 5, ¶ 17, 241 Wis. 2d 52, 621 N.W.2d 891; *State v. Phillips*, 218 Wis. 2d 180, 196, 577 N.W.2d 794 (1998). The State has the burden of proving [consent] by clear and convincing evidence. *Schneckloth v. Rustamonte*, 412 U.S. 218, 222 (1973); *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968); *State v. Rodgers*, 119 Wis. 2d 102, 107, 349 N.W.2d 453 (1984). That burden has [not] been met in this matter.

Furthermore, Long argues that law enforcement's unlawful and unconstitutional entry into his home led to an illegal seizure and arrest of his person for DC. Long's unlawful DC arrest falls under the "fruit of the poisonous tree" doctrine. "Fruit of the poisonous tree jurisprudence requires courts to decide whether the new evidence is gained by means sufficiently distinguishable from the illegal conduct in order to be purged of the primary taint brought about by illegal activity." *State v. Hart*, 2001 WI App 283, ¶ 27, 249 Wis.2d 329, 639 N.W.2d 213. Since Long's DC arrest was the result of illegal conduct by the police, this case must be reversed and remanded with instructions to the circuit court to dismiss it outright.

II. The trial court erroneously exercised its discretion by denying Long's Motion for Reconsideration (R30). The trial court erred by finding that *State v Tomlinson*, 2002 WI 91, 254 Wis. 2d 502, 647 N.W.2d 177, applied to the facts in this case. In addition, the trial court committed a manifest error of law and fact by finding that a 10-year-old child has the authority to [consent] to law enforcement's entry into Long's home even though the child's mother and Long were both home at the time.

On May 10, 2024, Long filed his Motion for Reconsideration. (R30:1-7; *See App. P. 70-76*). Long moved the trial court to reconsider its April 30, 2024 decision **denying** his Motion to Suppress and Dismiss based upon the Constitutional Protections Under the Fourth Amendment to the United States Constitution and Article I, Section 11, of Wisconsin's Constitution.

On March 22, 2024, the State filed a Brief Opposing the Defendant's Motions to Suppress and Dismiss ("State's Brief"). (R25:1-3; **See App. P. 22-24**).

On April 8, 2024, Long filed Defendant's Brief Supporting Defendant's Motions to Suppress and Dismiss ("Long's Brief"). (R27:1-44; **See App. P. 25-41**).

Based upon the trial court's very brief Oral Ruling on April 30, 2024, with all due respect, Long proffers that the trial court did not even read Long's Brief or gave it only a cursory review. Long bases this opinion on the fact that the trial court only cited a couple facts in the State's Brief (R25:1-3; **See App. P. 22-24**) and cited *State v. Tomlinson*, 2002 WI 91, 254 Wis. 2d 502, 648 N.W.2d 367. (**See App. P. 110-124**) (*Also see* Oral Ruling Transcript – R66:5, LL 11-15 *and See App. P. 64*). However, the trial court makes [no mention] to the rebuttal arguments in Long's Brief clearly explaining how *Tomlinson* does [not] apply to the instant case. (R27:9-14; **See App. P. 33-38**).

Long respectfully asserts that the circuit court made a manifest error of law and fact as follows. During the oral ruling the circuit court stated that the State argued that the warrantless entry into Long's home on November 21, 2023, was lawful based upon consent [a]nd exigent circumstances. (R66:1-10; **See App. P. 60-69**). However, the circuit court [erred] in fact because the State [only] *argued consent* to enter by AW and [forfeited] their exigent circumstances argument. (R25:1-3; **See App. P. 22-24**).

During the oral ruling the circuit court only relied upon *Tomlinson* by stating the facts of that case are very similar to the instant case. That was an

erroneous interpretation of the facts and a manifest error of law because of the law of the case doctrine. (R66:5-6; **See App. P. 64-65**).

The **Tomlinson** case cited by the State and the circuit court is [not] on point. The facts *differ significantly* from the case at bar. First, Tomlinson was convicted of PTAC of first-degree reckless homicide which is far more severe than Long's Class B misdemeanor for disorderly conduct ("DC"). In **Tomlinson**, "before coming into the house, the police officers knew that Tomlinson had two teenage daughters, later shown to be 14 and 15-years-old, who themselves were [suspects] in the crime."

In the instant case, Deputy Wildeman and Lt. Haag, both testified that they had [no idea] *how* many children were inside the home, *what* ages they were, and *who* was the actual reporting party ("RP"). Furthermore, **AW was only 10-years-old and in fourth grade in special education classes in elementary school**. She was not a suspect in the alleged crime. Wildeman's thoughts that night to support his testimony that he *thought* 10-year-old AW had [authority] over Long's home were meritless, unfounded, unreasonable, and [not] supported by law. The circuit court made a manifest error in law and fact by relying on Wildeman's ever changing testimony as fact. The circuit court erroneously accepted Wildeman's uneducated and incorrect interpretation of law that AW could legally give him consent to enter Long's home simply because she lived there.

For the record, a 10-year-old, fourth grader, can [never] legally give consent to enter Long's home when her mom was home, awake, and sitting on her

bed drinking coffee. Also, Long was home and in his bedroom. It was *convenient* for Wildeman to testify that AW had authority over the house and could give consent to enter *to cover his actions*; but, his testimony was dishonest, perjurous, unreasonable, and [not] supported by law.

In ***Tomlinson***, the circuit court ruled that a [high school-aged] child will likely have at least some authority to allow limited entry into the home. Absolutely [no courts] have ever ruled that a 10-year-old, elementary school-aged, child has any authority to allow entry into a home. See ***Tomlinson***, ¶ 33; e.g., ***Doyle v. State***, 633 P2d 306, 309 (Alaska Ct. App. 1981); ***Mears v. State***, 533 N.E.2d 140 (Ind. 1989); ***State v. Folkens***, 281 N.W.2d 1, 4 (Iowa 1979); ***State v. Griffin***, 756 S.W.2d 475, 484-85 (Mo. 1988). (See R27:13).

In ***Tomlinson***, the search was [limited] to the hallway and kitchen. Whereas, in the instant case four police officers searched Long's entire house "going lethal" with guns drawn even though Bales and her three children only rented the northern two bedrooms and bathroom.

In ***Tomlinson***, the officers [asked permission] to come inside *versus* Deputy Wildeman [not] identifying himself and [not] asking AW (age 10) *for permission to enter the residence*. AW did [not] close the sliding glass patio door when she calmly left the kitchen and went back to her bedroom because [she] never opened it. Since Wildeman physically opened the glass patio door to talk to AW, he should have [closed] it after she left the kitchen; [not] just walked inside Long's home.

In *Tomlinson*, he was [present] in the kitchen with his daughter with the backdoor wide open. When his [high school-aged] daughter gave the detective consent to enter the house, Tomlinson never spoke up and said, “NO.” Conversely, in the instant case, there were NO adult residents of Long’s home present with AW (age 10) in the kitchen. But importantly, there [were] two adult residents inside the home in their respective bedrooms.

III. The trial court erred by allowing the State to submit into the Record and cite in its brief elements of Deputy Wildeman’s [unredacted] body camera video (“BCV”) from Long’s home on 11/21/23 (R23) even though the BCV was [not] shown or admitted into evidence in open court during the evidentiary hearing held on 2/23/24.

The State is in violation of the rules of criminal procedure by filing and citing Deputy Wildeman’s [unredacted] body camera video (“BCV”) of this incident on 11/21/23 because it was [not] shown in open court at the motion evidentiary hearing on 2/23/24 and [not] admitted by the State as an evidence exhibit into the official trial court Record. (R23). It is an *ex parte* submission to the trial court filed on 2/27/24 which is four days [after] the motion evidentiary hearing. *Id.*

An *ex parte* communication is a one-sided communication *280 between a litigant or their representative and the judge presiding over a case involving the litigant. *In Re the Paternity of B.J.M.*, 386 Wis.2d 267, 280, ¶ 24, 925 N.W.2d

580; citing *State v. Tyler T.*, 2012 WI 52, ¶ 2 n.3, 344 Wis.2d 1, 814 N.W.2d 192.

Ex parte communications are generally prohibited because they may be initiated – or at least appear to be initiated – in an attempt to influence a judge’s decision.

Paternity of B.J.M., 386 Wis.2d 280 at ¶ 25; citing *Jocius v. Jocius*, 218 Wis.2d 103, 109, 580 N.W.2d 708 (Ct. App. 1998). As the Florida Supreme Court aptly stated:

“Nothing is more dangerous and destructive of the impartiality of the judiciary than a one-sided communication between a judge and a single litigant. Even the most vigilant and conscientious of judges may be subtly influenced by such contacts. No matter how pure the intent of the party who engages in such contacts, without the benefit of a reply, a judge is placed in the position of possibly receiving inaccurate information or being unduly swayed by unrebutted remarks about the other side’s case.”

Rose v. State, 601 So.2d 1181, 1183 (Fla. 1992). In other words, *ex parte* communications have the potential to erode public confidence and create the appearance of partiality.

Furthermore, **Wis. Stat. § 971.23**. Discovery and Inspection, provides in relevant part, in verbatim, as follows:

- (1) **What the district attorney must disclose to a defendant.** Upon demand the district attorney shall, within a reasonable time before trial, disclose to the defendant or his or her attorney and permit the defendant or his or her attorney to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the state.
....
- (7) **Continuing duty to disclose.** If, subsequent to compliance with a requirement of this section, and prior to or during trial, a party discovers additional material or the names of additional witnesses requested which are subject to discovery, inspection or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

The prosecutor, ADA Stephanie Stauber, in this case never informed or provided Long a digital copy of Deputy Wildeman's **unredacted** BCV from 11/21/2023 on a flash drive or thumb drive which she filed *ex parte* with the circuit court on 2/27/24. Therefore, it is an unlawful submission and filing in violation of Wis. Stat. § 971.23(1) and (7).

In addition, "Chapter 901 to 911 [rules of evidence] govern proceedings in the trial courts of the State of Wisconsin except as provided in ss. 911.01 and 972.11." Wis. Stat. § 901.01. Wis. Stat. § 911.01(2) provides that the rules of evidence "apply generally to proceedings in civil and criminal actions."

Once the proper foundation has been laid, the party calling the witness who identified the exhibit will move for its admission into evidence. The opposing side may object to its admission on the basis of one of the rules of evidence. Long admitted several police reports, a flash drive containing Lt. Haag's [unredacted] BCV of 11/21/23, and a DVD containing Deputy Wildeman's [redacted] BCV on 11/21/23. The State did not object to Long's admissions and did [not] admit any of their own exhibits or BCV's.

Verdicts, whether rendered by juries or judges, must either be based on the evidence properly admitted at the trial, or matters for which judicial notice may be taken. Although there is some evidentiary leeway in trials to the court, bench-trial judges may [not] use inadmissible evidence to decide a "critical issue." *State v. Sarnowski*, 2005 WI App 48, ¶ 12, 280 Wis. 2d 243, 694 N.W.2d 498 (citing *McCoy v. May*, 255 Wis. 20, 25, 38 N.W.2d 15, 17 (1949)).

Long contends that the trial court [cannot] base its decision on facts not in evidence. He argues that it is a fundamental rule of law that a case or motion must be decided on the evidence admitted at the trial or motion evidentiary hearing along with whatever common knowledge and life experiences the fact-finder possesses. *Id.*

In the context of admitting or denying admission of evidence, forfeiture is contemplated by statute. Wis. Stat. § 901.03(1) provides that, “Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affect and ...[i]n case the ruling is one admitting evidence, a timely objection or motion to strike appears of record” Two things are required before an appellate court may reverse evidentiary errors: (1) the violation of a party’s substantial right, and (2) an objection or motion to strike.

When a circuit court erroneously admits evidence that affects a substantial right of a party and the party benefitted fails to show beyond a reasonable doubt that the admitted evidence did [not] contribute to the verdict, or decision, reversible error may occur. *State v. Monahan*, 2018 WI 80, ¶ 33, 383 Wis.2d 100, 913 N.W.2d 894.

Plain errors are those that are “so fundamental that a new trial or other relief must be granted.” *Virgil v. State*, 84 Wis.2d 166, 191, 267 N.W.2d 852 (1978). (citation omitted). “[T]he plain-error doctrine should be reserved for cases where there is the likelihood that the erroneous introduction of evidence had

denied a defendant a basic constitutional right.” *State v. Sonnenberg*, 117 Wis.2d 159, 178, 344 N.W.2d 95 (1984).

Long did not raise any objection to the State’s video evidence in open court on 2/23/2024 because the State did [not] admit any evidence or exhibits during the Motion Evidentiary Hearing on 2/23/24. Long properly raised his [objection] to the circuit court that it [erred] by accepting and watching the **unredacted** BCV of Deputy Wildeman in chambers which was filed *ex parte*. Long’s objection was raised in his Defendant’s Brief Supporting Defendant’s Motion to Suppress and Dismiss – 4th Amendment (R27:5-7; **See App. P. 29-31**) and in his Motion for Reconsideration. (R30:6-7; **See App. P. 75-76**).


In summary, the circuit court made a manifest error in law by [not] ruling that Deputy Wildeman’s [unredacted] BCV cannot be legally cited by the State in its Brief because it was an *ex parte* submission. (R25:2; **See App. P. 23**). Also, it cannot be viewed or considered by the fact-finder because it was never shown by the State in open court, nor was it admitted into evidence regarding this matter. *See* Wis. Stats. – Chapters 901 to 911 (rules of evidence). (R27:5-7; **See App. P. 29-31**). The prosecutor’s *ex parte* submission of Wildeman’s **unredacted** BCV and the circuit court’s viewing of the BCV in chambers violated the rules of evidence and unlawfully influenced the circuit court’s [denial] of Long’s Motion to Suppress and Dismiss. Therefore, this constituted prejudicial and reversible error.

Conclusion

WHEREFORE, based upon the aforementioned facts, applicable case law, applicable Wisconsin Statutes, the Fourth Amendment to the U.S. Constitution, and Article I, Section 11, of Wisconsin's Constitution, the Defendant-Appellant, Peter J. Long, respectfully requests that this case be reversed and remanded with instructions that the entrance by law enforcement into Long's residence on 11/21/23 was [unlawful] so therefore the evidence and arrest must be suppressed and this case be dismissed with prejudice for violations of Long's constitutional rights.

Dated this 29th day of November, 2024.

Respectfully Submitted By:


Peter J. Long #383030
Pro Se Defendant-Appellant
Oshkosh Correctional Institution
P.O. Box 3310 (Legal)
Oshkosh, WI 54903-3310

Distribution: Clerk of Court of Appeals (original via mail)
ADA Stephanie Stauber (electronically)

¹ Long has been an excellent landlord since 1992 when he purchased his first duplex in Milwaukee while working as an Industrial Engineer for Grede Foundries, Inc. Long continued to purchase one duplex every year owner occupied while working as an engineer and attending graduate school up to four nights per week at UW-Milwaukee. Long graduated and received his MBA degree in 1997 and formed PJI Properties, LLC in 2002. Long has owned as many as 25 rental units by the time he was 35-years-old. Lastly, Long is also an honorably discharged infantry veteran from the U.S. Army and the WIARNG. He served a total of 6½ years.

Certification of Form and 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 **10,846** words.

Dated: 11-29-2024

Signed: 
Peter J. Long – Defendant-Appellant

TO: Office of the Clerk
Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

FROM: Peter J. Long #383030
Oshkosh Correctional Institution
P.O. Box 3310 (Legal)
Oshkosh, WI 54903-3310

RE: *State of Wisconsin vs. Peter J. Long*
Appeal No. 24-AP-1249-CR

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**Filing of Defendant-Appellant's BRIEF-IN-CHIEF
Filing of Defendant-Appellant's APPENDIX**

DATE: November 29, 2024

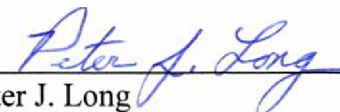
Dear Clerk:

My name is Peter Long and I am the *pro se* Defendant-Appellant in the above referenced appeal. Enclosed for filing please find one original of my *pro se* Defendant-Appellant's Brief-In-Chief and Appendix regarding this matter. **Please be advised that my Brief-In-Chief and Appendix were mailed to you in two (2) [separate] 9" x 12" manila envelopes on the same day.** This was due to the thickness of both documents and requirements of the U.S.P.S.

Please be advised that Assistant District Attorney Stephanie Stauber in Winnebago County is a registered eFile participant and will be served a copy of these documents electronically on the same day in which they are scanned and electronically filed by the Clerk.

Thank you for your time, understanding, and attention to this matter.

Sincerely,


Peter J. Long
Pro Se Defendant-Appellant

Enclosure: Appellant's Brief-In-Chief

Cc.: ADA Stephanie Stauber (electronically)

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