

No. 21-5050

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DANIEL DAVIS,

Defendant-Appellant,

v.

UNITED STATES OF AMERICA

Plaintiff-Appellee.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
CASE NO. 21-3030

BRIEF FOR APPELLANT

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QUESTION PRESENTED

I. Under the Fourth Amendment to the U.S. Constitution, does a police officer lack exigent circumstances to make a warrantless entry into a defendant's home when the defendant is missing a shirt and shoes, the temperature is dropping, and there might be debris from an explosion on the ground?

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STATEMENT OF JURISDICTION

This appeal is from the orders entered by the United States District Court for the Southern District of Indiana on October 22, 2021, and on July 2, 2021. (R. at 13-15, 16.) The United States Court of Appeals for the Seventh Circuit has jurisdiction over the orders entered by the District Court under 28 U.S.C.A. § 1291.

STATEMENT OF THE CASE

Procedural Background

On May 1, 2021, the Defendant Daniel Davis was indicted for knowingly possessing a firearm in violation of 18 U.S.C. § 922(g)(1), after he was arrested on the grounds in front of his cabin approximately two months before. (R. at 13.) The defendant moved to suppress the evidence of the handgun seized during the search of his home on the grounds that it violated his Fourth Amendment rights. (R. at 13.) The government argues that Officer Monk's search was valid under the exigent circumstances exception to the Fourth Amendment, because the defendant was partially dressed at the time of his arrest. (R. at 13.)

After a trial on May 2, 2021, a jury found the defendant guilty of Count One of the Indictment and the district court accordingly ruled that the defendant was guilty of violating 18 U.S.C. § 922(g)(1). (R. at 16.) Defendant Davis was committed to the custody of the United States Bureau of Prisons and sentenced to a total of 60 months imprisonment. (R. at 17.)

The Defendant Daniel Davis now appeals to the United States Court of Appeals for the Seventh Circuit from the district court's order entered on July 2,

2021, and the court's judgment entered on October 22, 2021. (R. at 18.) The issue on appeal is whether the police officer had exigent circumstances under the Fourth Amendment to the U.S. Constitution to enter the Defendant's home without a warrant for the safety or health of the Defendant. (R. at 18.) The appeal was served with the Clerk of the Court for the United States District Court for the Southern District of Indiana on November 20, 2021. (R. at 18.)

Facts

Twenty minutes after responding to a 911 call reporting a loud, explosion-like sound from a cabin in the Forest Trails neighborhood of Bloomington on March 6, 2021, Officer Adrian Monk pulled into the defendant's dirt drive and recognized Daniel Davis standing out front. (R. at 10.) After parking about 100 yards away from the cabin, Officer Monk approached the home and observed a trailer in the yard with one wall and several windows blasted out. (R. at 10.) Based on these observations, Officer Monk believed he had probable cause to place the Defendant under arrest. (R. at 10.)

Officer Monk placed Davis in handcuffs and arrested him after he walked down the steps and onto the ground in front of his cabin. (R. at 10.) While the arrest was taking place, the Defendant's roommate, Karen Rooth exited the cabin. (R. at 10.) Davis was missing a shirt and shoes, and Officer Monk noted that it was about fifty degrees outside and assumed that there might be debris on the ground between the cabin and police car. (R. at 10.) There was no evidence of confirmed hazardous

debris on the walk from the cabin to Officer Monk's car cited in the record. (R. at 10.)

Officer Monk asked Davis if he could enter the cabin to obtain shoes and a shirt from his bedroom. (R. at 10.) Defendant Davis stated that he was "[F]ine to go to the patrol car as is." (R. at 10.) Officer Monk ignored the Defendant's protests and escorted Davis into the cabin and to his bedroom, claiming that the cold temperature and the possibility of debris established the existence of exigent circumstances that would allow him to enter the cabin without a warrant. (R. at 10.)

Officer Monk never asked Karen Rooth's permission to enter the cabin. (R. at 11.) Once inside, he and Davis walked to the bedroom where Officer Monk observed a nine-millimeter handgun lying in plain view on the bedroom floor. (R. at 11.) Because Davis had previously been convicted of felony drug charges, Officer Monk seized the handgun and allowed Davis to dress himself in a sweater and shoes. (R. at 11.)

After re-handcuffing Davis, he and Officer Monk walked back down the dirt path and to the squad car, where the Defendant was then transported to the Bloomington police station. (R. at 11.)

SUMMARY OF THE ARGUMENT

The district court's denial of the defendant's motion to suppress was erroneous. Officer Monk's warrantless entry into the defendant's home absent any

exigent circumstances was unreasonable. Therefore, this Court should reverse the district court's ruling and remand the case for further proceedings.

First, the circumstances surrounding Mr. Davis' arrest did not constitute an immediate, serious enough danger to his life or health that would have justified Officer Monk's warrantless entry. A warrantless entry may not be justified where a defendant is not fully-clothed, unless conditions outside of the home present a danger "menacing" to his life or health. United States v. Kinney, 638 F.2d 941, 946 (6th Cir.1981). The "dangers" to Davis offered in the record by Officer Monk – a slight temperature drop and the possibility of debris – failed to show a life-threatening emergency and therefore, this court should reverse the district court's denial of the motion to suppress and remand.

Additionally, the weather on the evening of the arrest and the mere possibility of debris did not constitute an immediate and serious enough danger to Davis to create an exigent circumstance that would have obviated the warrant requirement imposed on Officer Monk under the Fourth Amendment to the U.S. Constitution. "[I]n invading the privacy of a person's home [without a warrant], government agents must show an exigent circumstance of "constitutional magnitude." United States v. Kinney, 638 F.2d 941, 943 (6th Cir. 1981). The risk of harm posed to Davis showed no such emergency.

Further, Officer Monk had two reasonable alternatives to entering Mr. Davis' cabin without a warrant, and ample time to employ them. First, Officer Monk could

have asked the roommate to enter the cabin and retrieve the clothing herself, or second, Officer Monk simply could have pulled his police car further up the drive and closer to the cabin. “[The exigency exception] applies when ‘the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable.’” Lange v. California, 141 S. Ct. 2011, 2017 (2021). Officer Monk was in control of the situation and consequently, the circumstances surrounding Mr. Davis’ arrest did not present him with a situation so compelling that he did not have time to secure a warrant or explore other reasonable alternatives.

Lastly, if the district court’s decision is not reversed, it will create yet another exigency exception to the Fourth Amendment, further limiting the people’s right to be free from governmental intrusion. Warrantless intrusions into the home are indeed “the chief evil against which the Fourth Amendment is directed.” Kentucky v. King, 563 U.S. 452, 474 (2011). If the Court allows a clothing exception to the warrant requirement, absent any clear evidence of an exigency requiring immediate action, the line between unreasonable warrantless intrusions and justified warrantless entries under the Supreme Court’s carefully delineated guidelines becomes even more unclear. Accordingly, this Court must reverse the district court’s denial of the motion to suppress and remand the case.

STANDARD OF REVIEW

For the denial of a motion to suppress, whether exigent circumstances existed is a mixed question of fact and law that is reviewed de novo. United States v. Schmidt, 700 F.3d 934, 937 (7th Cir. 2012). Thus, this Court should apply a de novo standard of review in analyzing the issue presented.

ARGUMENT

I. OFFICER MONK’S WARRANTLESS ENTRY INTO THE DEFENDANT’S HOUSE WAS UNREASONABLE UNDER THE FOURTH AMENDMENT BECAUSE THERE WERE NO EXIGENT CIRCUMSTANCES.

The Court should reverse the district court’s denial of the motion to suppress. The issue before the Court is whether Mr. Davis’ lack of clothing constituted an exigent circumstance under the Fourth Amendment that would have justified Officer Monk’s warrantless entry into his cabin.

Individuals are protected from “unreasonable searches and seizures” under the Fourth Amendment to the United States Constitution. U.S. Const. amend IV. “[P]olice may not invade a person’s house without a warrant except under very limited circumstances, such as the presence of exigent circumstances or an occupant’s consent.” United States v. McMullin, 576 F.3d 810, 814 (8th Cir. 1983). Exigent circumstances permit warrantless entries when “lives are threatened, a suspect’s escape is imminent, or evidence is about to be destroyed.” Id. When the totality of the circumstances shows an emergency such imminent harm to others . . . the police may act without waiting. United States v. Kinney, 638 F.2d 941, 945 (6th Cir. 1981).

The district court’s decision should be reversed for two reasons. First, the level of harm posed to the Defendant was not great enough to create an exigent circumstance. Second, Officer Monk had ample time to explore alternative methods to entering Mr. Davis’ home and violating his Fourth Amendment

rights. The weather on the evening of the arrest was not severe enough to cause imminent serious injury, and the possibility of debris did not pose a life threatening injury to Davis that would have constituted an exigent circumstance. Additionally, Officer Monk had two viable alternatives to entering Mr. Davis' cabin; asking the roommate, Karen Rooth to enter in his place and pulling the police car further up the drive. If the Court allows this exception for clothing, it will further limit the peoples' right to be free from unreasonable searches and seizures. Accordingly, this Court should reverse the district court's decision and remand.

A. The Government did not prove the existence of an exigency under the Fourth Amendment because it did not provide evidence of a serious risk of immediate harm to Mr. Davis at the time of his arrest.

The circumstances surrounding Mr. Davis' arrest did not constitute an immediate, serious enough danger to his life or health to constitute an exigent circumstance justifying Officer Monk's warrantless entry. "[S]earches and seizures inside a home without a warrant are presumptively unreasonable." Kentucky v. King, 563 U.S. 452, 459 (2011). A warrantless entry may not be justified where a defendant is not fully-clothed unless conditions outside of the home present a danger "menacing" to his life or health. United States v. Kinney, 638 F.2d 941, 946 (6th Cir. 1981). The "dangers" to Davis offered in the record by Officer Monk – a slight temperature drop and the possibility of debris – failed to show a life-threatening emergency and therefore, this court should reverse the district court's denial of the motion to suppress and remand.

- 1. Following the guidelines laid out by the Supreme Court in Brigham and Lange, the level of harm posed to Mr. Davis was not immediate or serious enough to justify a warrantless entry for clothing or shoes.**

A slight temperature drop and the possibility of debris along the path to the police car cited by Officer Monk in the record did not pose an immediate, serious enough risk of injury to Mr. Davis to justify a warrantless entry to retrieve clothing and shoes. Therefore, this Court should grant the Defendant's motion to suppress the evidence.

It is a "basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." Brigham City v. Stuart, 547 U.S. 398, 403 (2006). "[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." Id. Courts have "generally applied the exigent-circumstances exception on a 'case-by-case basis.'" Lange v. California, 141 S. Ct. 2011, 2018 (2021). "[One exigency exception is] the need to protect or preserve life or avoid [immediate] serious injury, [which may be] justification for what would be otherwise illegal absent an exigency or emergency." Brigham City, 547 U.S. at 403. For example, an officer may "enter a home without a warrant . . . to protect an occupant from imminent, [life-threatening] injury." Lange, 141 S. Ct. at 2017.

The "dangers" posed to Mr. Davis by not wearing a shirt and shoes at the time of his arrest did not threaten an immediate and serious injury to his person

and therefore, this Court must reverse. The weather at the time of Mr. Davis' arrest was described in Officer Monk's affidavit as the "early evening of March," where the temperature was only around fifty degrees. (R. at 10.) Missing a shirt and a pair of shoes in fifty-degree weather cannot be reasonably said to pose an immediate and serious threat to Mr. Davis' life or health in a way that would justify a warrantless entry into his cabin by Officer Monk. Like the Supreme Court stated in Lange, an arrestee must be in danger of imminent injury in order for the exigencies exception under the Fourth Amendment to apply. Additionally, Officer Monk cited in his affidavit only the mere possibility of debris along the pathway to the police car, stating that the only debris from the explosion he physically saw were a few pieces on the ground in front of Mr. Davis' cabin. (R at 10.) Debris on the ground along the path to the police car presented no greater danger to Mr. Davis than did the debris in front of his cabin, which he had already been walking around in without shoes or a shirt twenty minutes prior to Officer Monk's arrival. (R. at 10.)

Fifty-degree temperatures and slight debris from the explosion of the trailer did not present an imminent, life-threatening injury to Mr. Davis such that it would have justified Officer Monk's warrantless entry to retrieve clothing and shoes. Accordingly, this Court should reverse the denial of the motion to suppress and remand for further proceedings.

- 2. Even if there was some risk of minimal injury to Mr. Davis, mild weather conditions and the mere possibility of debris on the ground do not create an exigency of "constitutional magnitude" that the court in Kinney states is needed to satisfy the warrant exception under the Fourth Amendment.**

The weather on the evening of Mr. Davis' arrest and the mere possibility of debris along the pathway to Officer Monk's police car did not create an exigent circumstance that would have allowed a warrantless entry under the Fourth Amendment. Therefore, this Court must reverse the district court's decision.

"The Fourth Amendment of the Constitution prohibits unreasonable searches and seizures." United States v. Kinney, 638 F.2d 941, 943 (6th Cir. 1981). "[A] search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable unless the police can show that it falls within one of the carefully defined set of exceptions based on the premise of exigent circumstances." United States v. Whitten, 706 F.2d 1000, 1015 (9th Cir. 1983). "[I]n invading the privacy of a person's home [without a warrant], government agents must show an exigent circumstance of "constitutional magnitude." Kinney, 638 F.2d at 943. The Government bears the burden of establishing the "existence of any exceptional circumstances justifying a warrantless search" of an arrestee's residence. United States v. Anthon, 648 F.2d 669, 675 (10th Cir. 1981). In no way does a defendant's lack of clothing "create a blank check for intrusion upon the privacy of the sloppily dressed." Id.

For weather conditions to justify a warrantless entry based on the grounds of improper clothing, such weather must present a compelling threat of imminent harm. Kinney, 638 F.2d at 946. In Kinney, the defendant was arrested outside of his apartment wearing a shirt that was completely unbuttoned. Id. at 943. During the

time of his arrest, a crowd had formed outside to watch the situation unfold. Id. at 945. The officers justified their warrantless entry into the defendant's apartment by citing a concern for his safety because of his improper dress, and the crowd that had formed outside. Id. The court held that the circumstances did not present a danger great enough to create an exigent circumstance under the Fourth Amendment. Id. It reasoned that mere improper dress on a defendant nor "March weather," justifies a warrantless intrusion to retrieve clothing, and the officers had not proven that the crowd outside of the apartment presented a danger "menacing" to the defendant's safety or health. Id.

Improper dress on a defendant does not immediately justify a warrantless entry into his house. Anthon, 648 F.2d at 675. In Anthon, the defendant was arrested outside of his hotel room wearing only swim trunks. Id. at 674. Citing a concern for his safety, officers escorted him back inside the room where they allowed him to dress and effectuated a search. Id. at 675. The court held that a scantily-clad defendant does not in itself present an exigent circumstance that would justify an officer's warrantless intrusion. Id. at 676. It reasoned that the government had not provided any evidence of exceptional circumstances at the time of the arrest that dictated the necessity of a warrantless search. Id.

The circumstances surrounding Mr. Davis' arrest did not constitute a serious enough danger that would have created an exigent circumstance, and therefore this Court must reverse. Like the defendants in Kinney and Anthon, Mr. Davis was improperly dressed when he was arrested outside of his cabin by Officer Monk.

Similar to the crowd outside of the defendant's apartment in Kinney, and the conditions outside of the hotel room in Anthon, the mild weather and minimal debris outside of Mr. Davis' cabin did not pose a "menacing" enough risk to his health or safety that would allow a warrantless entry for clothing and shoes. Like the "March weather" cited by officers in Kinney, the weather posed no greater risk to Mr. Davis at the time of his arrest than it would have in normal circumstances, similar to how the defendant in Anthon was in no greater danger walking to a police car in his bathing suit than he would have been walking down to the lobby of the hotel. In Kinney, the officers provided no evidence that the crowd was "menacing" or threatening to the defendant, similar to how Officer Monk provided no evidence that he actually saw dangerous or life-threatening debris along the pathway to his police car. (R. at 10.)

While a few circuit courts have recognized that a defendant's scant clothing has created an exigent circumstance that serves as an exception to the warrant requirement, they rely on carefully laid, present and visible dangers that exist. In United States v. Butler, 980 F.2d 619 (10th Cir. 1992), the officers cited actual and physical evidence that the defendant's yard was littered with hundreds of beer cans, broken glass, and haphazardly strewn motor parts that posed an imminent and serious danger to the defendant's health and life. Although the circuit court in this case ruled that exigent circumstances did exist, Judge Seymour presented a compelling argument in his dissent stating that, "taking an arrestee in bare feet across a littered yard he has just traversed safely presents no greater exigency than

taking an arrestee to the police station in his bathing suit.” Id. at 624. In United States v. Wilson, 306 F.3d 231 (5th Cir. 2002), the defendant was arrested in his boxers in a public area, where he would have been exposed to the hazards of a public street. This case is distinguishable from Mr. Davis’ because the court in Wilson cited a concern of indecency in public, which is not comparable to Mr. Davis being arrested on his own private property. (R. at 10.) In United States v. Clay, 408 F.3d 214 (5th Cir. 2005), the court reasoned that the officer’s warrantless entry was justified because the search was a protective sweep incident to the defendant’s arrest inside the apartment. Here, Mr. Davis was arrested outside, with no weapon in reach that could have posed a threat to Officer Monk. (R. at 10.)

Although the possibility of debris may have presented a risk of minor injury to Mr. Davis during his walk to the police car, both the debris and the weather combined did not present an immediate and life-threatening risk that would have created an exigent circumstance that allowed Officer Monk’s warrantless entry to retrieve clothing and shoes. Consequently, this Court must reverse the district court’s decision to deny the motion to suppress and remand the case.

B. The conditions during Mr. Davis’ arrest did not present Officer Monk with a “now or never situation” that the Supreme Court in Lange says is needed to forego the warrant requirement. Thus, he had ample time to explore reasonable alternatives to entering Mr. Davis’ home.

Officer Monk had two reasonable alternatives to entering Mr. Davis’ cabin without a warrant, and ample time to employ them. First, Officer Monk could have asked the roommate to enter the cabin and retrieve the clothing herself, or second,

Officer Monk simply could have pulled his police car further up the drive and closer to the cabin. “The exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable in the same sense.” Kentucky v. King, 563 U.S. 452, 461 (2011). “It applies when ‘the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable.’” Lange v. California, 141 S. Ct. 2011, 2017 (2021). Officer Monk was in control of the situation and consequently, the circumstances surrounding Mr. Davis’ arrest did not present him with a situation so compelling that he did not have time to secure a warrant or explore other reasonable alternatives. Therefore, this court must reverse the district court’s denial of the motion to suppress.

“The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Id. However, “the warrant requirement is subject to certain exceptions.” Id. “The exception enables law enforcement officers to handle ‘emergenc[ies]’ – situations presenting a ‘compelling need for official action and no time to secure a warrant.’” Id. “Whether a ‘now or never situation’ actually exists – whether an officer has ‘no time to secure a warrant’ – depends upon facts on the ground.” Id. at 2018. “When exigent circumstances demand an immediate response, particularly where there is danger to human life . . . [an officer may be justified in] a limited, warrantless intrusion into the home.” United States v. McGough, 412 F.3d 1232, 1238 (11th Cir. 2005).

The exigent circumstances exception “encompasses several situations where it is simply not feasible for an officer to obtain a warrant.” Id. In McGough, the defendant was arrested outside of his home for leaving his young daughter locked inside alone. Id. at 1233. The daughter was missing shoes, and after already placing her in the police car next to her father, the officers took her back inside to retrieve a pair from her bedroom. Id. at 1234. During the arrest, the defendant’s sister had been called to the scene to take care of the daughter, and arrived either before or during the officers’ warrantless intrusion. Id. The court held that exigent circumstances did not exist to justify the entry and therefore there was no compelling situation that required the officers to act immediately and without a warrant. Id. at 1239. It reasoned that the officers had the situation under control with the defendant in handcuffs and the daughter already placed in the car. It further stated that the officers should have waited for the aunt to arrive and retrieve the shoes. Id.

Officer Monk had the situation under control and therefore had time to explore reasonable alternatives to entering the cabin without a warrant. Like the defendant in McGough, Mr. Davis was already in handcuffs and displayed no threatening behavior that would have posed a risk of harm to either himself or Officer Monk. Additionally, because Mr. Davis was already subdued, the minimal debris in the yard presented no greater danger to him than when he was unrestrained and freely walking around. Further, the weather on the evening of the arrest was not severe enough to present a threat that would have required

immediate action to protect Mr. Davis. Similar to the aunt in McGough, Mr. Davis' roommate, Karen Rooth, displayed no threatening behavior toward Officer Monk, nor did she indicate in any way that she posed a risk to anyone's safety present at the scene. During the arrest, Ms. Rooth exited the cabin and stood silently observing on the porch. (R. at 10.) Officer Monk did not mention Ms. Rooth at all except to say that after she had exited the cabin, he never asked her to go inside and retrieve the clothing. (R. at 11.) It is reasonable to say that Officer Monk could have asked Ms. Rooth to enter the cabin in his place because he never indicated that he in any way felt threatened by her presence in the affidavit. Alternatively, Officer Monk could have pulled the police car closer to the cabin. Officer Monk stated that he did not physically see any debris along the dirt path to the cabin, and he never cited any definitive reason for having to park at the end of the path. (R. at 10.) Without any such evidence, it is reasonable to assume that he could have maneuvered his car farther up the path, thus creating a shorter distance to walk for him and Mr. Davis.

The government relies on two cases that are factually distinguishable because they involved circumstances where there was need for immediate action by the officers. In United States v. Gwinn, 219 F.3d 326, 329 (4th Cir. 2000), officers entered the apartment to aid the defendant's girlfriend and baby. In United States v. Nascimento, 491 F.3d 25, 50 (1st Cir. 2007), the officers were conducting a sweep incident to the arrest of an unrestrained defendant clad only in his underwear, in an area that was in his immediate control. In short, the circumstances differ from

this case because Mr. Davis was handcuffed outside, in clothes that a reasonable person would not consider indecent, and there were no other persons inside the cabin in immediate need of aid.

Because Officer Monk was in control of the situation, having already placed Mr. Davis in handcuffs, and there was no immediate and serious threat to Mr. Davis or Officer Monk, there was ample time to explore other viable and reasonable alternatives to entering the cabin and violating Mr. Davis' Fourth Amendment rights. Therefore, this court must reverse the district court's denial of the motion to suppress and remand the case.

C. If this Court holds that Officer Monk's entry was valid under the exigency exception to the Fourth Amendment, it will create yet another limitation on the people's right to be free from unreasonable searches and seizures.

This Court should reverse the district court's denial of the motion to suppress and remand the case. Allowing this exception will further limiting the people's right to privacy. Warrantless intrusions into the home are indeed "the chief evil against which the Fourth Amendment is directed." Kentucky v. King, 563 U.S. 452, 474 (2011). "At [the Fourth Amendment's] very core stands the right of a man to retreat to his own home and there be free from unreasonable governmental intrusion." Id. at 475. If the Court allows this clothing exception to the warrant requirement, absent any clear evidence of an exigency requiring immediate action, the line between unreasonable warrantless intrusions and justified warrantless entries under the Supreme Court's carefully delineated guidelines becomes even more

unclear. Therefore, the Court must reverse the district court's denial of the motion to suppress the evidence and remand this case.

CONCLUSION

The Seventh Circuit Court of Appeals should reverse the district court's decision and remand this case back to the district court, so it may find that Officer Monk violated the Defendant's Fourth Amendment rights and grant the motion to suppress the evidence of the gun found in his bedroom.

Respectfully submitted,

/ s / 5800
Counsel for Appellant

CERTIFICATE OF SERVICE

A copy of this appellate brief has been provided to opposing counsel on April 4, 2022.

Respectfully submitted,

/ s / 5800
Counsel for Appellant