

Mark D. Gundrum

N2 W28791 Sylvan Trail, Waukesha, WI 53188

██████████ (b); ██████████ (c)

May 19, 2016

Governor Scott Walker
115 East State Capitol
Madison, Wisconsin 53707

RE: Judicial Vacancy – Wisconsin Supreme Court

Dear Governor Walker:

The Honorable David Prosser has announced his upcoming retirement from the Wisconsin Supreme Court. It is with great enthusiasm that I seek your appointment to fill this seat.

Members of the judicial branch should resist the temptation to make legislative-type public policy changes from the bench. In this vein, the letter of the law should be carefully respected so the public has confidence that when a law, or contract, is written, it will be interpreted consistent with that writing. This is the type of judge I have been for six years now on the trial court and court of appeals. If honored with appointment to the Wisconsin Supreme Court, this is the type of judge I will be at that level as well.

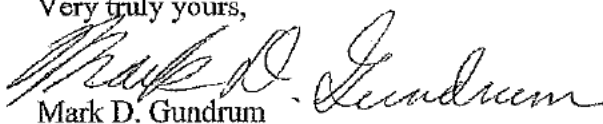
My work as an appellate court judge has been very similar to that of the justices on our state supreme court - reading briefs and trial court records, researching the applicable law, interpreting statutes and contracts, engaging attorneys at oral argument, and carefully crafting written decisions so as to avoid unintended consequences and provide clarity for involved parties as well as the bench and bar. If appointed to our supreme court, I will be able to hit the ground running from day one.

As you know, prior to joining the judiciary, I served in the Wisconsin State Assembly. Over the years, I gained a reputation for working in a cooperative, bi-partisan manner for the good of our state. Our supreme court could greatly benefit from the appointment of an individual with a proven record of working in a collegial, cooperative manner, as I have done in the legislature and on the court of appeals.

In addition to working as a private attorney, lawmaker, and trial and appellate court judge, I have had the honor of serving our nation as a judge advocate officer in the Army Reserve for the past 16 years, including working directly with Iraqi judges as a Rule of Law Advisor while deployed to Iraq in 2008.

Governor Walker, I believe my background and legal experience will serve the citizens of this state well on the Wisconsin Supreme Court. I hope you will honor me with the opportunity to provide that service, and I thank you for your consideration of my application for this important office.

Very truly yours,



Mark D. Gundrum
Court of Appeals Judge, District II

Mark D. Gundrum

N2 W28791 Sylvan Trail, Waukesha, WI 53188

██████████ (h); ██████████ (c)

JUDICIAL EXPERIENCE

WISCONSIN COURT OF APPEALS Waukesha, WI November 2011 – Present

Appointed in November 2011 and elected to full term in April 2013. Read briefs and trial court records, research applicable law, interpret laws and contracts, engage attorneys at oral argument, and carefully craft written decisions so as to avoid unintended consequences and provide clarity for involved parties as well as the bench and bar.

WAUKESHA COUNTY CIRCUIT COURT Waukesha, WI August 2010 – November 2011

Elected to serve as trial court judge for Branch 2, defeating previously appointed incumbent 77%-23% in April 2010 election. Presided over full spectrum of criminal cases from first degree intentional homicide to sexual assault to drunk driving.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF WISCONSIN Milwaukee, WI June 1995 – June 1996

Served as full-time law clerk for Federal District Court Judge Rudolph Randa. Among other responsibilities, drafted Decisions and Orders for Judge Randa.

UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT Lansing, MI Summer 1993

Served as summer law clerk for Federal Court of Appeals Judge Richard Suhrheinrich. Wrote memoranda for Judge Suhrheinrich and assisted with drafting Opinions.

CIVIL LAW EXPERIENCE

HIPPENMEYER, REILLY, MOODIE & BLUM, S.C. Waukesha, WI January 2003 – July 2010

While serving full-time in the Wisconsin Legislature, practiced law part-time with the Hippenmeyer firm. Focusing primarily on municipal law, served as prosecutor for the Village of Mukwonago, prosecuting hundreds of local law violations each year. Handled various other municipal matters, including responding to open records requests and drafting municipal ordinances.

DEAN & McKOY, S.C. Waukesha, WI

August 1999 – June 2000

While serving full-time in the Wisconsin Legislature, practiced law part-time with this general practice firm.

KASDORF, LEWIS & SWIETLIK, S.C. Milwaukee, WI

September 1996 – May 1999

Practiced as litigation defense associate, representing insurance companies, businesses, and individuals in various legal matters.

FOLEY & LARDNER, LLP Madison, WI

January 1994 – May 1995

As part-time law clerk for the Foley firm, prepared memoranda and drafts of legal briefs, and provided consultation as requested.

OUTAGAMIE COUNTY DISTRICT ATTORNEY'S OFFICE Appleton, WI Summer 1994

Served as prosecution intern, including prosecuting own caseload with assistance from full-time prosecutors in the office.

MILITARY/RULE OF LAW EXPERIENCE

UNITED STATES ARMY RESERVE

July 2000 – Present

Have served as a judge advocate for the 646th Regional Support Group (2014-Present), 214th Legal Support Organization (2000-2006 and 2011-2014), 91st Legal Support Organization (2009-present), 432nd Civil Affairs Battalion (2006-2009). Have counseled and represented individual soldiers on family law, estate planning, consumer protection, employment law, and other legal matters, as well as counseled and represented commanders. Selected by the command to serve as Legal Advisor and/or Recorder (akin to a prosecutor) for Administrative Separation Boards. Promoted to Major in July 2010, and currently up for promotion to Lieutenant Colonel.

UNITED STATES EMBASSY IN IRAQ/XVIII AIRBORNE CORPS February-November 2008

Served as a Rule of Law Advisor in Iraq, working for XVIII Airborne Corps and the United States Rule of Law Coordinator under Ambassador Ryan Crocker. Worked directly with the Chief Justice of the Iraq Supreme Judicial Council (Iraq Supreme Court), as well as lower level Iraqi judges and members of the national parliament, to advance the Rule of Law in Iraq.

LAWMAKING EXPERIENCE

WISCONSIN STATE LEGISLATURE Madison, WI

January 1999 – July 2010

Elected and re-elected to represent approximately 54,000 constituents in the State Assembly and serve said constituents with regard to various state matters. Personally wrote and/or helped usher into law state constitutional amendments and statutory changes. Blocked or amended as appropriate numerous legislative proposals. Chairman of the Assembly Judiciary Committee from 2001-2008. Elected by Assembly Republican colleagues to leadership positions of Caucus Chairman and Assistant Majority Leader.

HALES CORNERS VILLAGE BOARD Hales Corners, WI

April 1995 - January 1999

Represented over 7,000 constituents as a Village Trustee on the Village Board. Drafted ordinances and responded to various constituent issues and concerns.

EDUCATION

UNIVERSITY OF WISCONSIN – MADISON

- Law School, Juris Doctor 1992-1994
Law Review, Moot Court
- Undergraduate, Bachelor of Arts 1988-1992
Political Science and Economics Degrees
Graduated Phi Beta Kappa and with Distinction



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

115 EAST STATE CAPITOL
MADISON, WI

APPLICATION FOR JUDGESHIP

(Please attach additional pages as needed to fully respond to questions)

DATE: May 19, 2016

I. Personal Information:

Name (Last, First, Middle Initial) <u>Gundrum, Mark D.</u>	Home Telephone Number (Area Code) [REDACTED]
E-Mail [REDACTED]	Work Number (Area Code) _____
Court Applying For <u>Wisconsin Supreme Court</u>	Cell Number (Area Code) [REDACTED]
Age <u>46</u>	Current Address <u>N2W28791 Sylvan Trail</u>
Place of Birth <u>Milwaukee</u>	City <u>Waukesha</u>
Driver's License Active in WI? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	County of Residence <u>Waukesha</u>
Wisconsin Bar Number <u>1024370</u>	State <u>WI</u>
Date Admitted to Practice Law in WI <u>1995</u>	Zip Code <u>53188</u>
Date Admitted to Practice Law in Another State <u>N/A</u>	Year(s) at Current Address <u>5</u>
	Are you registered to vote at this address? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

WISCONSIN IS OPEN FOR BUSINESS

WWW.WALKER.WI.GOV • (608) 266-1212 • FAX: (608) 267-8983

II. Employment Information

Current Employer <u>State of Wisconsin</u>	Work Address <u>2727 N. Grandview Blvd</u>
Title <u>Court of Appeals Judge</u>	City <u>Waukesha</u>
Telephone Number (Area Code) <u>262-521-5230</u>	County <u>Waukesha</u>
	State <u>WI</u>
	Zip Code <u>53188</u>

III. Marital Information

Marital Status

Single Married

If married, please provide the following: Date of marriage, spouse's name, spouse's occupation
12/16/1996, Mary Gundrum, Homemaker/Owner of Mary Gundrum Photography, LLC

If ever divorced, please provide the following: Name, former spouse(s)' occupation, and date of divorce(s)

Please provide the following for any children and stepchildren: Name, state of residence, and occupation

<i>Name</i>	<i>State of Residence</i>	<i>Occupation</i>
<u>Jacinta Gundrum</u>	<u>WI</u>	<u>Student</u>
<u>Bernadette Gundrum</u>	<u>WI</u>	<u>Student</u>
<u>Mark Gundrum, Jr.</u>	<u>WI</u>	<u>Student</u>
<u>Augustine Gundrum</u>	<u>WI</u>	<u>Student</u>
<u>Cecilia Gundrum</u>	<u>WI</u>	<u>Student</u>
<u>Philomena Gundrum</u> <u>Gemma Gundrum</u> <u>Dominic Gundrum</u> <u>Agnes Gundrum</u>	<u>WI</u>	<u>Students, and Agnes is one year old</u>

IV. Residential History

List all previous residences for the past ten years

5239 S. Guerin Pass, New Berlin, WI 53151

V. Personal Information Cont.

- 1) Do you currently have a physical or mental impairment that in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

If yes, explain.

- 2) In the past ten years have you unlawfully used controlled substances as defined by federal or state laws?

Yes No

If yes, explain.

- 3) Since leaving high school, have you, other than for academic reasons, ever been denied enrollment, disciplined, denied course credit, suspended, expelled, or requested to end your enrollment by any college, university, law school or other institution?

Yes No

If yes, explain.

- 4) Have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements or any contractual arrangement?

Yes No

If yes, explain.

- 5) Have you ever been held in contempt or otherwise formally reprimanded or sanctioned by a tribunal before which you have appeared?

Yes No

If yes, explain.

- 6) Are you delinquent in your mandatory continuing legal education?

Yes No

If yes, explain.

- 7) Have you ever been a party to a lawsuit either as a plaintiff or as a defendant?

Yes No

If yes, please supply the jurisdiction and/or county, case number, nature of the lawsuit, whether you were the plaintiff or defendant, and disposition of each lawsuit.

Johnson v. Burmaster, Ozaukee County, 2008 WI App 4, 2006AP1380. My wife and I, along with several other parents of children enrolled in the Wisconsin Virtual Academy, a start up on-line school, successfully moved to intervene in this case. In Johnson v. Burmaster, the Wisconsin Education Association Council (WEAC) filed suit against Elizabeth Burmaster, then-State Superintendent of Public Instruction, and the Northern Ozaukee School District, the district through which the on-line school operated. WEAC's ultimate goal with the suit was to shut down the on-line school, which WEAC viewed as being in competition with brick and mortar schools in which WEAC's members taught. We moved to intervene in this case to ensure the interests of the children and families involved with the on-line school were properly represented in the suit. We won summary

judgment in the trial court, but were reversed by the District II Court of Appeals. While the petition for review was pending in the Wisconsin Supreme Court, the Legislature provided the relief we sought through legislation that effectively mooted the case.

- 8) Has there ever been a formal complaint filed against you, a finding of probable cause, citation, or conviction issued against you?
Yes No

If yes, explain.

In 1999, my state assembly campaign committee, Citizens for Mark Gundrum, paid a \$50 forfeiture because my mother, the campaign treasurer, failed to report a \$500 campaign contribution within 24 hours of the contribution being received by the campaign on October 10, 1998. The contribution was fully reported on the campaign's regular finance reports; however, because it was a \$500 contribution and was made in the final weeks before the November election, it should have been reported within 24 hours of the contribution being received. That 1998 campaign was my mother's first experience as treasurer for a state elected office.

- 9) Are you presently under investigation by the Wisconsin Judicial Commission, the Supreme Court of Wisconsin, the Office of Lawyer Regulation, or any other equivalent, in any jurisdiction?
Yes No

If yes, explain.

- 10) If you are a quasi-judicial officer, have you ever been disciplined or reprimanded by a sitting judge?
Yes No

If yes, explain.

- 11) In the past five years, have you ever been cited for a municipal or traffic violation, excluding parking tickets?
Yes No

If yes, explain.

I received a citation in Elm Grove in February 2012 for driving 15 mph over the speed limit. The citation was ultimately amended to a defective speedometer violation, and I paid the related forfeiture. Around this same time, I believe, I also received either a warning or citation for speeding in Oconomowoc. If I received a citation, I believe I would have just paid it.

- 12) Have you ever failed to timely file your federal or state income tax returns?
Yes No

If yes, explain.

See Question 13.

- 13) Have you ever paid a tax penalty?
Yes No

If yes, explain.

In Fall 2009, my judicial campaign committee, Gundrum for Judge, hired an individual to assist with my 2010 judicial campaign. I utilized an accounting firm to take care of payroll and tax issues related to this "employee." I had to let the individual go after just a few weeks. I told him I would pay him for the weeks he worked; however, he never

Application for Judgeship

returned the necessary documents I had given him so that the accounting firm could properly process his pay and related taxes. Nearly a year later, in Fall 2010, the individual contacted me and asked to be paid for the weeks he had worked in December 2009. I gave him another copy of the documents, which he returned, I provided the documents to the accounting firm, and the individual was promptly paid by Gundrum for Judge. About three months later, I received an unexpected notice from the Wisconsin Department of Revenue informing me that I was being assessed a \$50.00 "late filing fee" related to the payment of taxes for this individual. Although I thought the fee was inappropriate, I promptly sent the D.O.R. a check for the \$50.00, along with a letter explaining the situation and appealing the assessment of the fee. The D.O.R. withdrew the assessment and refunded the \$50.00 to me.

14) Has a tax lien ever been filed against you?

Yes No

If yes, explain.

15) Have you ever filed a personal petition in bankruptcy, or has a petition in bankruptcy been filed against you?

Yes No

If yes, explain.

16) Have you ever owned more than ten percent of the issued and outstanding shares, or acted as an officer or director, for any corporation by which or against which a petition in bankruptcy has been filed?

Yes No

If yes, explain.

V. Education

High School Education Information

Name of School Catholic Memorial High School
Address: Street, City, State 601 E. College Ave., Waukesha, WI 53186
Degree Earned College Prep
GPA Above 4.0; I believe I was third in my class of approximately 242 students
Dates Attended 1984-1988

Undergraduate Education Information

Name of School University of Wisconsin-Madison
Address: Street, City, State Madison, WI
Degree Earned B.A.
GPA 3.793
Dates Attended 1988-1992

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Law School Education Information

Name of School University of Wisconsin-Madison
Address: Street, City, State Madison, WI
Degree Earned J.D.
GPA The transcript does not say what my GPA was.
Dates Attended 1992-1994

List and describe academic scholarships, awards, honor societies, extracurricular involvement, and any other related educational information. Note any leadership positions.

-University of Wisconsin-Madison Undergraduate: Phi Beta Kappa and graduated with distinction

-University of Wisconsin-Madison Law School: Law Review and Moot Court

VI. MILITARY EXPERIENCE:

List all military service (including Reserves and National Guard).

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
United States Army Reserve	Judge Advocate	Major	2000-Present

Type of discharge:

List any awards or honors earned during your service. Also list any citations or charges pursued against you under the Uniform Code of Military Justice.

Meritorious Service Medal, Joint Service Commendation Medal, Army Commendation Medal, Army Achievement Medal, Army Reserve Components Achievement Medal, National Defense Service Medal, Global War on Terrorism Medal, Iraq Campaign Medal w/ Campaign Star, Army Service Ribbon, Army Reserve Components Overseas Training Ribbon, Armed Forces Reserve Medal w/ M Device, Joint Meritorious Unit Award, German Armed Forces Badge for Military Proficiency

VII. PROFESSIONAL ADMISSIONS:

List all courts (including state bar admissions) and administrative bodies to which you have been admitted to practice, giving the dates of admission, and, if applicable, whether you have ever been suspended or have resigned.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Wisconsin State Bar	1995
United States District Court, Eastern District of Wisconsin	1995

VIII. NON-LEGAL EMPLOYMENT:

List all previous full-time, non-legal jobs or positions held in the past eight years.

<i>Employer</i>	<i>Position</i>	<i>Date</i>	<i>Address</i>
Citizens of the 84 th Assembly District	State Representative	1999-2010	State Capitol

IX. LEGAL EMPLOYMENT:

(If you are a sitting judge, answer the following questions with reference to before you became a judge.)

List the names, dates, and addresses of all legal employment, including law school and volunteer work.

<i>Employer</i>	<i>Position</i>	<i>Date</i>	<i>Address</i>
Hippenmeyer, Reilly, Moodie & Blum, S.C.	Attorney	2003-10	720 Clinton St., Waukesha, WI
Dean & McKoy, S.C.	Attorney	1999-2000	20975 Swenson Dr., Waukesha, WI
Kasdorf, Lewis, & Swietlik, S.C.	Attorney	1996-99	11270 W. Park Place, Milwaukee, WI
Federal District Court Judge Rudolph Randa, Eastern District of Wisconsin	Law Clerk	1995-96	Milwaukee, WI

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Describe your legal experience as an advocate in criminal litigation, civil litigation, and administrative proceedings.

Through my employment as an attorney with Hippenmeyer, Reilly, Moodie & Blum, S.C., I served as the municipal prosecutor for the Village of Mukwonago from January 2003 through June 2010, except not the year I was deployed to Iraq (2008).

As an insurance defense litigation associate with Kasdorf, Lewis & Swietlik, S.C., from 1996 to 1999, I represented and advocated for insurance companies, businesses, and government entities in cases filed primarily in counties around the greater Milwaukee area.

As a judge advocate in the Army Reserve, I have served as both a recorder (akin to a prosecutor) and legal advisor to administrative separation boards. I have represented and advised both individual soldiers and commanders on Army legal matters.

On multiple occasions between 1998 and 2007, I advocated for candidates and legislative colleagues, pro bono, on matters before the State Elections Board, such as election recounts, challenges to nomination papers, and campaign finance issues.

In your career, how many cases have you tried that resulted in a verdict or judgment?

Jury:	<u>3</u>	Non-jury:	<u>15</u> (approximately, including municipal court)
Arbitration:	<u>N/A</u>	Administrative Bodies:	<u>5</u>

How many cases have you litigated on appeal? Provide case names and case numbers. If fewer than twenty cases, describe the nature of each case, your involvement, and each case's disposition.

Kosky v. International Association of Lions Club, 210 Wis. 2d 463 (Ct.App. 1997), was a recreational immunity case in which I represented the third party defendant-respondent. I wrote the appellate brief and advocated at oral argument before the District III Court of Appeals. We lost on appeal.

Armour v. Milwaukee Transport Services, No 97AP883, was a personal injury case in which I argued before the trial court that, based on the plaintiff's own version of the facts, as noted from his deposition, there was no genuine issue of material fact to be tried, and that my client, Milwaukee Transport Services, was entitled to summary judgment. The trial court agreed. I continued my representation before the District I Court of Appeals, which affirmed the trial court's grant of summary judgment.

Milwaukee Transport Services v. Circuit Court for Waukesha County, No. 96AP2862, was a case in which I represented Milwaukee Transport Services in seeking a writ of prohibition. Our request was denied by the District II Court of Appeals.

List and describe the three most significant cases in which you were involved; give the case number and citation to reported decisions, if any. Describe the nature of your participation in the case and the reason you believe it to be significant.

Kosky v. International Association of Lions Club, 210 Wis. 2d 463 (Ct. App. 1997), is discussed briefly above. While the court of appeals did not find in favor of my client, the recreational immunity issues in the case were important because of their potential impact on future landowner decisions regarding whether or not to open their land to the public for recreational uses.

Johnson v. Burmaster, 2008 WI App 4, 2006AP1380, is also discussed earlier. Although Michael Dean served as our legal counsel in this case, I worked with Attorney Dean in developing arguments at the trial court level and on appeal. The case was significant because the survival or elimination of virtual public schools in Wisconsin depended on the outcome of the case. The case helped prompt legislation addressing virtual schools.

I was involved with numerous other trial and municipal court cases; however, no other cases of significant consequence reached the appellate courts.

X. PRIOR JUDICIAL EXPERIENCE:

Have you ever held a judicial or quasi-judicial office? If so, state the court(s) involved, position held, and dates of service.

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<i>Name of Agency/Court</i>	<i>Position Held</i>	<i>Dates</i>
Wisconsin Court of Appeals, District II	Appellate Court Judge	2011- Present
Waukesha County Circuit Court	Trial Court Judge, Branch 2	2010-2011

List the names, phone numbers, and addresses of two attorneys who appeared before you on matters of substance.

Lloyd Carter: then-Waukesha County Assistant District Attorney, now trial court judge
515 W. Moreland Blvd., Waukesha, WI 53188
(262) 548-7809 (w); (414) 418-3574 (c)

Peter Wolff: Wolff & Sonderhouse
400 W. Moreland Blvd., Waukesha, WI 53188
(262) 446-9222 (w); (414) 418-0143 (c)

Describe the approximate number and nature of cases you have heard during your judicial or quasi-judicial tenure.

I am not completely certain what is intended by the word "heard" here. I would fairly estimate that I handled/disposed of over 1500 cases while on the trial court bench. These included felonies, misdemeanors, criminal traffic cases, and civil forfeiture cases. While a trial court judge, I believe I presided over approximately a half dozen or more jury trials, ranging from sexual assaults to operating while intoxicated offenses.

As an appellate court judge, I have personally authored well over a hundred written decisions, including published and unpublished three judge decisions, as well as one-judge decisions. I have also served as supervising judge on one fourth of the per curiam and summary decisions from our district.

Describe the two most significant cases you have heard as a judicial officer. Identify the parties, describe the cases, and explain why you believe them to be significant. Provide the trial dates and names of attorneys involved, if possible.

As a trial court judge, I presided over a two day jury trial in State v. Danny Anton, which resulted in guilty verdicts on January 26, 2011. Mr. Anton was convicted of one count of first-degree sexual assault of a child and three counts of second degree sexual assault of a child. This case was significant because of the severity of the offenses involved. At trial, Deputy District Attorney Debra Blasius represented the State and Attorney Maura McMahon represented Mr. Anton.

I also presided over the case of State v. Steven Osburn in late 2011. The case received significant media attention because Mr. Osburn was an Iraq war veteran who had shot and killed his friend, a Marine, while drunk. The case was fairly complex because it involved media

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attention, the possible affect of Osburn's deployment experience upon his criminal actions, and questions of self-defense. The State was represented by Deputy District Attorney Steve Centenario and Mr. Osburn was represented by Attorney Gerald Boyle.

The John K. MacIver Institute for Public Policy, Inc. v. Jon Erpenbach, 13AP1187, is one of the more significant cases I have been involved with in the four and a half years I have served on the court of appeals. The case involved important issues related to correspondence sent to state lawmakers and the extent to which information in the correspondence must be disclosed to the public, upon request, under Wisconsin's public records law. Rick Esenberg represented the Institute and Thomas Pyper represented Senator Jon Erpenbach.

XI. PREVIOUS PARTISAN OR NON-PARTISAN POLITICAL INVOLVEMENT:

Have you ever held a position or played a role in a judicial, non-partisan, or partisan political campaign, committee, or organization? If so, please describe your involvement.

Assisted with numerous political, and some judicial, campaigns throughout the years.

List all instances in which you ran for elective office. For each instance, list the date of the election (include both primary and general election), the office that you sought, and the outcome of the election. Include your percentage of the vote.

I was appointed to the Wisconsin Court of Appeals, District II, in November 2011, and then was elected to a full term in April 2013 (uncontested). In April 2010, I was elected to the Waukesha County Circuit Court with 77% of the vote, defeating the incumbent judge who had been appointed a year earlier by then-Governor Jim Doyle. I was elected to the Wisconsin State Assembly in 1998, 2000, 2002, 2004, 2006, and 2008. I won contested primary elections for that seat in September 1998 and 2002 with 62% and 63% of the vote respectively. In 1997, I ran in a special election for Milwaukee County Supervisor. I won the June primary, but lost the July general election by about 2%. I was elected to serve as a Hales Corners Village Trustee in April 1995 and 1997.

List all judicial or non-partisan candidates that you have publicly endorsed in the last six years.

Lloyd Carter, Waukesha County Circuit Court. I believe I also agreed to endorse one of Governor Walker's appointees to the Milwaukee County Circuit Court in 2012 or 2013, as well as Justice David Prosser in his 2011 re-election. I believe those are the only public endorsements I have made in the last six years.

XII. HONORS, PUBLICATIONS, PROFESSIONAL AND OTHER ACTIVITIES:

List any published books or articles, providing citations and dates.

In April 2001, then-State Senator Kim Plache and I published an article in the Wisconsin Lawyer magazine regarding the work we were involved with on a special legislative committee related to guardian ad litem issues. The following should be the correct electronic citation for the article: https://www.wisbar.org/AM/Template.cfm?Section=guardian_ad_litem&CONTENTID=48995&TEMPLATE=/CM/ContentDisplay.cfm.

In March 2005, I published an article in the Wisconsin Lawyer magazine, encouraging other attorneys to consider joining the Army Reserve. Below should be the correct electronic citation. http://www.wisbar.org/am/template.cfm?section=wisconsin_lawyer&template=/cm/contentdisplay.cfm&contentid=46886.

List any honors, prizes, or awards you have received, providing dates.

-Wisconsin State Representative, 1999-2010 - Judiciary Committee Chairman, 2001-2007; Assistant Majority Leader; Majority Caucus Chairman.

-VFW Post 5716 Patriotic Citizen of the Year (2009)

-Champion of Commerce Award - Metropolitan Milwaukee Association of Commerce (2005-06)

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- Taxcutter of the Year Award - Republican Party of Milwaukee (2005)
- Open Government Badger Award - Wisconsin Newspaper Association (2005)
- Scales of Justice Award - State Bar of Wisconsin (2004)
- Friend of Agriculture Award - Wisconsin Farm Bureau Federation (2004)
- Outstanding Legislator Award - Wisconsin Counties Association (2004)
- Voices of Courage Award - Wisconsin Coalition Against Sexual Assault (2003)
- Friend of the Housing Industry - Wisconsin Builder's Association (2003)
- Guardian of Small Businesses - National Federation of Independent Businesses (2002)
- ABC Legislative Award - Wisconsin Associated Builders and Contractors (2002)
- Outstanding Young Wisconsinite Award - Jaycees of Wisconsin (2001)
- Working for Wisconsin Award - Wisconsin Manufacturers and Commerce (2000)
- Friend of the Taxpayer Award - Americans for Tax Reform (1999)
- Distinguished Graduate Award - Department of Elementary Schools of the National Catholic Educational Association, St. Mary's Parish School (1999)

List all bar associations and professional societies of which you are a member; give the titles and dates of any office that you may have held in such groups and committees to which you belong or have belonged.

Wisconsin Bar Association.

Describe any additional involvement in professional or civic organizations, volunteer activities, service in a church or synagogue, or any other activities or hobbies that could be relevant or helpful to consideration of your application.

-Have served as head or assistant coach for various basketball, football, and baseball teams on which my children have played.

Describe any significant pro bono legal work you have performed in the last five years.

N/A

Describe any courses on law that you have taught or lectures you have given at bar association conferences, law school forums, or continuing legal education programs.

1) In 2003, a man wrongfully convicted and incarcerated for 18 years was released from prison after DNA testing confirmed the perpetrator of the original crimes was another man. Following this, I established and led a task force to study what led to the wrongful conviction and propose appropriate reforms for the criminal justice system. Those reforms, related to eyewitness identification procedures, electronic recording of custodial interrogations, and better use of DNA technology, were adopted in 2005.

Related to these efforts, Wisconsin Innocence Project Director Keith Findley and I spoke at multiple conferences regarding the reforms. These conferences included the Wisconsin Police Association's Mid-Winter Training in March 2005 in Kohler, WI, a Wisconsin Joint Legislative-Judicial Conference entitled "Addressing Injustices in the Justice System" in September 2004 in Madison, WI, and a state public defender's conference in Milwaukee, WI, among other presentations.

2) During the Wisconsin National Guard's May 2010 Judge Advocate General Readiness Conference at Fort McCoy, WI, I presented a one hour CLE block of instruction entitled "Working Towards the Rule of Law and Democracy in Iraq."

3) As Chairman of the Assembly Judiciary Committee, I spoke at various State Bar conferences and meetings throughout my years in the legislature, including serving on a panel with then-Chief Justice Shirley Abrahamson and then-Attorney General Peg Lautenschlager addressing the topic "Access to Justice."

Describe any other speeches or lectures you have given.

After returning from Iraq at the end of 2008, I did multiple slideshow presentations of my Rule of Law work while deployed.

Prior to the adoption of the Marriage Amendment to the Wisconsin Constitution by the people of this state in November 2006, I spoke at multiple functions across the state regarding the amendment.

As a state representative, I spoke publicly at innumerable events over the years.

XIII. FINANCIAL INVOLVEMENT:

Are you or your spouse now an officer, director, or otherwise engaged in the management of any business enterprise?

Yes No

If yes, state the name of the enterprise, the nature of the business, the nature of your duties, and you or your spouse's intended involvement upon your appointment or election to judicial office.

My wife re-started a small (very small) photography business last year - Mary Gundrum Photography, LLC. I have no involvement with the business. I anticipate her continuing the business if I am appointed to the Wisconsin Supreme Court; however, if it posed a problem in any way, we could shut it down.

Describe any business or profession other than the practice of law that you have been engaged in since being admitted to the Bar.

State Representative for the 84th Assembly District.

Describe any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind that you have received during the past five years.

I was injured in a car accident in 2012 and received a settlement from Farmers Insurance.

XIV. References

Reference 1

Name	Attorney Paul Dedinsky
Address	Milwaukee County District Attorney's Office 821 W. State St., Milwaukee, WI
Telephone Number	262-271-1188

Reference 2

Name	Judge Patrick Haughney
Address	515 W. Moreland Blvd., Waukesha, WI
Telephone Number	██████████ (c); 262-548-7548 (w); ██████████ (h)

Reference 3

Name	Judge Lisa Neubauer
Address	Court of Appeals, District II 2727 N. Grandview Blvd., Waukesha, WI
Telephone Number	██████████ (c)

Reference 4

Name	State Representative Dale Kooyenga
Address	Room 324 East, State Capitol, Madison, WI
Telephone Number	██████████

XV. ADDITIONAL INFORMATION:

Explain in 500 words or less why you want to become a judge/justice.

My professional interest over the last two decades has been for truth, justice, and the rule of law. Whether that has been as Chairman of the Assembly Judiciary Committee, as a Rule of Law Advisor in Iraq, as a Waukesha County Circuit Court Judge, or now as a court of appeals judge, this interest has always driven me to the career choices I have pursued. Serving on the Wisconsin Supreme Court would allow me to employ these ideals at the highest level in our state.

One of the most satisfying aspects of my service as a lawmaker and long-time Chairman of the Assembly Judiciary Committee was reviewing significant court decisions and carefully crafting appropriate legislation to address concerns related to those decisions. I have found carefully wordsmithing decisions interpreting and applying the law on the court of appeals to be equally satisfying. I am confident performing the same thoughtful, careful type of work on the Wisconsin Supreme Court will be even more satisfying.

Respect for the law declines when respect for those interpreting and applying the law declines. Our supreme court is in desperate need of members who can start to rebuild and restore its image. Having spent more than a decade working cooperatively in the legislature with individuals of all political stripes and having spent four and a half years working cooperatively with individuals of varying ideologies and philosophies on the court of appeals, I am confident I can work cooperatively with all members of the supreme court and thereby assist with restoring the public's respect for the court.

In 500 words or less, name one of the best United States or Wisconsin Supreme Court opinions in the last thirty years and explain why you feel that way.

District of Columbia v. Heller, 128 S.Ct. 2783 (2008), is one of the best opinions in the last thirty years, in part because of Justice Scalia's skilled writing of the opinion and in part because it judicially resolved a very important constitutional question. In that case, the Supreme Court considered "whether a District of Columbia prohibition on the possession of usable handguns in the home violates the Second Amendment to the Constitution." *Id.* at 2788. After providing a thorough analysis of the meaning of the Second Amendment, the Court, led by Justice Scalia, concluded the D.C. prohibition violated the amendment. *Id.* 2821-22.

Heller is an important decision because it squarely answers the question of whether the Second Amendment protects an individual right of possession and use of firearms or only the right to possession and use related to militia service. *Heller* explains the important distinction between "operative" and "prefatory" clauses, and the role of each, and clarifies that prefatory clauses, like "whereas" clauses, are not to be used to produce ambiguity but only to resolve it, if ambiguity exists. *Id.* at 2790 n.4. The opinion focuses first on the text of the Constitution, noting that, when addressing "rights," every usage in the Constitution of the term "the people"—as in "the right of the people to keep and bear arms, shall not be infringed"—refers only to an individual right of "all members of the political community," not the right of a collective body made up from a subset of that community, such as a militia. *Id.* at 2790-91.

In disciplined fashion, Heller walks through the individual words used in the Second Amendment, noting that, at the time the amendment was written as now, the word "arms" was not limited only to weapons and armor used in a military capacity, and "keep" and "bear" in no way suggested the amendment was limited to individuals only keeping and bearing arms as part of a structured military organization. *Id.* at 2791-94. Because the phrase "keep and bear arms" did not itself resolve the question of whether the Second Amendment protects an individual versus collective right, the court looked to "founding-era sources" to help illuminate the true intent of the amendment. Those documents provided significant support for the majority's conclusion that the right to keep and bear arms is an individual right. *Id.* at 2793, 2798-2803. The majority made clear that "both text and history" confirmed that the Second Amendment referred to the right of an individual to keep and bear arms. *Id.* at 2799.

In Heller, Justice Scalia also cleverly employed words Justice Ginsburg, one of the dissenters, authored in a prior decision to reinforce the majority's opinion of the intent of the Second Amendment: "Justice Ginsburg wrote that '[s]urely a most familiar meaning [of 'carries a firearm' in a federal criminal statute] is, as the Constitution's Second Amendment ... indicate[s]: 'wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person.'" *Id.* at 2793. Scalia then added, "We think that Justice Ginsburg accurately captured the natural meaning of "bear arms." *Id.*

Importantly, the majority also recognized that the Second Amendment did not GRANT to the people the right to keep and bear arms, but only protected that already-existing right from infringement. *Id.* at 2797-98, 2801-02.

In 500 words or less, name one of the worst United States or Wisconsin Supreme Court opinions in the last thirty years and explain why you feel that way.

In 2005, the Wisconsin Supreme Court released *State v. Jerrell*, 283 Wis. 2d 145 (2005), which was an example of the court, as then composed, engaging in aggressive policymaking "because it could." The court utilized its "supervisory power" to require that "all custodial interrogations of juveniles in future cases be electronically recorded where feasible, and without exception when questioning occurs at a place of detention." *Id.* at 151.

Jerrell was a 14-year-old boy who had been arrested in connection with an armed robbery. Following his arrest, Jerrell was held in custody and interrogated at the police station for a significant period of time. His requests to speak with his parents were continually rejected. Though Jerrell repeatedly denied any connection with the robbery, he eventually admitted to being involved in it and signed a statement to that effect.

Jerrell subsequently moved to suppress the confession, arguing that it was involuntary, unreliable, and a product of coercion. The trial court denied the motion and Jerrell was tried and adjudged delinquent as a party to the crime. In a postdisposition motion and on appeal, Jerrell continued to argue that his confession was involuntary and should have been suppressed. His motion was rejected by the trial court. The court of appeals affirmed.

Concluding that Jerrell's confession was involuntary and should have been suppressed, the supreme court reversed the decision of the court of appeals. No justice disputed that Jerrell's confession was involuntary and that the delinquency adjudication was being properly reversed on those grounds. My concerns with the decision relate to the majority's failure to end its decision with the reversal of the adjudication based upon the involuntary nature of the confession. Instead, the majority went further and enacted a policy requiring police to electronically record future custodial interrogations of juveniles.

The overreach by the Jerrell court was particularly troubling because, at the very time the court issued its decision, the Legislature was working in a collaborative, bi-partisan manner to develop legislation that would properly address the issue of electronic recording during custodial interrogations. The legislative reforms were adopted by the Legislature in bi-partisan fashion and signed into law just months after the decision in Jerrell.

In addition to the obvious concerns about the Jerrell court's aggressive policymaking, it is important to note that the court's decision created a costly unfunded mandate on local police departments. By contrast, the Legislature was able to establish an appropriate funding source for law enforcement agencies to utilize for costs related to the new electronic recording requirement. Through the special committee established to help develop the legislation, the Legislature was also able to anticipate and directly account for many future legal issues related to the new policy, rather than wait years for such issues to be resolved through the court system, one case at a time.

Judges, even elected judges, are not elected to enact legislative-type public policy. In addition, courts are ill-equipped to craft public policy. Judges should merely decide the cases before them and not give in to the temptation to further public policy objectives simply "because they can."

In 500 words or less, describe your judicial philosophy.

It is critical that members of our state supreme court have a full appreciation of the different roles of the three branches of government, embrace the philosophy of judicial restraint, and exercise the discipline necessary to apply that restraint. I have all these characteristics and would bring them to the supreme court.

Judicial restraint, of course, means resisting the temptation to creatively interpret legislation or contracts in a way that achieves the result personally desired by the judge, but which does great injustice to the intent of the bodies properly enacting the legislation or parties crafting language in a contract. I believe lawmakers and contract drafters will be more cautious and exact with the language they choose to employ if they know the courts will hold them to the precise words chosen.

My experience running for election to the legislature and serving as a lawmaker, Judiciary Committee Chairman, and Assistant Majority Leader has afforded me unique insight into the legislative process. It is no small feat to translate concerns of citizens out in the public into legislation enacted into law. The process along the way is a thoughtful and deliberate one, which deserves deference and respect. It is an affront to the entire process and the citizens who vote for lawmakers to have one or a handful of members of the judiciary take liberties with enacted law so as to accomplish an end those judges personally desire.

Application for Judgeship

If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

I submitted an application for appointment to the Court of Appeals, District II, in May 2011.

Describe any other information you feel would be helpful to your application.

I have served in the Army Reserve for almost 16 years now, including serving in Iraq in 2008. I thought it might be of value for the Judicial Selection Committee and Governor Walker to have the opportunity to consider some reviews of my performance as a judge advocate in the Reserve. To that end, I am including with this application Officer Evaluation Reports covering my last five years of service. As you will see from these OERs, during this time period, I have been rated as "Most Qualified" or "Best Qualified" by five different colonels.

Do you wish to request that your application remain confidential to the extent allowed by law?

Yes No

Note: Such a request does not ensure that your application will remain confidential. In general, you should expect that all materials submitted will be disclosed to the public upon request under the public records law. The Governor's Office will honor such a confidentiality request to the extent the law allows. A request for confidentiality will not adversely affect your application for appointment.

Please remember to upload your first writing sample, second writing sample, resume, signed signature page, and cover letter.

WAIVER AND AUTHORIZATION:

I hereby authorize any person acting on behalf of the Governor or his staff to seek information related to my interest in appointment as judge. I further authorize any recipient of a request for information from the Governor or his staff to provide such information for consideration of my application.

5/19/16 Mark D. Sundreem
(Date) (Signature of Applicant)

NOTICE OF DISCLOSURE:

I acknowledge and understand that this application and supporting materials, when submitted to the Governor of Wisconsin, generally become public record. I therefore understand that this means my name, the fact that I have applied to be appointed as a judge, and my application materials could be released to the public.

5/19/16 Mark D. Sundreem
(Date) (Signature of Applicant)

Please note that under certain, limited circumstances, applications for appointed positions may be exempt from disclosure under the public records law. If you wish your application to remain confidential to the extent allowed by law, please send a request to that effect in writing along with your application.

Such a request does not ensure that your application will remain confidential. In general, you should expect that all materials submitted will be disclosed. The Governor's Office will honor such a confidentiality request to the extent the law allows. A request for confidentiality will not adversely affect your application for appointment.

FIELD GRADE PLATE (O4 - O5; CW3 - CW5) OFFICER EVALUATION REPORT					See Privacy Act Statement in AR 623-3.	
For use of this form, see AR 623-3; the proponent agency is DCS, G-1.						
PART I - ADMINISTRATIVE (Rated Officer)						
a. NAME (Last, First, Middle Initial)		b. SSN	c. RANK	d. DATE OF RANK (YYYYMMDD)	e. BRANCH	f. COMPONENT (Status Code)
GUNDRUM, MARK, K		[REDACTED] 3053	MAJ	20100729	JA	TPU
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND			h. UIC	i. REASON FOR SUBMISSION		
646th CS GRP HHD RSG, Madison, 53704-620, AR			WR76AA	02 Annual		
j. PERIOD COVERED		k. RATED MONTHS	l. NON RATED CODES	m. NO. OF ENCLOSURES	n. RATED OFFICER'S EMAIL ADDRESS (.gov or .mil)	
FROM (YYYYMMDD)	THRU (YYYYMMDD)	12		0	[REDACTED]	
20141231	20151230					
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)						
a1. NAME OF RATER (Last, First, Middle Initial)		a2. SSN	a3. RANK	a4. POSITION		
M [REDACTED], N [REDACTED]		[REDACTED] 0844	LTC	CJA		
a5. EMAIL ADDRESS (.gov or .mil)		a6. SIGNATURE		a7. DATE (YYYYMMDD)		
[REDACTED]		[REDACTED]		20160209		
b1. NAME OF INTERMEDIATE RATER (Last, First, Middle Initial)		b2. SSN (Optional)	b3. RANK	b4. POSITION		
[REDACTED]						
b5. EMAIL ADDRESS (.gov or .mil)		b6. SIGNATURE		b7. DATE (YYYYMMDD)		
[REDACTED]		[REDACTED]		[REDACTED]		
c1. NAME OF SENIOR RATER (Last, First, Middle Initial)		c2. SSN	c3. RANK	c4. POSITION		
R [REDACTED], M [REDACTED], D [REDACTED]		[REDACTED] -1074	COL	Commander		
c5. SENIOR RATER'S ORGANIZATION		c6. BRANCH	c7. COMPONENT	c9. EMAIL ADDRESS (.gov or .mil)		
646th RSG		LG	USAR	[REDACTED]		
		c8. SENIOR RATER PHONE NUMBER		c10. SIGNATURE		c11. DATE (YYYYMMDD)
		[REDACTED]		[REDACTED]		20160209
d. This is a referred report, do you wish to make comments?		e1. SIGNATURE		e2. DATE (YYYYMMDD)		
<input type="checkbox"/> Referred <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No		[REDACTED]		20160209		
f1. Supplementary Review Required?		f2. NAME OF REVIEWER (Last, First, Middle Initial)				
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		[REDACTED]				
f3. RANK	f4. POSITION	f5. Comments Enclosed				
		<input type="checkbox"/> Yes <input type="checkbox"/> No				
f6. SIGNATURE		f7. DATE (YYYYMMDD)	g. MSAF Date (YYYYMMDD)			
[REDACTED]		20151213	20151213			
PART III - DUTY DESCRIPTION						
a. PRINCIPAL DUTY TITLE			b. POSITION AOC/BRANCH			
Deputy Command Judge Advocate			JA			
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES						
Assist CJA in all areas for the 646th RSG. Act as one of only two attorneys in a command of over 900 Soldiers within a multi-state region. Provide legal advice to the Commander, his subordinate battalion, company and detachment commanders. Advise and educate the command on military justice, administrative law, ethics and operational law matters. Assist investigation officers with AR 15-6, RCM 303 investigations, FLIPLs, and other informal investigations. Ensure that adverse administrative and military justice actions are legally sufficient and that the process for such actions protects the rights of the Soldiers involved.						
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM, COMPETENCIES, AND ATTRIBUTES (Rater)						
a. APFT Pass/Fail/Profile: <u>PASS</u> Date: <u>20151115</u> Height: <u>75</u> Weight: <u>256</u> Within Standard? <u>YES</u>						
Comments required for "Failed" APFT, or "Profile" when it precludes performance of duty, and "No" for Army Weight Standards? MAJ Gundrum past his PT test in November, 2015 with a known cartilage tear in his knee and commenced surgery on the knee shortly thereafter.						
b. THIS OFFICER POSSESSES SKILLS AND QUALITIES FOR THE FOLLOWING BROADENING ASSIGNMENTS						
Command Judge Advocate, LOD Team Lead, LOD Deputy Commander						
c. THIS OFFICER POSSESSES SKILLS AND QUALITIES FOR THE FOLLOWING OPERATIONAL ASSIGNMENTS						
DIMA Operational Law Attorney, TJAGLCS Operational Law Instructor						
d1. Character:		Sets a positive example daily in the appropriate practices of EO and Sharp. MAJ Gundrum lives the Army Values and treats every Soldier who comes in contact with the JA office with dignity and respect.				
(Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)						

NAME GUNDRUM, MARK, K	SSN ██████████3053	PERIOD COVERED: FROM (YYYYMMDD) 20141231	THRU (YYYYMMDD) 20151230
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d2. Provide narrative comments which demonstrate performance regarding field grade competencies and attributes in the Rated Officer's current duty position. (i.e. demonstrates excellent presence, confidence and resilience in expected duties and unexpected situation, adjusts to external influence on the mission or taskings and organization, prioritizes limited resources to accomplish mission, proactive in developing others through individual coaching counseling and mentoring, active learner to master organizational level knowledge, critical thinking and visioning skills, anticipates and provides for subordinates on-the-job needs for training and development, effective communicator across echelons and outside the Army chain of command, effective at engaging others, presenting information and recommendations and persuasion, highly proficient at critical thinking, judgment and innovation, proficient in utilizing Army design method and other to solve complex problems, uses all influence techniques to empower others; proactive in gaining trust in negotiations, remains respectful, firm and fair. Fully supports SHARP and creates a positive command/workplace environment.)

COMMENTS:
During this rating period, MAJ Gundrum assisted with all separation actions, including EO and SHARP cases, which arose within the command. With each and every case he provided excellent guidance and support to the IO and SARC as needed, as well as completed dozens of legal reviews on separation packets. With all these sensitive cases he was able to build relationships up and down the chain of command and create trust with all parties involved. Further, he volunteered to act as recorder on boards for the 103rd ESC.

e. This Officer's overall Performance is Rated as: (Select one box representing Rated Officer's overall performance compared to others of the same grade whom you have rated in your career. Managed at less than 50% in EXCELS.)

A completed DA Form 87-10-1A was received with this report and considered in my evaluation and review: Yes No (explain in comments below)

HQDA COMPARISON OF THE RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED			
EXCELS			
RO: GUNDRUM, MARK, K	SSN: ██████████3053	R: M██████ N██████ J	SSN: ██████████
DATE: 2016-02-11	TOTAL RATINGS: 5	RATINGS THIS OFFICER: 2	I currently rate <u>1</u> Army Officers in this grade.

Comments:
MAJ Gundrum is in the top 5% of all JA officers with whom I have worked. He accepts willingly the substantive and time challenges that his embed position demands. His civilian job as a Wisconsin Court of Appeals judge gives him unique skills and insight into the cases which come through this office and he has been instrumental in creating correct outcomes on several complex separation actions. Further, MAJ Gundrum did all of this while completing ILE where he excelled with an average "A" grade in all courses.

PART V - INTERMEDIATE RATER

PART VI - SENIOR RATER

<p>a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)</p> <p>HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px 0;"> <p>MOST QUALIFIED</p> </div> <p>RO: GUNDRUM, MARK, K</p> <p>SR: ██████████, M██████████</p> <p>DATE: 2016-02-11</p> <p>TOTAL RATINGS: 9</p> <p>RATINGS THIS OFFICER: 1</p>	<p>b. I currently senior rate <u>6</u> Army Officers in this grade.</p> <p>c. COMMENTS ON POTENTIAL: MAJ Gundrum is a superlative officer who is ready to serve and lead at the next level. He should be promoted to LTC ahead of his peers and selected now for the resident US Army War College. His leadership, dedication, technical ability as an attorney and acumen at developing relationships makes him one of the best field grade officers with whom I have worked. MAJ Gundrum's potential is unlimited and he is a future senior leader within the Army Reserves.</p> <p>d. List 3 future <u>SUCCESSIVE</u> assignments for which this Officer is best suited: LOD Deputy Commander, SJA, Instructor TJAGLCS</p>
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FIELD GRADE PLATE (O4 - O5; CW3 - CW5) OFFICER EVALUATION REPORT						See Privacy Act Statement in AR 623-3.		
For use of this form, see AR 623-3; the proponent agency is DCS, G-1.								
PART I - ADMINISTRATIVE (Rated Officer)								
a. NAME (Last, First, Middle Initial) GUNDRUM, MARK, D			b. SSN [REDACTED]-3053		c. RANK MAJ	d. DATE OF RANK (YYYYMMDD) 20100729	e. BRANCH JA	f. COMPONENT (Status Code) TPU
g. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND 0646 CS GRP HHD RSG, MADISON, 53704-620, AR.					h. UIC WR76AA		i. REASON FOR SUBMISSION 02 Annual	
j. PERIOD COVERED FROM (YYYYMMDD) 20140101 THRU (YYYYMMDD) 20141231		k. RATED MONTHS 12	l. NON RATED CODES	m. NO. OF ENCLOSURES 0	n. RATED OFFICER'S EMAIL ADDRESS (.gov or .mil) [REDACTED]			
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)								
a1. NAME OF RATER (Last, First, Middle Initial) M [REDACTED], N [REDACTED]			a2. SSN [REDACTED]-0844		a3. RANK LTC	a4. POSITION Command Judge Advocate		
a5. EMAIL ADDRESS (.gov or .mil) [REDACTED]			a6. SIGNATURE M [REDACTED], N [REDACTED]				a7. DATE (YYYYMMDD) 20150325	
b1. NAME OF INTERMEDIATE RATER (Last, First, Middle Initial)			b2. SSN (Optional)		b3. RANK	b4. POSITION		
b6. EMAIL ADDRESS (.gov or .mil)			b6. SIGNATURE				b7. DATE (YYYYMMDD)	
c1. NAME OF SENIOR RATER (Last, First, Middle Initial) W [REDACTED], D [REDACTED]			c2. SSN [REDACTED]-6931		c3. RANK COL	c4. POSITION Commander		
c5. SENIOR RATER'S ORGANIZATION 646th RSG		c6. BRANCH MP	c7. COMPONENT USAR		c9. EMAIL ADDRESS (.gov or .mil) [REDACTED]			
		c8. SENIOR RATER PHONE NUMBER [REDACTED]		c10. SIGNATURE W [REDACTED], D [REDACTED]			c11. DATE (YYYYMMDD) 20150326	
d. This is a referred report, do you wish to make comments? <input type="checkbox"/> Referred <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No				e1. SIGNATURE GUNDRUM, MARK DENIS. 1190575353			e2. DATE (YYYYMMDD) 20150330	
f1. Supplementary Review Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				f2. NAME OF REVIEWER (Last, First, Middle Initial)				
f3. RANK		f4. POSITION		f5. Comments Enclosed <input type="checkbox"/> Yes <input type="checkbox"/> No				
f6. SIGNATURE			f7. DATE (YYYYMMDD)		g. MSAF Date (YYYYMMDD) 20141116			
PART III - DUTY DESCRIPTION								
a. PRINCIPAL DUTY TITLE Assist Judge Advocate				b. POSITION AOC/BRANCH 27A00/JA				
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES Assist Judge Advocate for the 646th Regional Support Group. Act as one of only two attorneys in a command of over 900 Soldiers within a multi-state area. Responsible for providing all areas of legal advice to Commander, his subordinate battalion, company and detachment commanders. Advise and educate the command on military justice, administrative law, ethics, and operational law matters. Assist investigating officers conducting AR 15-6 investigations, financial liability investigations, commanders' inquiries, and similar investigations. Ensure that adverse administrative and military justice actions are legally sufficient, and that the process for such actions protects the rights of the Soldier involved.								
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM, COMPETENCIES, AND ATTRIBUTES (Rater)								
a. APFT Pass/Fail/Profile: <u>PASS</u> Date: <u>20141219</u> Height: <u>75</u> Weight: <u>250</u> Within Standard? <u>YES</u> Comments required for "Failed" APFT, or "Profile" when it precludes performance of duty, and "No" for Army Weight Standards?								
b. THIS OFFICER POSSESSES SKILLS AND QUALITIES FOR THE FOLLOWING BROADENING ASSIGNMENTS Instructor TJAGLCS, Military Judge, LOD DSJA								
c. THIS OFFICER POSSESSES SKILLS AND QUALITIES FOR THE FOLLOWING OPERATIONAL ASSIGNMENTS RSG SJA, Operations Attorney USACC, DSJA USJAFCOM								
d1. Character (Adherence to Army Values, Empathy, and Warrior Ethos/Service Ethos and Discipline. Fully supports SHARP, EO, and EEO.)		MAJ Gundrum goes above and beyond with his warrior and service ethos. He never fails to complete any assignment and volunteers for work. He took on the challenge of the GAFPB while managing all other responsibilities and received Silver, leading the way with physical fitness. Without question and in all actions he fully supports SHARP and lives the Army Values.						

NAME GUNDRUM, MARK, D	SSN ██████████3053	PERIOD COVERED: FROM (YYYYMMDD) 20140101	THRU (YYYYMMDD) 20141231
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d2. Provide narrative comments which demonstrate performance regarding field grade competencies and attributes in the Rated Officer's current duty position. (i.e. demonstrates excellent presence, confidence and resilience in expected duties and unexpected situation, adjusts to external influence on the mission or taskings and organization, prioritizes limited resources to accomplish mission, proactive in developing others through individual coaching counseling and mentoring, active learner to master organizational level knowledge, critical thinking and visioning skills, anticipates and provides for subordinates on-the-job needs for training and development, effective communicator across echelons and outside the Army chain of command, effective at engaging others, presenting information and recommendations and persuasion, highly proficient at critical thinking, judgment and innovation, proficient in utilizing Army design method and other to solve complex problems, uses all influence techniques to empower others; proactive in gaining trust in negotiations, remains respectful, firm and fair. Fully supports SHARP and creates a positive command/workplace environment.)

COMMENTS:

Immediately upon his arrival, MAJ Gundrum took on numerous Separation files and 15-6 investigation legal reviews, which he completed with great competency and speed. He volunteered as Recorder on a separation board with positive outcome to the government. His civilian position as an Appellate Court Judge brings significant added value to the command, specifically guiding the command to proper action on a sensitive domestic case. Further, he manages two senior NCO paralegals to great effect.

e. This Officer's overall Performance is Rated as: (Select one box representing Rated Officer's overall performance compared to others of the same grade whom you have rated in your career. Managed at less than 50% in EXCELS.)

A completed DA Form 67-10-1A was received with this report and considered in my evaluation and review: Yes No (explain in comments below)

HQDA COMPARISON OF THE RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED			
EXCELS			
RO: GUNDRUM, MARK, D	SSN: ██████████3053	R: M ████████ N ████████	SSN: ██████████0844
DATE: 2015-04-22	TOTAL RATINGS: 4	RATINGS THIS OFFICER: 1	I currently rate <u>1</u> Army Officers in this grade.

Comments:

MAJ Gundrum is in the top 5% of all Judge Advocates with whom I have served in my 17 year career. His technical ability is accompanied by his outstanding interpersonal skills, which have earned him the respect and confidence of all leaders and Soldiers within the command. His advice is taken and followed with fantastic outcomes for the command. He shows leadership through constant energy and enthusiasm for his work, which is infectious to other Soldiers.

PART V - INTERMEDIATE RATER

PART VI - SENIOR RATER

a. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

MOST QUALIFIED

RO: GUNDRUM, MARK, D

SR: W ████████ D ████████

DATE: 2015-04-22

TOTAL RATINGS: 4

RATINGS THIS OFFICER: 1

b. I currently senior rate 8 Army Officers in this grade.

c. COMMENTS ON POTENTIAL:

Major Gundrum has limitless potential to excel in task accomplishment and leadership responsibilities. He continually exceeds expectations and he will make a positive impact to any unit assigned. Promote now, ahead of his peers and place in a key legal staff position or leadership position. Tremendous officer who is ready to work at the next level.

d. List 3 future **SUCCESSIVE** assignments for which this Officer is best suited:

Command Judge Advocate, Deputy Staff Judge Advocate, LOD Deputy Commander

OFFICER EVALUATION REPORT						FOR OFFICIAL USE ONLY (FOUO) SEE PRIVACY ACT STATEMENT IN AR 623-3.	
For use of this form, see AR 623-3; the proponent agency is DCS, G-1.							
PART I - ADMINISTRATIVE DATA							
a. NAME (Last, First, Middle Initial)		b. SSN	c. RANK	d. DATE OF RANK (YYYYMMDD)	e. BRANCH	f. DESIGNATED SPECIALTIES / PMOS (WO)	
GUNDRUM, MARK D.		██████████-3053	MAJ	20100729	JA	27A	
g. 1. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND				g. 2. STATUS CODE		h. REASON FOR SUBMISSION	
214th Legal Operations Detachment, Milwaukee, WI 53218 USARLC				TPU		04 Change of Duty	
i. PERIOD COVERED		j. RATED MONTHS	k. NONRATED CODES	l. NO. OF ENCL	m. RATED OFFICER'S APO EMAIL ADDRESS (gov or mil)		n. UIC
FROM (YYYYMMDD)	THRU (YYYYMMDD)	5		0	████████████████████		WS8YA6
	20130803	20131231					LC
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)							
a. NAME OF RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE		DATE (YYYYMMDD)
P. ██████████, J. ██████████		██████████-9198	LTC	Deputy Commander	████████████████████		20140306
b. NAME OF INTERMEDIATE RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE		DATE (YYYYMMDD)
R. ██████████, N. ██████████		██████████-3178	COL	Commander	████████████████████		20140306
c. NAME OF SENIOR RATER (Last, First, MI)			SSN	RANK	POSITION	SIGNATURE	
R. ██████████, N. ██████████			██████████-3178	COL	Commander	████████████████████	
SENIOR RATER'S ORGANIZATION				BRANCH	SENIOR RATER TELEPHONE NUMBER	E-MAIL ADDRESS (gov or mil)	
214th Legal Operations Detachment 505 88th Division Road, Ft Snelling, MN 55111-4008				JA	████████████████████	████████████████████	
d. This is a referred report, do you wish to make comments?				e. SIGNATURE OF RATED OFFICER		DATE (YYYYMMDD)	
<input type="checkbox"/> No <input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No				GUNDRUM, MARK DENIS, 1190475		20140307	
PART III - DUTY DESCRIPTION							
a. PRINCIPAL DUTY TITLE				b. POSITION ACC/BR			
LOT-G Team Chief				27A00/JA			
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1.							
LOT-G Team Leader in a fifty-six Soldier Legal Operations Detachment, containing 32 attorneys and 24 paralegals in 12 separately deployable legal teams located at Fort Snelling, MN, Madison, WI, and Milwaukee, WI, with the mission to deploy on short notice to provide judge advocate support as needed to active component SJA offices and contingency operations. Direct supervisor to one attorney and two paralegals on his team that is responsible for providing a full range of legal services to soldiers, commanders, and staffs in Minnesota, Wisconsin, North Dakota, and South Dakota. Served as acting LOT-S Team Leader in Milwaukee, responsible for direct supervision of both Milwaukee LOT-G Teams, which contain three attorneys and four paralegals, and overseeing the delivery of legal services by the Milwaukee teams in all areas of military law to Soldiers and commanders.							
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)							
CHARACTER Disposition of the leader; combination of values, attributes, and skills affecting leader actions							
a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vd.)							
		Yes	No			Yes	No
1. HONOR: Adherence to the Army's publicly declared code of values		<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. RESPECT: Promotes dignity, consideration, fairness, & EO		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed		<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. SELFLESS SERVICE: Places Army priorities before self		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. COURAGE: Manifests physical and moral bravery		<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. DUTY: Fulfills professional, legal, and moral obligations		<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier		<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "No" entries.							
b.1. ATTRIBUTES (Select 1)		<input checked="" type="checkbox"/> 1. MENTAL Possesses desire, will, initiative, and discipline		<input type="checkbox"/> 2. PHYSICAL Maintains appropriate level of physical fitness and military bearing		<input type="checkbox"/> 3. EMOTIONAL Displays self-control; calm under pressure	
b.2 SKILLS (Competence) (Select 2)		<input checked="" type="checkbox"/> 1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning		<input type="checkbox"/> 2. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering		<input checked="" type="checkbox"/> 3. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions	
		<input type="checkbox"/> 4. TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting				<input checked="" type="checkbox"/> NO	
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving							
INFLUENCING Method of reaching goals while operating / improving		<input type="checkbox"/> 1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups		<input checked="" type="checkbox"/> 2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely		<input type="checkbox"/> 3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment	
OPERATING Short-term mission accomplishment		<input type="checkbox"/> 4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable		<input checked="" type="checkbox"/> 5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources		<input type="checkbox"/> 6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement	
IMPROVING Long-term improvement in the Army its people and organizations		<input checked="" type="checkbox"/> 7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders		<input type="checkbox"/> 8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate		<input type="checkbox"/> 9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading change	
c. APFT: PASS		DATE: 20131102	HEIGHT: 75	WEIGHT: 247	YES		
d. OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF CPTs, LTs, CW2s, AND WO1s.							
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?							
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NA							

NAME GUNDRUM, MARK D.

SSN [REDACTED] 3053

PERIOD COVERED 20130803

20131231

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE, PROMOTE UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE, REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND PART Vb, DA FORM 67-9-1.

MAJ Gundrum continued his outstanding performance as the acting LOT-S Team Chief in Milwaukee, a LTC position, for the first month of this rating period. He then provided excellent support to the new LOT-S Team Chief upon his arrival. As a direct result of MAJ Gundrum's exceptional and capable leadership, the new LOT-S Team Chief had a well-run team fully capable of performing any mission at the highest levels of success. Additionally, MAJ Gundrum continued to provide top-notch legal assistance and advice to Soldiers and their families during the Milwaukee Team's three-month on-call Legal Assistance period. He also volunteered to provide SRP support to the 826th Ordnance Company in Janesville, Wisconsin; where, again, he provided stellar leadership and impeccable support and advice to the Soldiers and family members who needed legal services. While he will be greatly missed in the 214th LOD, MAJ Gundrum will continue to serve as a tremendous asset for the USAR and JAG Corps as an embedded JA with the 646th ASG.

c. COMMENT ON POTENTIAL FOR PROMOTION.

Promote MAJ Gundrum to LTC immediately upon completing ILE. His outstanding performance as an acting LOT-S Team Leader clearly demonstrates that he is ready now to take on greater responsibilities at the higher rank, and he will enhance his skills and leadership by serving in an embedded JA position.

d. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

MAJ Gundrum currently serves as an elected state court of appeals judge, after serving as an elected trial court judge. He has served as an elected state lawmaker for over a decade, chairing the Judiciary Committee and being selected for numerous leadership posts.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

I currently senior rate 6 officer(s) in this grade

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below) A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review YES NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)
HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

CENTER OF MASS

RO: MAJ GUNDRUM MARK D
[REDACTED] 53

SR: COL R [REDACTED]
[REDACTED] 3178

DATE: 2014 04 23

TOTAL RATINGS: 5

RATINGS THIS OFFICER: 1

c. COMMENT ON PERFORMANCE/POTENTIAL

Continued rock-solid performance by one of the top two majors in my command. During this brief rating period, curtailed further by a one-month Government shutdown, MAJ Gundrum seamlessly passed the reigns of leadership of the Milwaukee legal operations teams, enabling the new leader to continue to lead the LOTs in the same outstanding manner that MAJ Gundrum had done. He displayed unmatched dedication, as evidenced by his tremendous support of Soldiers and Family members during deployment readiness processing, the advice he provided as an on-call attorney, and his volunteering to serve as an embedded judge advocate in the 646th RSG. Upon his completion of ILE, MAJ Gundrum should immediately be promoted to lieutenant colonel and assigned to positions of greater responsibility.

d. LIST THREE FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY CPT, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Brigade Judge Advocate, Command Judge Advocate, LOT-S Chief

OFFICER EVALUATION REPORT						FOR OFFICIAL USE ONLY (FOUO) SEE PRIVACY ACT STATEMENT IN AR 623-9.	
For use of this form, see AR 623-3; the proponent agency is DCS, G-1.							
PART I - ADMINISTRATIVE DATA							
a. NAME (Last, First, Middle Initial)		b. SSN	c. RANK	d. DATE OF RANK (YYYYMMDD)	e. BRANCH	f. DESIGNATED SPECIALTIES / PMOS (WO)	
GUNDRUM, MARK D.		3053	MAJ	20100729	JA	27A	
g. 1. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND				g. 2. STATUS CODE		h. REASON FOR SUBMISSION	
214th Legal Support Organization, Ft. Snelling, MN 55111 USARC				TPU		02 Annual	
i. PERIOD COVERED		j. RATED MONTHS	k. NONRATED CODES	l. NO. OF ENCL	m. RATED OFFICER'S APO EMAIL ADDRESS (gov or mil)		n. UIC
FROM (YYYYMMDD) THRU (YYYYMMDD)		12		0	[REDACTED]		WS8YA6
							LI
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)							
a. NAME OF RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE	DATE (YYYYMMDD)	
P [REDACTED] J [REDACTED]		9198	LTC	Deputy Commander	[REDACTED]	20131020	
b. NAME OF INTERMEDIATE RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE	DATE (YYYYMMDD)	
R [REDACTED] N [REDACTED]		3178	COL	Commander	[REDACTED]	20131122	
c. NAME OF SENIOR RATER (Last, First, MI)			SSN	RANK	POSITION	SIGNATURE	DATE (YYYYMMDD)
R [REDACTED] N [REDACTED]			3178	COL	Commander	[REDACTED]	20131122
SENIOR RATER'S ORGANIZATION				BRANCH	SENIOR RATER TELEPHONE NUMBER	E-MAIL ADDRESS (gov or mil)	
214th Legal Operations Detachment				JA	[REDACTED]	[REDACTED]	
505 88th Division Road, Ft Snelling, MN 55111-4008				d. This is a referred report, do you wish to make comments?		e. SIGNATURE OF RATED OFFICER	
				<input type="checkbox"/> No		GUNDRUM, MARK D, 11905755	
				<input type="checkbox"/> Yes, comments are attached		20131126	
PART III - DUTY DESCRIPTION							
a. PRINCIPAL DUTY TITLE LOT-G Team Chief				b. POSITION AOC/BR 27A00/JA			
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1.							
LOT-G Team Leader in a fifty-six Soldier Legal Operations Detachment, containing 32 attorneys and 24 paralegals in 12 separately deployable legal teams located at Fort Snelling, MN, Madison, WI, and Milwaukee, WI, with the mission to deploy on short notice to provide judge advocate support as needed to active component SJA offices and contingency operations. Direct supervisor to one attorney and two paralegals on his team that is responsible for providing a full range of legal services to soldiers, commanders, and staffs in Minnesota, Wisconsin, North Dakota, and South Dakota. Served as acting LOT-S Team Leader in Milwaukee, responsible for direct supervision of both Milwaukee LOT-G Teams, which contain three attorneys and four paralegals, and overseeing the delivery of legal services by the Milwaukee teams in all areas of military law to Soldiers and commanders.							
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)							
CHARACTER <i>Disposition of the leader: combination of values, attributes, and skills affecting leader actions</i>							
a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vd.)		Yes No		Yes No		Yes No	
1. HONOR: Adherence to the Army's publicly declared code of values		<input checked="" type="checkbox"/> <input type="checkbox"/>		5. RESPECT: Promotes dignity, consideration, fairness, & EO		<input checked="" type="checkbox"/> <input type="checkbox"/>	
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed		<input checked="" type="checkbox"/> <input type="checkbox"/>		6. SELFLESS-SERVICE: Places Army priorities before self		<input checked="" type="checkbox"/> <input type="checkbox"/>	
3. COURAGE: Manifests physical and moral bravery		<input checked="" type="checkbox"/> <input type="checkbox"/>		7. DUTY: Fulfills professional, legal, and moral obligations		<input checked="" type="checkbox"/> <input type="checkbox"/>	
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier		<input checked="" type="checkbox"/> <input type="checkbox"/>				<input checked="" type="checkbox"/> <input type="checkbox"/>	
b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "No" entries.							
b.1. ATTRIBUTES (Select 1)		<input checked="" type="checkbox"/> 1. MENTAL Possesses desire, will, initiative, and discipline		<input checked="" type="checkbox"/> NO		<input type="checkbox"/> 2. PHYSICAL Maintains appropriate level of physical fitness and military bearing	
		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> NO		<input type="checkbox"/> 3. EMOTIONAL Displays self-control; calm under pressure	
b.2. SKILLS (Competence) (Select 2)		<input checked="" type="checkbox"/> 1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 2. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering	
		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> NO		<input type="checkbox"/> 3. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions	
		<input type="checkbox"/> 4. TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting				<input checked="" type="checkbox"/> NO	
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving							
INFLUENCING Method of reaching goals while operating / improving		<input checked="" type="checkbox"/> 1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely	
		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> NO		<input type="checkbox"/> 3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment	
OPERATING Short-term mission accomplishment		<input type="checkbox"/> 4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources	
		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> NO		<input type="checkbox"/> 6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement	
IMPROVING Long-term improvement in the Army its people and organizations		<input type="checkbox"/> 7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate	
		<input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> NO		<input type="checkbox"/> 9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading change	
c. APFT: PASS DATE: 20130713 HEIGHT: 75 WEIGHT: 244 YES							
d. OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF CPTs, LTs, CW2s, AND WO1s.							
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED? <input checked="" type="checkbox"/> NO <input type="checkbox"/> NA							

NAME GUNDRUM, MARK D.

SSN [REDACTED] 3053

PERIOD COVERED 20120803

20130802

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE, PROMOTE UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE, REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND PART Vb, DA FORM 67-9-1.

Despite dealing with a close family member's major health concerns, MAJ Gundrum excelled at the highest level as the acting LOT-S Team Chief in Milwaukee, a LTC position, ensuring full mission readiness of all team members and accountability for all personnel and physical assets. This outstanding Soldier/Lawyer led his team to a superior performance during the Legal Command FX at Ft. McCoy. Despite suffering a significant shoulder injury early in the FX, MAJ Gundrum soldiered on, leading his team through all FX exercises, including weapons qualification, where he qualified as a Sharpshooter with his 9mm utilizing only one arm. Under his leadership, two of his Soldiers were recognized for superior achievement during the FX. In October 2012 and May 2013, he ensured the delivery of outstanding legal services and briefings at SRPs for the nearly 300-member 452nd CSH. MAJ Gundrum also led the Milwaukee Team to provide superb legal services for dozens of soldiers during its three-month stint as the on-call Legal Assistance team for the unit. Finally, MAJ Gundrum encouraged one of his Soldiers to participate in the LC's Best Warrior competition, which that Soldier won. His first rate judgment and exceptional legal and leadership skills have made him a tremendous asset to the Milwaukee Team, the 214th LOD, and the JAG Corps.

c. COMMENT ON POTENTIAL FOR PROMOTION.

MAJ Gundrum should be promoted to LTC immediately upon completion of ILE. His outstanding performance as an acting LOT-S Team Leader clearly demonstrates that he is ready now to take on greater responsibilities at the higher rank.

d. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

MAJ Gundrum now serves as an elected state court of appeals judge after previously serving as an elected trial court judge. Prior to that, while also practicing law, he served as an elected state lawmaker for over a decade, chairing the Judiciary Committee and being selected for numerous leadership posts.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

I currently senior rate 8 officer(s) in this grade

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below)

A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review YES NO (Explain in e)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

ABOVE CENTER OF MASS

RO: MAJ GUNDRUM MARK D

[REDACTED] 953

SR: COL R [REDACTED]

[REDACTED] 3178

DATE: 2013 12 23

TOTAL RATINGS: 4

RATINGS THIS OFFICER: 1

c. COMMENT ON PERFORMANCE/POTENTIAL

Magnificent performance by one of the two best majors in my command. Once again, MAJ Gundrum not only served flawlessly as leader of my two Milwaukee teams -- acting as a lieutenant colonel -- but he did so in a location remote from the support of the unit's staff and leadership. Yet, under MAJ Gundrum's leadership, his Legal Operations Teams consistently boasted some of the lowest vacancy rates, and highest military readiness and morale, of all the teams in my command. He even mentored this year's winner of the U.S. Army Reserve Legal Command's Best Soldier competition. Affable, unflappable, professional, and insightful, MAJ Gundrum has long been excelling at the lieutenant colonel level. He must be promoted immediately and entrusted with positions of greater responsibility.

d. LIST THREE FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED.

FOR ARMY COMPETITIVE CATEGORY CPT, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

LOT-S Team Chief, Command Judge Advocate, LOD Deputy Commander

OFFICER EVALUATION REPORT						FOR OFFICIAL USE ONLY (FOUO) SEE PRIVACY ACT STATEMENT IN AR 623-3.	
For use of this form, see AR 623-3; the proponent agency is DCS, G-1.							
PART I - ADMINISTRATIVE DATA							
a. NAME (Last, First, Middle Initial)		b. SSN	c. RANK	d. DATE OF RANK (YYYYMMDD)	e. BRANCH	f. DESIGNATED SPECIALTIES / PAOS (WO)	
GUNDRUM, MARK D.		[REDACTED] 053	MAJ	20100729	JA	27A	
g. 1. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND				g.2. STATUS CODE		h. REASON FOR SUBMISSION	
214th Legal Support Organization, Ft. Snelling, MN 55111 Legal Command				TPU		03 Change of Rater	
i. PERIOD COVERED		j. RATED MONTHS	k. NONRATED CODES	l. NO. OF ENCL	m. RATED OFFICER'S APO EMAIL ADDRESS (gov or mil)		n. UIC
FROM (YYYYMMDD)	THRU (YYYYMMDD)	10		0	[REDACTED]		WS8YA1
20111020	20120802						LC
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)							
a. NAME OF RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE		DATE (YYYYMMDD)
I. [REDACTED]		[REDACTED] 2279	LTC	Deputy Commander	[REDACTED]		20121008
b. NAME OF INTERMEDIATE RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE		DATE (YYYYMMDD)
B. [REDACTED]		[REDACTED] 8432	COL	Commander	[REDACTED]		20121030
c. NAME OF SENIOR RATER (Last, First, MI)				RANK	POSITION	SIGNATURE	
B. [REDACTED]				COL	Commander	[REDACTED]	
SENIOR RATER'S ORGANIZATION				BRANCH	SENIOR RATER TELEPHONE NUMBER	E-MAIL ADDRESS (gov or mil)	
214th Legal Support Organization				JA	[REDACTED]	[REDACTED]	
505 88th Division Road, Ft Snelling, MN 55111-4008				d. This is a referred report, do you wish to make comments?		e. SIGNATURE OF RATED OFFICER	
				<input type="checkbox"/> No <input type="checkbox"/> Yes, comments are attached		GUNDRUM, MARK DENIS 1190375 20121102	
PART III - DUTY DESCRIPTION							
a. PRINCIPAL DUTY TITLE Director of Legal Services/Team Leader				b. POSITION AOC/BR 27A00/JA			
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IVa, DA FORM 67-9-1.							
Serve as Director of Legal Services/Team Leader of the Milwaukee team of the 214th Legal Support Organization, a detached team of judge advocates and paralegals, prepared to deploy on order to provide legal support worldwide. Lead the development and utilization of team members in providing legal support to commanders and soldiers as Legal Command needs require. Provide advice and legal support in the areas of military justice, operational law, administrative separations, reports of survey, AR 15-6 investigations, line of duty investigations, pre-mobilization legal issues, and legal assistance. Provide Soldier and family readiness briefings and predeployment legal services with respect to a broad range of deployment and other legal issues, including the law of war, rules of engagement, Soldier rights under USERRA, SGLI, the Servicemember's Civil Relief Act, and estate planning.							
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)							
CHARACTER Disposition of the leader: combination of values, attributes, and skills affecting leader actions							
a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)							
		Yes	No			Yes	No
1. HONOR: Adherence to the Army's publicly declared code of values		<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. RESPECT: Promotes dignity, consideration, fairness, & EO		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. INTEGRITY: Possesses high personal moral standards; honest in word and deed		<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. SELFLESS-SERVICE: Places Army priorities before self		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. COURAGE: Manifests physical and moral bravery		<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. DUTY: Fulfills professional, legal, and moral obligations		<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier		<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "No" entries.							
b.1. ATTRIBUTES (Select 1)		<input checked="" type="checkbox"/> 1. MENTAL Possesses desire, will, initiative, and discipline <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> 2. PHYSICAL Maintains appropriate level of physical fitness and military bearing <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> 3. EMOTIONAL Displays self-control; calm under pressure <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
b.2 SKILLS (Competence) (Select 2)		<input checked="" type="checkbox"/> 1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 2. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> 3. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
		<input type="checkbox"/> 4. TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving							
INFLUENCING Method of reaching goals while operating / improving		<input checked="" type="checkbox"/> 1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> 3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
OPERATING Short-term mission accomplishment		<input type="checkbox"/> 4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input checked="" type="checkbox"/> 5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> 6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
IMPROVING Long-term improvement in the Army its people and organizations		<input type="checkbox"/> 7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> 8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> 9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading change <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
c. APFT: PASS		DATE: 20120609		HEIGHT: 75		WEIGHT: 250 YES	
d. OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF CPTs, LTs, CW2s, AND WO1s.							
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?							
		<input checked="" type="checkbox"/>		<input type="checkbox"/> NO		<input type="checkbox"/> NA	

NAME GUNDRUM, MARK D.

SSN [REDACTED] 3053

PERIOD COVERED 20111020

20120802

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE, PROMOTE UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE, REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND PART Vb, DA FORM 67-9-1.

Despite significant adversity during this rating period, including beginning a challenging new job and the major health concerns of a close family member, MAJ Gundrum unconditionally excelled in the challenging position of Team Leader, a LTC position. He provided outstanding leadership, ensuring full mission readiness of all team members, while leading the team through the double transformation from the 91st to the 214th and LSO to LOD, simultaneously ensuring full accountability for all personnel and physical assets. This superb Soldier/Lawyer led his team to outstanding performances at multiple training events including Staff Rides at the New Orleans On-Site and Ft. Snelling Family Day events, and the Ft. McCoy FTX and weapons qualification at which he secured high scores in personal weapons qualification with both 9mm and M16. He ensured full delivery of highly professional services at SRPs and Yellow Ribbons where he and his team provided outstanding legal assistance and briefings for individual soldiers and units. He continues to display sound judgment and superb legal and leadership skills. MAJ Gundrum's leadership and enthusiasm for the Army Reserve is evidenced by his continued efforts to recruit new members to the Reserve and his successful efforts in developing junior soldiers. MAJ Gundrum should be promoted below the zone to LTC.

c. COMMENT ON POTENTIAL FOR PROMOTION.

MAJ Gundrum continues to display outstanding leadership and excel in the performance of his duties. He should complete ILE at the earliest opportunity should be promoted below the zone to LTC.

d. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

MAJ Gundrum was recently appointed by the Wisconsin Governor to the state Court of Appeals after previously serving as an elected trial court judge. Prior to that, while also practicing law, he served as an elected state lawmaker for over a decade, chairing the Judiciary Committee and being selected for numerous leadership posts.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

I currently senior rate 15 officer(s) in this grade

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below) A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review YES NO (Explain in a)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

ABOVE CENTER OF MASS

RO: MAJ GUNDRUM MARK D [REDACTED] 3053

SR: COL B [REDACTED] [REDACTED] 3432

DATE: 2012 11 05

TOTAL RATINGS: 17

RATINGS THIS OFFICER: 1

c. COMMENT ON PERFORMANCE/POTENTIAL

MAJ Gundrum's performance was outstanding in the demanding role of Team Leader, a Lieutenant Colonel position. He led his team to exemplary performances during the staff rides in January and July, 2012, as well as during the March 2012 FTX. He continues to serve as a key asset in all 214th missions, including SRP/Yellow Ribbon and FTX operations. He continues to ensure full mission readiness of all team members. MAJ Gundrum successfully led his team through the transformation from the 91st to the 214th LSO, ensuring full accountability of personnel and physical assets. He provided outstanding legal support, and ensured the same from all team members, whether individual soldiers or entire units. I concur with his rater that MAJ Gundrum should be selected for a below the zone promotion. He has proven that he can serve as a LTC and he should be promoted immediately due to his abilities.

d. LIST THREE FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED. FOR ARMY COMPETITIVE CATEGORY OPT, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Command Judge Advocate, Deputy Commander, Military Judge.

OFFICER EVALUATION REPORT				FOR OFFICIAL USE ONLY (FOUO) SEE PRIVACY ACT STATEMENT IN AR 623-3.			
PART I - ADMINISTRATIVE DATA							
a. NAME (Last, First, Middle Initial)		b. SSN	c. RANK	d. DATE OF RANK (YYYYMMDD)	e. BRANCH	f. DESIGNATED SPECIALTIES / PIOS (WO)	
GUNDRUM, MARK D.		3053	MAJ	20100729	JA	27A	
g. 1. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND				g. 2. STATUS CODE		h. REASON FOR SUBMISSION	
91st Legal Support Organization, Milwaukee, WI 53218 Legal Command				TPU		02 Annual	
i. PERIOD COVERED		j. RATED MONTHS	k. NONRATED CODES	l. NO. OF ENCL	m. RATED OFFICER'S APO EMAIL ADDRESS (.gov or .mil)		n. UIC
FROM (YYYYMMDD) THRU (YYYYMMDD)		12		0	[REDACTED]		WR17U6
20101020		20111019					LC
PART II - AUTHENTICATION (Rated officer's signature verifies officer has seen completed OER Parts I-VII and the admin data is correct)							
a. NAME OF RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE		DATE (YYYYMMDD)
M [REDACTED] R [REDACTED]		8728	LTC	Deputy Commander	[REDACTED]		20111203
b. NAME OF INTERMEDIATE RATER (Last, First, MI)		SSN	RANK	POSITION	SIGNATURE		DATE (YYYYMMDD)
W [REDACTED] E [REDACTED]		8971	COL	Commander	[REDACTED]		20111204
c. NAME OF SENIOR RATER (Last, First, MI)			SSN	RANK	POSITION	SIGNATURE	
W [REDACTED] E [REDACTED]			8971	COL	Commander	[REDACTED]	
SENIOR RATER'S ORGANIZATION			BRANCH	SENIOR RATER TELEPHONE NUMBER		E-MAIL ADDRESS (.gov or .mil)	
91st Legal Support Organization			JA	[REDACTED]		[REDACTED]	
7402 Roosevelt Road, Forest Park, IL 60130-2524			d. This is a referred report, do you wish to make comments?		e. SIGNATURE OF RATED OFFICER		DATE (YYYYMMDD)
			<input type="checkbox"/> Yes, comments are attached <input type="checkbox"/> No		GUNDRUM, MARK DENIS 1190575		20111204
PART III - DUTY DESCRIPTION							
a. PRINCIPAL DUTY TITLE Team Leader/Senior Legal Opinions Officer				b. POSITION AOC/BR 27A00/JA			
c. SIGNIFICANT DUTIES AND RESPONSIBILITIES. REFER TO PART IV, DA FORM 67-9-1.							
Serve as Team Leader for the Milwaukee team of the 91st Legal Support Organization. Lead the development and utilization of team members in service to the command, other soldiers and our nation. Provide legal support to commanders and soldiers as Legal Command needs require. Provide advice and legal support in the areas of military justice, operational law, administrative separations, reports of survey, AR 15-6 investigations, line of duty investigations, pre-mobilization legal issues, and legal assistance. Provide Soldier readiness and family readiness briefings with respect to a broad range of deployment and other legal issues, including the law of war, rules of engagement, Soldier rights under USERRA, SGLI, the Servicemember's Civil Relief Act, and basic estate planning.							
PART IV - PERFORMANCE EVALUATION - PROFESSIONALISM (Rater)							
CHARACTER Disposition of the leader: combination of values, attributes, and skills affecting leader actions							
a. ARMY VALUES (Comments mandatory for all "NO" entries. Use PART Vb.)		Yes No		Yes No		Yes No	
1. HONOR: Adherence to the Army's publicly declared code of values		<input checked="" type="checkbox"/> <input type="checkbox"/>		5. RESPECT: Promotes dignity, consideration, fairness, & EO		<input checked="" type="checkbox"/> <input type="checkbox"/>	
2. INTEGRITY: Possesses high personal moral standards, honest in word and deed		<input checked="" type="checkbox"/> <input type="checkbox"/>		6. SELFLESS-SERVICE: Places Army priorities before self		<input checked="" type="checkbox"/> <input type="checkbox"/>	
3. COURAGE: Manifests physical and moral bravery		<input checked="" type="checkbox"/> <input type="checkbox"/>		7. DUTY: Fulfills professional, legal, and moral obligations		<input checked="" type="checkbox"/> <input type="checkbox"/>	
4. LOYALTY: Bears true faith and allegiance to the U.S. Constitution, the Army, the unit, and the soldier		<input checked="" type="checkbox"/> <input type="checkbox"/>				<input checked="" type="checkbox"/> <input type="checkbox"/>	
b. LEADER ATTRIBUTES / SKILLS / ACTIONS: First, mark "YES" or "NO" for each block. Second, choose a total of six that best describe the rated officer. Select one from ATTRIBUTES, two from SKILLS (Competence), and three from ACTIONS (LEADERSHIP). Place an "X" in the appropriate numbered box with optional comments in PART Vb. Comments are mandatory in Part Vb for all "No" entries.							
b.1. ATTRIBUTES (Select 1)		<input checked="" type="checkbox"/> 1. MENTAL Possesses desire, will, initiative, and discipline		<input checked="" type="checkbox"/> 2. PHYSICAL Maintains appropriate level of physical fitness and military hearing		<input checked="" type="checkbox"/> 3. EMOTIONAL Displays self-control; calm under pressure	
b.2. SKILLS (Competence) (Select 2)		<input checked="" type="checkbox"/> 1. CONCEPTUAL Demonstrates sound judgment, critical/creative thinking, moral reasoning		<input checked="" type="checkbox"/> 2. INTERPERSONAL Shows skill with people: coaching, teaching, counseling, motivating and empowering		<input checked="" type="checkbox"/> 3. TECHNICAL Possesses the necessary expertise to accomplish all tasks and functions	
		<input type="checkbox"/> 4. TACTICAL Demonstrates proficiency in required professional knowledge, judgment, and warfighting				<input checked="" type="checkbox"/> <input type="checkbox"/>	
b.3. ACTIONS (LEADERSHIP) (Select 3) Major activities leaders perform: influencing, operating, and improving							
INFLUENCING Method of reaching goals while operating / improving		<input checked="" type="checkbox"/> 1. COMMUNICATING Displays good oral, written, and listening skills for individuals / groups		<input checked="" type="checkbox"/> 2. DECISION-MAKING Employs sound judgment, logical reasoning and uses resources wisely		<input checked="" type="checkbox"/> 3. MOTIVATING Inspires, motivates, and guides others toward mission accomplishment	
OPERATING Short-term mission accomplishment		<input type="checkbox"/> 4. PLANNING Develops detailed, executable plans that are feasible, acceptable, and suitable		<input checked="" type="checkbox"/> 5. EXECUTING Shows tactical proficiency, meets mission standards, and takes care of people/resources		<input checked="" type="checkbox"/> 6. ASSESSING Uses after-action and evaluation tools to facilitate consistent improvement	
IMPROVING Long-term improvement in the Army its people and organizations		<input type="checkbox"/> 7. DEVELOPING Invests adequate time and effort to develop individual subordinates as leaders		<input type="checkbox"/> 8. BUILDING Spends time and resources improving teams, groups and units; fosters ethical climate		<input checked="" type="checkbox"/> 9. LEARNING Seeks self-improvement and organizational growth; envisioning, adapting and leading change	
c. APFT: PASS		DATE: 20111016		HEIGHT: 75		WEIGHT: 243	
						YES	
d. OFFICER DEVELOPMENT - MANDATORY YES OR NO ENTRY FOR RATERS OF CPTs, LTs, CW2s, AND WO1s.							
WERE DEVELOPMENTAL TASKS RECORDED ON DA FORM 67-9-1a AND QUARTERLY FOLLOW-UP COUNSELINGS CONDUCTED?							
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> NA							

NAME GUNDRUM, MARK D.

SSN [REDACTED] 3053

PERIOD COVERED 20101020 - 20111019

PART V - PERFORMANCE AND POTENTIAL EVALUATION (Rater)

a. EVALUATE THE RATED OFFICER'S PERFORMANCE DURING THE RATING PERIOD AND HIS/HER POTENTIAL FOR PROMOTION

OUTSTANDING PERFORMANCE, MUST PROMOTE SATISFACTORY PERFORMANCE, PROMOTE UNSATISFACTORY PERFORMANCE, DO NOT PROMOTE OTHER (Explain)

b. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE, REFER TO PART III, DA FORM 67-9 AND PART IVa, b, AND PART Vb, DA FORM 67-9-1.

MAJ Gundrum once again excelled as Team Leader. He made "taking care of soldiers" a high priority and focused on developing team members into a superb unit. His outstanding mentorship ensured soldiers were well prepared to mobilize rapidly in any judge advocate role and guaranteed accountability for and effective utilization of all team assets. Due to MAJ Gundrum's efforts, three of his soldiers quickly mobilized in support of the Office of Soldier's Counsel Mission to provide support for Wounded Warriors throughout the US. MAJ Gundrum ensured excellent support for SRP/Yellow Ribbon missions within his AO, which provided soldiers and family members with outstanding service. He also made certain Team 6 members assisted whenever possible with additional 91st missions outside his AO. MAJ Gundrum supported the very successful judge advocate legal on-site in Chicago, IL, serving as lead for protocol responsibilities and acting as personal escort to TJAG. He participated in and assisted with FTX at Ft. McCoy, WI, serving as a Range Safety officer and stayed on extra days to receive additional training at the WI Army National Guard Legal Readiness Conference. MAJ Gundrum also performed two weeks of AT at Ft. McCoy, assisting dozens of military clients with legal assistance issues. His performance continues to be outstanding.

c. COMMENT ON POTENTIAL FOR PROMOTION.

Though still a fairly junior O-4, Major Gundrum continues to display outstanding leadership while assigned to a position normally held by a LTC. He has unlimited potential and should be enrolled in ILE at the earliest opportunity. Continue to assign to challenging leadership positions and promote to LTC at first opportunity.

d. IDENTIFY ANY UNIQUE PROFESSIONAL SKILLS OR AREAS OF EXPERTISE OF VALUE TO THE ARMY THAT THIS OFFICER POSSESSES. FOR ARMY COMPETITIVE CATEGORY CPT ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

In his civilian profession, MAJ Gundrum serves as a state trial court judge (Criminal Division), a post he was elected to in 2010. Prior to that, while also practicing law, he served as an elected state lawmaker for over a decade, chairing the Judiciary Committee and being selected for numerous leadership posts.

PART VI - INTERMEDIATE RATER

PART VII - SENIOR RATER

a. EVALUATE THE RATED OFFICER'S PROMOTION POTENTIAL TO THE NEXT HIGHER GRADE

I currently senior rate 8 officer(s) in this grade

BEST QUALIFIED FULLY QUALIFIED DO NOT PROMOTE OTHER (Explain below)

A completed DA Form 67-9-1 was received with this report and considered in my evaluation and review YES NO (Explain in c)

b. POTENTIAL COMPARED WITH OFFICERS SENIOR RATED IN SAME GRADE (OVERPRINTED BY DA)

HQDA COMPARISON OF THE SENIOR RATER'S PROFILE AND BOX CHECK AT THE TIME THIS REPORT PROCESSED

ABOVE CENTER OF MASS

RO: MAJ GUNDRUM MARK D
[REDACTED] 3053

SR: COL W [REDACTED]
[REDACTED] 3971

DATE: 2012 01 19

TOTAL RATINGS: 41

RATINGS THIS OFFICER: 2

c. COMMENT ON PERFORMANCE/POTENTIAL

MAJ Gundrum's performance is at the highest level, excelling in the demanding role of Team Leader, a Lieutenant Colonel position. He once again successfully prepared his team for mobilization, mobilizing an additional three soldiers to join the four others from his team already mobilized to Office of Soldiers' Counsel and the PEB/MEB mission. He continues to serve as a key asset in all 91st missions, including SRP/Yellow Ribbon and FTX operations. He provided exceptional support to the Chicago legal on-site, put on this year by the 91st LSO, receiving specific recognition from LTG Chipman and BG Beck for his work. In the attorney role, MAJ Gundrum provided outstanding legal service during his two-week AT at Ft. McCoy, serving dozens of military clients with their legal needs. MAJ Gundrum should be promoted at the earliest opportunity.

d. LIST THREE FUTURE ASSIGNMENTS FOR WHICH THIS OFFICER IS BEST SUITED.

FOR ARMY COMPETITIVE CATEGORY CPT, ALSO INDICATE A POTENTIAL CAREER FIELD FOR FUTURE SERVICE.

Command Judge Advocate, Operational Law Officer, Deputy Commander

360 Wis.2d 369
Court of Appeals of Wisconsin.

Eric D. **CARLSON**,
Plaintiff–Appellant,

v.

FIDELITY MOTOR GROUP,
LLC, Defendant–Respondent.

No. 2014AP695.

Submitted on Briefs Oct. 20, 2014.

Opinion Filed Jan. 14, 2015.

Synopsis

Background: Car buyer brought action against Illinois seller after discovering mechanical problems. The Circuit Court, Ozaukee County, Paul V. Malloy, J., dismissed for lack of personal jurisdiction. Buyer appealed.

[Holding:] The Court of Appeals, **Gundrum**, J., held that seller's advertisements on third party Internet websites and telephone conversation with buyer did not purposefully establish minimum contacts required for court to exercise personal jurisdiction.

Affirmed.

West Headnotes (6)

[1] Appeal and Error

↔ Cases Triable in Appellate Court

Whether a court has personal jurisdiction over an out-of-state defendant is a question of law reviewed de novo.

Cases that cite this headnote

[2] Courts

↔ Jurisdiction of the Person

On question of personal jurisdiction over out-of-state defendant, plaintiff bears minimal burden of establishing prima facie threshold showing that requirements of both constitutional due process and long-arm statute are satisfied. U.S.C.A. Const.Amend. 14; W.S.A. 801.05.

1 Cases that cite this headnote

[3] Courts

↔ Contacts with forum state in general

Courts

↔ Allegations, pleadings, and affidavits

Courts

↔ Presumptions and Burden of Proof as to Jurisdiction

In reviewing whether plaintiff has made prima facie case of personal jurisdiction over out-of-state defendant, court may consider documentary evidence and weigh affidavits, accepts as true all well-pleaded allegations in complaint unless controverted by affidavits of challenging party, resolves factual doubts in favor of the plaintiff, and

must keep in mind that focus is not on plaintiff, but on the defendant's contacts with forum state. W.S.A. 801.05.

Cases that cite this headnote

[4] **Courts**

Presumptions and Burden of Proof as to Jurisdiction

Plaintiff carries burden on inquiry as to whether out-of-state defendant purposefully established minimum contacts in forum state as required for exercise of personal jurisdiction consistently with due process clause. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[5] **Courts**

Presumptions and Burden of Proof as to Jurisdiction

Defendant bears burden of showing that assertion of personal jurisdiction does not comport with fair play and substantial justice and thus violates due process. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[6] **Constitutional Law**

Manufacture, distribution, and sale

Courts

Internet use

Courts

Defective, dangerous, or injurious products; products liability

Illinois car seller's advertisements on third party Internet websites and telephone conversation with buyer did not purposefully establish minimum contacts required for court to exercise personal jurisdiction over seller consistently with due process clause in buyer's suit against seller after discovering mechanical problems; seller's advertisements were accessible to everyone regardless of location and represented merely potential contacts with state, seller did not send unsolicited communications into state or advertise for any relevant websites within state, the telephone calls amounted to no more than five minutes of conversation and were initiated by buyer, seller made one-time sale to Wisconsin resident, and connection to state was random, fortuitous, and attenuated. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

Attorneys and Law Firms

****300** On behalf of the plaintiff-appellant, the cause was submitted on the briefs of Eric D. Carlson, Esq., Mequon.

On behalf of the defendant-respondent, the cause was submitted on the brief of Michael S. Kenitz of Kenitz Law Office LLC, Hartford.

Before NEUBAUER, P.J., REILLY and GUNDRUM, JJ.

Opinion

GUNDRUM, J.

*371 ¶ 1 Eric Carlson appeals from an order of the circuit court dismissing his lawsuit against Fidelity Motor Group, LLC, related to his purchase of a 2006 BMW automobile from Fidelity. He contends the court erred in concluding it did not have personal jurisdiction over Fidelity, arguing that Fidelity's "advertisements on third party web sites and phone conversation with [him] meet the minimum contacts requirement" that must be satisfied for Wisconsin courts to have personal jurisdiction. We conclude that such advertisements and conversation did not meet the minimum contacts requirement and therefore are insufficient to establish jurisdiction. We affirm.

Background

¶ 2 Carlson commenced this lawsuit in Ozaukee County, Wisconsin, alleging "fraud by wire" and "negligent representation" by Fidelity related to his purchase of the BMW. Fidelity moved the circuit court for *372 dismissal for lack of personal jurisdiction. Each party submitted an affidavit. Exhibits submitted with Carlson's affidavit include "screenshots" of Fidelity's own website and its advertisements on fourteen other websites, including "cars.com," and a copy of a portion of a cell phone bill showing phone calls made on March 16, 2013.

¶ 3 The relevant, undisputed allegations from Carlson's complaint and facts as averred in his affidavit and exhibits in opposition to Fidelity's motion to dismiss are as follows. Carlson is a resident of Wisconsin and Fidelity is an automobile dealership located in Illinois. On March 16, 2013, Carlson observed on his wife's cell phone a Fidelity advertisement for the BMW on the cars.com website. He called Fidelity's toll-free number listed on the website and spoke with a Fidelity representative for approximately four minutes, during which time the representative told Carlson the vehicle was in excellent condition with no known mechanical problems. The representative called Carlson back two hours later and spoke with him for approximately one minute regarding the vehicle.¹ Carlson and his wife traveled to **301 Fidelity that same day. Carlson test drove *373 the BMW and discussed the price with the representative. Both he and his wife requested that Fidelity change the oil at the time of purchase and the representative agreed Fidelity would do that. Fidelity took the vehicle to its service center and the representative indicated to Carlson that the oil had been changed. Carlson purchased the BMW.

¹ Carlson asserts in both his brief-in-chief and reply brief, as he asserted in his brief to the circuit court, that a Fidelity representative called him back on the cell phone. Neither the complaint nor Carlson's affidavit explicitly state that a Fidelity representative called Carlson back. In Carlson's affidavit, however, he references a "first telephone conversation" with a Fidelity representative on March 16, 2013, and an exhibit accompanying the affidavit shows a four-minute call from the cell phone to a toll-free number of Fidelity and two hours later a one-minute call from another Fidelity toll-free number to the cell phone. Fidelity does not dispute that a Fidelity

representative called Carlson back approximately two hours after Carlson first called Fidelity.

¶ 4 Five months later, **Carlson** experienced problems with and sustained damage to the BMW in Wisconsin, damage which he asserts was caused by the oil not having been changed at the time of purchase as had been represented to him. According to a mechanic who examined the BMW, the oil had not been changed for “tens of thousands of miles.”

¶ 5 Fidelity's affidavit, by its executive vice president, provides the following relevant, undisputed facts. Fidelity is an Illinois limited liability company and has a single facility, located in Illinois, from which it sells motor vehicles. Fidelity has never

owned, used, maintained and had any office or other facility in Wisconsin; ... employed any persons to perform any services or deliver any materials in Wisconsin; ... advertised or purchased any advertisement or solicitation within Wisconsin (except to the extent that [Fidelity's] website is accessible to Wisconsin residents); ... directed any mail or other solicitation to any Wisconsin residents; ... filed suit in any Wisconsin court; ... excepting this case, never been a Defendant in any case in the Wisconsin courts; ... performed any contract within Wisconsin; ... owned, leased or held any

interest in any personal property or real estate in Wisconsin[; or] engaged in any business in Wisconsin.

With regard to Carlson's purchase of the BMW, the vice president averred:

*374 [T]he contract for sale was entered into in Illinois ...; delivery of the vehicle was made in Illinois; the Plaintiff and Defendant met at [Fidelity's] facility in Illinois to discuss the sale of the vehicle, sign the contract and make delivery; [and] any and all pre-sale inspections, repair and maintenance of the vehicle was performed in Illinois....

¶ 6 The circuit court granted **Fidelity's** motion to dismiss after a hearing and **Carlson** appeals.²

2 Fidelity moved for dismissal solely on the ground of lack of personal jurisdiction, and the parties' written and oral arguments before the circuit court and the circuit court's comments at oral argument addressed only that issue. In its oral ruling, however, the court, we assume mistakenly, stated it was dismissing the case due to a lack of *subject matter* jurisdiction. In its written order following its oral ruling, the court stated that it was dismissing the case based on a lack of personal jurisdiction. Apparently following the court's oral pronouncement, Carlson indicates in his notice of appeal that he is appealing the court's decision to dismiss the action based on a lack of subject matter jurisdiction. In their briefs on appeal, the parties focus only on the issue of personal jurisdiction, and that is the issue we address.

Discussion

[1] ¶ 7 Whether a court has personal jurisdiction over an out-of-state defendant is a question of law we review de novo. *Johnson*

*Litho Graphics of Eau Claire, **302 Ltd. v. Sarver*, 2012 WI App 107, ¶ 6, 344 Wis.2d 374, 824 N.W.2d 127.

[2] [3] ¶ 8 On a question of personal jurisdiction over an out-of-state defendant, the plaintiff bears “the minimal burden of establishing a prima facie threshold showing” that the requirements of both constitutional *375 due process and Wisconsin’s long-arm statute, WIS. STAT. § 801.05 (2011–12),³ are satisfied. *Kopke v. A. Hartrodt S.R.L.*, 2001 WI 99, ¶ 8, 245 Wis.2d 396, 629 N.W.2d 662 (citation omitted). In reviewing whether this burden has been met, “we may consider documentary evidence and weigh affidavits.” *Id.* We accept as true all well-pleaded allegations in the complaint, unless controverted by affidavits of the challenging party. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir.2003). “Factual doubts are to be resolved in favor of the plaintiff,” *Kopke*, 245 Wis.2d 396, ¶ 8, 629 N.W.2d 662 (citation omitted); however, we must keep in mind that the “focus in a jurisdictional analysis is not on the plaintiff but on the [defendant’s] contacts with Wisconsin,” *Stayart v. Hance*, 2007 WI App 204, ¶ 15, 305 Wis.2d 380, 740 N.W.2d 168.

3 All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.

¶ 9 Before proceeding to the due process question, courts generally begin the jurisdictional analysis by determining if the requirements of the long-arm statute are satisfied. See *Kopke*, 245 Wis.2d 396, ¶ 8, 629 N.W.2d 662. Where, as here, however, it is clear the due process minimum contacts requirement is not satisfied, we may

proceed directly to this issue. See *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F.Supp.2d 1154, 1157 (W.D.Wis.2004) (if due process requirements are not met, need not decide if WIS. STAT. § 801.05 is satisfied).

[4] [5] ¶ 10 The due process question presents two considerations. First, we must determine whether the defendant “purposefully established minimum contacts in the forum State.” *Kopke*, 245 Wis.2d 396, ¶ 23, 629 N.W.2d 662 *376 (citation omitted). The plaintiff carries the burden on this inquiry. *Id.* If this question is answered in the affirmative, we then consider whether the assertion of personal jurisdiction comports with “fair play and substantial justice.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). On this consideration, the defendant bears the burden. *Id.* Here, we need not wrestle with the latter issue as we conclude Fidelity did not “purposefully establish [] minimum contacts” in Wisconsin.

[6] ¶ 11 **Carlson** asks us to determine that **Fidelity’s** “advertisements on third party web sites and phone conversation with [him] meet the minimum contacts requirement.” He directs us to our supreme court’s decision in *Kopke* as support for his position that due process considerations permit Wisconsin courts to exercise personal jurisdiction over Fidelity. In discussing the due process question, the *Kopke* court stated:

Under the Due Process Clause, personal jurisdiction over a nonresident defendant is proper when the defendant has “certain minimum contacts with [the State] such that the maintenance of the suit does not

offend 'traditional notions of fair play and substantial justice.' ” Minimum contacts requires that “ ‘the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.’ ” Essential to each case is “ ‘that there be some act by which the **303 defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’ ” The “purposeful availment” requirement has become the “baseline,” the primary focus, of the minimum contacts analysis. “This ‘purposeful availment’ requirement ensures that a defendant will not be haled into a jurisdiction solely *377 as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, or of the ‘unilateral activity of another party or a third person.’ ”

Id., ¶ 24 (alteration in original) (citations omitted).

¶ 12 In *Kopke*, the plaintiff truck driver was injured when he opened a cargo container in Neenah, Wisconsin, and a pallet loaded with paper fell on him. *Id.*, ¶ 2. Workers for an Italian cooperative had placed the pallet of paper into the cargo container prior to its shipping from Italy to Neenah. *Id.*, ¶¶ 2, 4, 6. The truck driver sued the cooperative, among others, which moved to dismiss for lack of personal jurisdiction. *Id.*, ¶ 7.

¶ 13 Although the *Kopke* court ultimately did conclude the circuit court had personal jurisdiction over the cooperative, *see id.*, ¶ 48, the case is of no help to Carlson. Correctly noting the facts in *Kopke*, Carlson himself explains in his brief-in-chief that the *Kopke*

court held that Wisconsin had jurisdiction over the cooperative “because the facts showed there was ‘a regular course of dealing that result[ed] in deliveries’ of multiple units of the product into [the] forum over a period of years.” Brief for Appellant at 26 (quoting *Kopke*, 245 Wis.2d 396, ¶ 31, 629 N.W.2d 662). “Specifically,” Carlson further writes, “the records showed that between November 8, 1996 and May 20, 1997, ‘at least 40 containers were loaded by [defendant's] workers for delivery in this forum.’ ” *Id.* (quoting *Kopke*, 245 Wis.2d 396, ¶ 35, 629 N.W.2d 662). Putting the nail into his own coffin with regard to the inapplicability of *Kopke* to this case, Carlson adds that “[t]he [*Kopke*] court also emphasized that this was not a ‘one-time transaction.’ ” *Id.* at 27 (quoting *Kopke*, 245 Wis.2d 396, ¶ 46, 629 N.W.2d 662).

*378 ¶ 14 In stark contrast to the facts in *Kopke*, here the record only shows that Fidelity made this “one-time transaction”—the sale of the BMW—with a Wisconsin resident, Carlson. This is a far cry from “ ‘a regular course of dealing that result[ed] in deliveries’ of multiple units of the product into [the] forum over a period of years,” *id.*, ¶ 31 (citation omitted), and highlights how inappropriate it would be for the Wisconsin courts to exercise jurisdiction over Fidelity based upon the record before us. *See also Johnson Litho*, 344 Wis.2d 374, ¶ 24, 824 N.W.2d 127 (out-of-state defendant's extensive business contacts with a Wisconsin company “cross[ed] the threshold from offending due process to sufficient minimum contacts,” with the court emphasizing “[t]his was not a one or two time business relationship” (first alteration in original) (citation omitted)); *cf. Hy Cite*, 297

F.Supp.2d at 1162 (stating it “cannot seriously [be] argue[d] that *one* sale is a sufficient ground to hale defendant into a Wisconsin court for any suit”).

¶ 15 Carlson contends Fidelity's use of Internet websites to sell its vehicles supports his position that Wisconsin courts may exercise personal jurisdiction over Fidelity. Neither party has directed us to Wisconsin Supreme Court case law on the effect of Internet websites on the question of personal jurisdiction over out-of-state defendants, and our review has uncovered no helpful cases. We gain guidance, however, from a case out of the United States **304 District Court for the Western District of Wisconsin, *Hy Cite*.⁴

⁴ Carlson refers us to a federal district court decision out of Pennsylvania, *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa.1997), which discusses a sliding scale test for determining the impact of a defendant's website upon the personal jurisdiction question. See *id.* at 1124. We conclude, however, that *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F.Supp.2d 1154 (W.D.Wis.2004)—which rejected the *Zippo* test as a substitute for the minimum contacts inquiry—provides a better approach by not looking to a separate test where Internet websites are involved, but rather simply considering such websites as a part of the overall due process question of “whether the defendant's contacts with the state are of such a quality and nature such that it could reasonably expect to be haled into the courts of the forum state.” See *Hy Cite*, 297 F.Supp.2d at 1161. As the *Hy Cite* court further observed: “The Supreme Court has never held that courts should apply different standards for personal jurisdiction depending on the type of contact involved. To the contrary, the Court ‘long ago rejected the notion that personal jurisdiction might turn on ‘mechanical’ tests.’” *Id.* at 1160 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). The *Hy Cite* court added: “The purpose of the ‘minimum contacts’ test set forth in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945),] was to create a standard flexible enough

that specialized tests were not needed.” *Hy Cite*, 297 F.Supp.2d at 1160.

We also find persuasive the observation of another federal court that declined to follow the *Zippo* analysis:

[T]his court observes that the need for a special Internet-focused test for “minimum contacts” has yet to be established. It seems to this court that the ultimate question can still as readily be answered by determining whether the defendant did, or did not, have sufficient “minimum contacts” in the forum state. The manner of establishing or maintaining those contacts, and the technological mechanisms used in so doing, are mere accessories to the central inquiry.

Winfield Collection, Ltd. v. McCauley, 105 F.Supp.2d 746, 750 (E.D.Mich.2000).

*379 ¶ 16 The plaintiff in *Hy Cite* was a Wisconsin corporation and the defendant was a West Indies company that owned and operated a website that displayed consumer complaints against businesses. *Hy Cite*, 297 F.Supp.2d at 1156. Of 61,000 consumer complaints submitted to the defendant, thirty to forty were about the plaintiff. *Id.* The defendant also allowed businesses to purchase ad space on the website, although no *380 Wisconsin company had done so, and displayed a link for purchasing a book and solicited donations for itself on the website. *Id.* at 1156–57. One Wisconsin resident had purchased a book, but the defendant could not recall whether it had received any donations from Wisconsin. *Id.* at 1157.

¶ 17 The plaintiff e-mailed the defendant about ways to resolve the complaints posted on the website about the plaintiff, and the defendant responded with an e-mail informing the plaintiff of its “Corporate Consumer Advocacy Program” that was advertised on the website and in which the plaintiff could pay to enroll. *Id.* at 1156. The parties also communicated regarding this program via phone. *Id.* at 1163.

The plaintiff did not enroll, nor had any other Wisconsin company enrolled, in the program. *Id.* at 1156. Instead, the plaintiff sued the defendant and the defendant moved to dismiss based on a lack of personal jurisdiction. *Id.*

¶ 18 In addressing whether personal jurisdiction over the defendant comported with due process, the *Hy Cite* court stated that

a finding that a defendant uses its website to engage in repeated commercial transactions may support the exercise of personal jurisdiction, *so long as there is a corresponding finding that the defendant is expressly targeting residents of the forum state and not just making itself accessible to everyone regardless of location.*

Id. at 1161 (emphasis added); *accord be2 LLC v. Ivanov*, 642 F.3d 555, 559 (7th Cir.2011) (concluding that use of out-of-state defendant's website by twenty Illinois residents did not suffice to establish personal jurisdiction over the defendant by the Illinois courts, with the court noting “[t]here is no evidence that [the defendant] *381 targeted or exploited the market in the state that would allow a conclusion that he availed himself of the privilege of doing business in the state”). Like our supreme court in *Kopke*, the *Hy Cite* court recognized that the ultimate question is “whether the defendant's contacts with the state are of such a quality and nature such that it could reasonably expect to be haled into the courts of the forum state.” *Hy Cite*, 297

F.Supp.2d at 1161; *see also Kopke*, 245 Wis.2d 396, ¶ 24, 629 N.W.2d 662.

¶ 19 The *Hy Cite* court concluded that the defendant did not have sufficient contact with Wisconsin for the court to exercise personal jurisdiction over the defendant. *Hy Cite*, 297 F.Supp.2d at 1163, 1167. The court observed that

[w]ith the exception of the book sale to one Wisconsin resident and the communication between the parties, all of the activities identified by plaintiff consist of nothing more than *potential* contacts. Further, although plaintiff characterizes defendant's internet-based activities as “soliciting” Wisconsin business, plaintiff has not alleged that defendant has done anything to target internet users in Wisconsin.

Id. at 1161. The court noted that the defendant did not “send mailings or unsolicited e-mails to the state” or “advertise for its [website] within Wisconsin,” and pointed out that “the defendant does not control who views [the website] or responds to it.” *Id.* at 1164. The court continued: “The closest plaintiff comes to a showing of solicitation is defendant's exchanges with plaintiff about the Corporate Consumer Advocacy Program. However, it is undisputed that it was plaintiff who contacted defendant without any prompting on the part of defendant.” *Id.* The *Hy Cite* court acknowledged that the defendant had had

contact with multiple Wisconsin citizens who had posted complaints on *382 the defendant's website, but emphasized that the defendant "has not targeted Wisconsin citizens more than the citizens of any other state." *Id.*

¶ 20 We note even greater similarities between the case before us and *Marschke v. Wratistaw*, 743 N.W.2d 402 (S.D.2007), in which the Supreme Court of South Dakota concluded that personal jurisdiction did not comport with due process where an automobile sale was prompted by an Internet advertisement. *Id.* at 404, 407, 411. In that case, the defendant, who resided in Montana and was licensed there to sell used cars, advertised a 1971 Fiat on the Internet auction site eBay. *Id.* at 404. The defendant's business website and toll-free telephone number were displayed on the auction webpage for the Fiat. *Id.* The plaintiff found the vehicle while searching the auction website, but instead of bidding on it, called the defendant's toll-free number to discuss the vehicle.⁵ *Id.*

⁵ In his affidavit on the defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff averred that during this initial phone call he informed the defendant that he was from South Dakota. *Marschke v. Wratistaw*, 743 N.W.2d 402, 404 n. 2 (S.D.2007).

¶ 21 The plaintiff spoke with the defendant by phone on at least two occasions, arranging the sale terms. *Id.* The defendant e-mailed the plaintiff to obtain his full name and mailing address, and subsequently mailed the unsigned purchase **306 agreement to the plaintiff, which the plaintiff signed in South Dakota and mailed back to the defendant. *Id.* at 408–10. The defendant executed the agreement at his Montana office. *Id.* The plaintiff wire-transferred payment for the vehicle to the

defendant. *Id.* The defendant then referred the plaintiff to a motor carrier, with whom the plaintiff arranged for transportation of the vehicle. *Id.* *383 When the vehicle reached the plaintiff in South Dakota, the plaintiff determined it was not in acceptable condition and commenced the lawsuit. *Id.* at 404–05. The defendant moved to dismiss for lack of personal jurisdiction, and the circuit court granted the motion. *Id.* at 405.

¶ 22 On appeal to the supreme court, the plaintiff argued that the defendant's use of the Internet to sell the vehicle, the communications that occurred between the plaintiff and the defendant, the defendant's mailing of the unsigned contract to South Dakota for the plaintiff's signature, and the manner in which payment was made to the defendant constituted sufficient minimum contacts with South Dakota to establish personal jurisdiction. *Id.* at 405, 408. The court disagreed. *Id.* at 411.

¶ 23 The court recognized that the defendant posted the vehicle for sale on eBay, along with a toll-free telephone number and a link to his business website, and that the defendant had acknowledged in his affidavit that he occasionally posted other cars for sale on eBay. *Id.* at 408 & n. 7. The court stated, however, that because the plaintiff did not buy the vehicle through eBay, the defendant's "use of eBay in this case constitute[d] no more than an extension, via Web link, of his own advertisement Website." *Id.* at 408. The court concluded that "any contact created through the use of the Internet as an *advertising* medium [was] attenuated." *Id.* The court then addressed the contract between the parties, noting that

“the United States Supreme Court has held that a contract with a nonresident party is not alone sufficient to establish minimum contacts.” *Id.* at 409 (citing *Burger King Corp.*, 471 U.S. at 478, 105 S.Ct. 2174). The court continued, “[t]hus ... we must determine if the sum total of the rest of [the *384 defendant's] acts when added to the contract constitute sufficient minimum contacts.” *Id.*

¶ 24 The court observed that there was no long-term relationship between the plaintiff and the defendant, and further added:

[T]he sum total of [the defendant's] transactions in South Dakota could be characterized as a “one shot deal”—the sale to [the plaintiff]. Therefore, that [the defendant] had no physical contact with South Dakota before, during or after the period relevant to the sale of the [vehicle], is a factor that we consider. In the context of this “one shot deal,” we also find it pertinent that [the plaintiff] initiated the telephone calls and negotiations leading to the ... purchase with [the defendant]. That [the defendant] sent a solitary e-mail into Cyberspace to obtain [the plaintiff's] contact information so that the unsigned contract could be mailed to him in South Dakota does not constitute

a significant contact among these facts.

Id. at 410. The court continued:

[The defendant] was not incorporated, headquartered or licensed to do business in South Dakota. Neither did he maintain an office or employees in South Dakota. He did not own real estate or maintain bank accounts here. He did not manufacture, distribute or sell products within the state, and in this case neither did he make delivery of any sale item to South Dakota. In short, [the defendant] had no presence in South **307 Dakota and his only connection with the state was through one isolated sale of a [vehicle] to [the plaintiff].

Id. at 410–11 (citations and footnote omitted). The court concluded that the defendant's contacts with South Dakota were insufficient for jurisdiction. *Id.*; accord *Riverside Exports, Inc. v. B.R. Crane & Equip., LLC*, 362 S.W.3d 649 (Tex.App.2011) (rejecting similar *385 arguments relating to minimum contacts, Internet presence, and contact through e-mails/phone calls and concluding it had no personal jurisdiction); see also *Winfield Collection, Ltd. v. McCauley*, 105 F.Supp.2d 746, 749 (E.D.Mich.2000) (defendant who sold items via eBay to Michigan residents on two occasions, but did not target the state, did not purposefully avail herself of the

privilege of doing business there; rather, such sales constituted “random” and “attenuated” contact).⁶

⁶ Wisconsin courts could have either general or specific personal jurisdiction over an out-of-state defendant. See generally *Rasmussen v. General Motors Corp.*, 2011 WI 52, 335 Wis.2d 1, 803 N.W.2d 623. The court in *Hy Cite* concluded that the defendant did not have sufficient contact with Wisconsin for the court to exercise either general or specific jurisdiction. *Hy Cite*, 297 F.Supp.2d at 1161–67. In *Marschke*, the court specifically addressed the issue of specific jurisdiction. *Marschke*, 743 N.W.2d at 406. Carlson fails to specify whether his arguments are based on general or specific jurisdiction. Here, the facts fail to provide a basis for the exercise of either. For a discussion of the difference between general and specific jurisdiction in Wisconsin, see *Rasmussen*.

¶ 25 We turn now to the case before us. Consistent with the *Hy Cite* court's observation in that case, Fidelity's advertisements on its own website, cars.com, or other third-party sites represent merely *potential* contacts with the state of Wisconsin. See *Hy Cite*, 297 F.Supp.2d at 1161. Significantly, **Carlson** has neither alleged nor shown facts suggesting **Fidelity** targeted Wisconsin residents with its Internet advertisements any more than any other state's residents; instead, the advertisements were “accessible to everyone regardless of location.” See *id.*; see also *Reno v. American Civil Liberties Union*, 521 U.S. 844, 851, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997) (observing that “cyberspace” may be accessed by anyone, located *386 anywhere, who has an Internet connection). There is no evidence suggesting Fidelity sent unsolicited communications into Wisconsin or advertised for any of the relevant websites within Wisconsin. See *Hy Cite*, 297 F.Supp.2d at 1164. Moreover, Fidelity does not control who views or responds to its own website or those of third parties. See *id.*; *Riverside*, 362 S.W.3d

at 654. Further, the two phone calls between **Carlson** and **Fidelity**—one from and one to **Carlson's** wife's cell phone—do not constitute significant contact by **Fidelity** with Wisconsin, as they amounted to no more than five minutes of conversation and were initiated by Carlson. See *Hy Cite*, 297 F.Supp.2d at 1164; *Marschke*, 743 N.W.2d at 410; see also *Johnson Litho*, 344 Wis.2d 374, ¶¶ 21, 28, 824 N.W.2d 127 (which party initiates contact for a business relationship is relevant in determining whether sufficient minimum contacts with the forum state have been established).

¶ 26 **Carlson** has neither alleged nor presented any evidence indicating **Fidelity** has ever sold a vehicle to anyone else from Wisconsin, or even that it has ever had any contact with a Wisconsin business or resident other than Carlson (and his wife). Again, based on the record before us, this was a “one shot deal,” a one-time sale to a Wisconsin resident, Carlson, with no ongoing, much less long-term, relationship between the parties. See *Marschke*, 743 N.W.2d at 410.

**308 ¶ 27 Contrasted against this nearly nonexistent record of “contact” with Wisconsin are Fidelity's undisputed averments that it has never

owned, used, maintained and had any office or other facility in Wisconsin; ... employed any person to perform any services or deliver any materials in Wisconsin; ... advertised or purchased any advertisement or solicitation within Wisconsin (except to the

extent that *387 [Fidelity's] website is accessible to Wisconsin residents); ... directed any mail or other solicitation to any Wisconsin residents; ... filed suit in any Wisconsin court; ... excepting this case, never been a Defendant in any case in the Wisconsin courts; ... performed any contract within Wisconsin; ... owned, leased or held any interest in any personal property or real estate in Wisconsin; or] engaged in any business in Wisconsin.

And

the contract for sale was entered into in Illinois ...; delivery of the vehicle was made in Illinois; the Plaintiff and Defendant met at [Fidelity's] facility in Illinois to discuss the sale of the vehicle, sign the contract and make delivery; [and] any and all pre-sale inspections,

repair and maintenance of the vehicle was performed in Illinois....

¶ 28 Based on this record, we cannot conclude that Fidelity “purposefully avail[ed] itself of the privilege of conducting activities” within Wisconsin and “thus invok[ed] the benefits and protections of its laws,” or that Fidelity’s “conduct and connection” with Wisconsin was such that it should have “reasonably anticipate[d] being haled into court [here].” *See Kopke*, 245 Wis.2d 396, ¶ 24, 629 N.W.2d 662 (citations omitted). Fidelity’s connection to Wisconsin was no more than “random,” “fortuitous,” and “attenuated.” *Id.* (citation omitted). Fidelity did not “purposefully establish[] minimum contacts” in Wisconsin so as to permit the circuit court to exercise personal jurisdiction over it. *Id.*, ¶ 23 (citation omitted).

Order affirmed.

All Citations

360 Wis.2d 369, 860 N.W.2d 299, 2015 WI App 16

359 Wis.2d 246
Court of Appeals of Wisconsin.

KENOSHA COUNTY,
Plaintiff–Respondent,

v.

Blaire A. FRETT, Defendant–Appellant.

No. 2014AP6.

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Submitted on Briefs Oct. 27, 2014.

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Opinion Filed Nov. 19, 2014.

Synopsis

Background: Defendant filed motion to expunge the record related to a littering ordinance violation for which she had paid a forfeiture. The Circuit Court, Kenosha County, S. Michael Wilk, J., denied the motion, and defendant appealed.

[Holding:] The Court of Appeals, Gundrum, J., held that record was not subject to expunction.

Affirmed.

West Headnotes (6)

[1] Criminal Law

⇒ Expungement or Correction;
Effect of Acquittal or Dismissal

Infants

⇒ Adjudication or conviction

Defendant's plea to amended charge of littering, which included payment of forfeiture, was not subject to expunction under youthful offender expungement statute, as statute only applied to law violations where detention or probation could be ordered upon conviction. W.S.A. 973.015.

Cases that cite this headnote

[2] Appeal and Error

⇒ Cases Triable in Appellate Court
Interpretation and application of a statute is a matter of law reviewed de novo.

Cases that cite this headnote

[3] Statutes

⇒ Language

Statutes

⇒ Context

The court interprets a statute by looking at the text of the statute; the statutory language is examined within the context in which it is used.

Cases that cite this headnote

[4] Statutes

⇒ Statute as a Whole; Relation of Parts to Whole and to One Another
When interpreting a statute, the court is to consider the role of the relevant language in the entire statute.

Cases that cite this headnote

[5] **Statutes**

↔ Prior or existing law in general

The legislature is presumed to know the case law in existence at the time it changes the statutes.

1 Cases that cite this headnote

[6] **Infants**

↔ Expungement or correction

Statute providing for expunction of record for youthful offenders does not apply to civil forfeiture violations. W.S.A. 973.015.

Cases that cite this headnote

Attorneys and Law Firms

****397** On behalf of the defendant-appellant, the cause was submitted on the briefs of Andrew R. Walter of Walter Law Office LLC, Elkhorn.

On behalf of the plaintiff-respondent, the cause was submitted on the brief of Tracey L. Braun, assistant district attorney, Kenosha.

Before NEUBAUER, P.J., REILLY and GUNDRUM, JJ.

Opinion

GUNDRUM, J.

***247** Blaire Frett appeals the circuit court order denying her motion pursuant to WIS.

248** STAT. § 973.015 (2011–12)¹ to expunge the record related to a Kenosha County ordinance violation for which she *398** paid a forfeiture. Based upon the plain language of that statute, we conclude § 973.015 provides no authority for circuit courts to expunge the record related to such civil forfeiture violations. We affirm.

¹ All references to the Wisconsin Statutes are to the 2011–12 version unless otherwise noted.

Background

¶ 2 In 2012, Frett was cited for “underage consumption/possession of alcohol” pursuant to a Kenosha County ordinance. She pled to an amended charge of littering pursuant to a different Kenosha County ordinance and was ordered by a court commissioner to pay a forfeiture. According to circuit court docket entries in the record and referenced by Frett in this appeal, she paid the forfeiture on October 15, 2012.

¶ 3 Approximately one year after paying the forfeiture, Frett moved the circuit court to expunge the record. The court denied the motion after a hearing. Frett appeals.²

² This appeal was converted from a one-judge appeal to a three-judge appeal under WIS. STAT. RULEE 809.41(3).

Discussion

[1] [2] [3] [4] ¶ 4 This appeal requires us to interpret and apply WIS. STAT. § 973.015. Interpretation and application of a statute is a matter of law we review de novo. *Moua v. Northern States Power Co.*, 157 Wis.2d 177, 184, 458 N.W.2d 836 (Ct.App.1990). “We interpret a statute by *249 looking at the text of the statute. The statutory language is examined within the context in which it is used.” *State v. Matasek*, 2014 WI 27, ¶ 12, 353 Wis.2d 601, 846 N.W.2d 811. Further, we are to consider “the role of the relevant language in the entire statute.” *Alberte v. Anew Health Care Servs., Inc.*, 2000 WI 7, ¶ 10, 232 Wis.2d 587, 605 N.W.2d 515.

¶ 5 WISCONSIN STAT. § 973.015 provides in relevant part as follows:

Special disposition. (1) (a) ... [W]hen a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law *for which the maximum period of imprisonment is 6 years or less*, the court may order at the time of sentencing that the record be expunged *upon successful completion of the sentence* if the court determines the person will benefit and society will not be harmed by this disposition....

....

(c) No court may order that a record of a conviction for any of the following be expunged:

1. A Class H felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent

offense, as defined in [WIS. STAT. §] 301.048(2)(bm), or is a violation of [WIS. STAT. §§] 940.32, 948.03(2) or (3), or 948.095.

2. A Class I felony, if the person has, in his or her lifetime, been convicted of a prior felony offense, or if the felony is a violent offense, as defined in [WIS. STAT. §] 301.048(2) (bm), or is a violation of [WIS. STAT. §] 948.23(1)(a).

(2) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the *250 conditions of probation. *Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record.* If the person has been imprisoned, the detaining authority shall also forward a copy **399 of the certificate of discharge to the department. (Emphasis added.)

Frett contends § 973.015 includes forfeitures within its scope. We disagree.

¶ 6 Looking to the language of the statute, para. (1)(a) provides that a court may order expunction “when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court *for violation of a law for which the maximum period of imprisonment is 6 years or less.*” (Emphasis added.) We read this language as indicating that law violations for which expunction is available

relate to laws that include some “period of imprisonment.” Thus, where there is no “period of imprisonment” associated with a law, that law is not one to which WIS. STAT. § 973.015 applies. As Frett acknowledges on appeal, the county ordinance she violated included no potential period of imprisonment. See KENOSHA COUNTY, WIS., ORDINANCE § 9.287.81 (2009) (providing that the penalty for violation of this ordinance “is a forfeiture of not less than \$25 nor more than \$500”); see also *State ex rel. Keefe v. Schmiege*, 251 Wis. 79, 84–86, 28 N.W.2d 345 (1947) (holding that municipalities and counties do not have the power to impose a penalty of imprisonment for violation of an ordinance other than as a means of enforcing payment). Therefore, expunction is not an option for Frett's civil littering violation.

*251 This interpretation is bolstered by language in WIS. STAT. § 973.015 establishing the process for effectuating expunction. Paragraph (1)(a) provides that “the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence.” Subsection (2) states that expunction is to be effectuated as follows:

Upon successful completion of the sentence *the detaining or probationary authority shall issue a certificate of discharge* which shall be forwarded to the court of record and which shall have the effect of expunging the record. If the person has been imprisoned, the detaining authority shall also forward

a copy of the certificate of discharge to the department.
(Emphasis added.)

This language indicates that expunction under § 973.015 applies to law violations where detention (or probation) can be ordered upon conviction. With Frett's civil forfeiture violation, neither detention nor probation could have been ordered. There also would be no issuance of a “certificate of discharge” related to the littering violation. The legislature simply provided no mechanism for expunction of a record following payment of a civil forfeiture.

¶ 8 In *State v. Michaels*, 142 Wis.2d 172, 176–77, 417 N.W.2d 415 (Ct.App.1987), we clearly held that WIS. STAT. § 973.015 did not apply to civil forfeiture violations. However, in 2009, the legislature revised the statute. Frett cites to *Melody P.M.*, an unpublished one-judge decision of this court that held *Michaels* no longer controls the issue because of that statutory revision and, as revised, § 973.015(1) (a) *does* apply to civil forfeiture violations. *State v. Melody P.M.*, No. 2009AP2994, 2010 WL 2303318, unpublished slip op. ¶¶ 4–7 (WI App June 10, 2010). We herein interpret revised § 973.015 *252 differently than in *Melody P.M.*, and because that decision is unpublished, we may do so. See WIS. STAT. RULEE 809.23(3)(b).

¶ 9 Frett relies upon the *Melody P.M.* court's conclusion that revised WIS. STAT. § 973.015 applies to civil forfeiture violations because the revision changed the title of the provision from “Misdemeanors, special disposition” to just “Special disposition” and with this change “there is nothing in the plain language of § 973.015 limiting its application to only

misdemeanor ****400** offenses.” See *Melody P.M.*, No. 2009AP2994, 2010 WL 2303318, unpublished slip op. ¶ 7. We agree the 2009 statutory revision expanded application of § 973.015 beyond just misdemeanors; however, we conclude that the expansion did not include forfeitures. Rather, the revision to the title as well as changes to language within the statute appear to have been for the purpose of expanding application from solely misdemeanors to also providing expunction as an option for certain felony convictions for which the maximum period of imprisonment is six years or less. Nothing in the language of revised § 973.015 indicates that the legislature intended to expand that statute to apply to civil forfeiture violations, and, as previously explained, the language of the statute clearly indicates that expunction is only available under this provision for misdemeanors and the identified felonies.

¶ 10 While we conclude that the language of the statute unambiguously demonstrates it does not apply to civil forfeiture violations, and thus there is no need to look to legislative history, we nonetheless note that the legislative history supports our reading of WIS. STAT. § 973.015. The revision to § 973.015 was made within the 2009–10 budget bill, 2009 Wis. Act 28. See 2009 Wis. Act 28, §§ 3384–86. The drafting file contains the ***253** Legislative Reference Bureau analysis on an early draft of the proposed revision, explaining the proposal as follows:

Under current law, when a person is found guilty of a misdemeanor that the person commits before he or she was 21, the sentencing court may order that the record of

the conviction be expunged when the person completes his or her sentence....

Under this bill, a person is eligible to have his or her record of a conviction expunged *if the conviction is for a misdemeanor or a nonviolent Class H or Class I felony* that was committed before the person reached the age of 25 and the other current requirements of expungement are met.

Drafting File for 2009 Wis. Act 28, Analysis by the Legislative Reference Bureau of 2009 A.B. 75 (emphasis added). A Legislative Fiscal Bureau (LFB) paper related to this statutory revision and prepared prior to its adoption in the budget states: “In his Budget in Brief, the Governor indicated his intent to expand eligibility for record expungement *to include ‘Class H to I felonies.’*” LFB, Expunging Record of Conviction (Circuit Courts), Paper # 245 to Joint Committee on Finance, at 2 (Apr. 21, 2009) (emphasis added). At the time this paper was issued, based on the plain language of the statute and our interpretation in *Michaels*—and as referenced in the LFB paper itself—§ 973.015 only applied to misdemeanors and did not apply to felonies or forfeitures. Thus, we read this statement in the paper to indicate the intent to only expand the applicability of the statute from solely providing expunction as an option for misdemeanors to also providing it as an option for certain identified felonies. Further, we note that the LFB’s comparative summary of Act 28, issued ***254** shortly after enactment of the act,³ describes the expunction revision as “expand[ing] the eligible offenses to include non-violent Class H or I felonies.” LFB, 2009–10 Wis. State Budget, Comparative Summary

of Budget Recommendations, Circuit Courts, at 306.

3 2009 Wis. Act 28 was enacted on June 29, 2009, and the LFB comparative summary was issued in August 2009.

[5] ¶ 11 When the legislature revised the expunction statute in 2009, our ruling **401 in *Michaels* that WIS. STAT. § 973.015 did not apply to civil forfeiture violations was the controlling law on the issue, and the legislature is presumed to “kn[o]w the case law in existence at the time it change[s] the statutes.” *Blazekovic v. City of Milwaukee*, 225 Wis.2d 837, 845, 593 N.W.2d 809 (Ct.App.1999). Thus, one would expect that if the legislature intended § 973.015 to thereafter apply to civil forfeiture violations in addition

to misdemeanors and the identified felonies, it would have demonstrated that intent with plain language to accomplish that objective. Instead, the legislature adopted language indicating a clear intent for the statute to only apply to misdemeanors and the identified felonies.

[6] ¶ 12 For the foregoing reasons, we conclude that WIS. STAT. § 973.015 does not apply to civil forfeiture violations.

Order affirmed.

All Citations

359 Wis.2d 246, 858 N.W.2d 397, 2014 WI App 127

359 Wis.2d 255
Court of Appeals of Wisconsin.

STATE of Wisconsin,
Plaintiff–Respondent,

v.

Jennifer M. PARISI,
Defendant–Appellant.

No. 2014AP474–CR.

Submitted on Briefs Sept. 23, 2014.

Opinion Filed Nov. 19, 2014.

Synopsis

Background: Defendant pled no contest in the Circuit Court, Winnebago County, John A. Jorgensen, J., to possession of tetrahydrocannabinols with intent to deliver, and she appealed.

[Holding:] The Court of Appeals, Gundrum, J., held that exigent circumstances existed so as to justify the officers' warrantless entry into defendant's apartment.

Affirmed.

West Headnotes (5)

[1] Controlled Substances

⇨ Exigent circumstances

Exigent circumstances existed so as to justify the officers' warrantless

entry into defendant's apartment; as officers stood outside the apartment door, they were aware marijuana was being burned inside apartment, and with the occupants of apartment quieting or ceasing their conversation and not answering the door after officer knocked and announced the police presence, possibility of the intentional and organized destruction of the drug existed, exigency exception to the warrant requirement was not undermined by officer's actions in knocking on door to apartment and announcing his police presence in attempt to make contact with occupants, and had officers taken the time to procure a warrant before entry, the occupants would have had an entire apartment, including sinks and toilets, to utilize for destruction of the suspected marijuana. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[2] Searches and Seizures

⇨ Necessity of and preference for warrant, and exceptions in general

Searches and Seizures

⇨ Presence of probable cause

Searches and Seizures

⇨ Likely escape or loss of evidence

Warrantless entry into a residence is generally prohibited by the Fourth Amendment, but exception to this rule allows for such entry where there is probable cause to believe

evidence of a crime will be found in the residence and there is a risk that evidence will be destroyed if time is taken to obtain a warrant, i.e., an exigent circumstance. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[3] Searches and Seizures

⇐ Likely escape or loss of evidence

Test for whether an exigent circumstance existed, so as to fall within exception to warrant requirement, is an objective one—whether a police officer, under the facts as they were known at the time, would reasonably believe that delay in procuring a search warrant would risk destruction of evidence. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

[4] Searches and Seizures

⇒ Presumptions and Burden of Proof

Burden is on the State to prove that an exigent circumstance existed so as to warrant exception to warrant requirement. U.S.C.A. Const.Amend. 4.

Cases that cite this headnote

[5] Searches and Seizures

⇒ Likely escape or loss of evidence

Exigent circumstance exception to warrant requirement does not

require that officers observe actual destruction of evidence taking place before making entry. U.S.C.A. Const.Amend. 4.

1 Cases that cite this headnote

Attorneys and Law Firms

****473** On behalf of the defendant-appellant, the cause was submitted on the briefs of Jeffrey A. Mann of Mann Law Office, LLC, Oshkosh.

On behalf of the plaintiff-respondent, the cause was submitted on the brief of Donald V. Latorraca, assistant attorney general, and J.B. Van Hollen, attorney general.

Before NEUBAUER, P.J., REILLY and GUNDRUM, JJ.

Opinion

GUNDRUM, J.

***257 ¶ 1** Jennifer Parisi appeals from a judgment of conviction entered after the circuit court denied her motion to suppress evidence of drug ***258** activity obtained following the warrantless entry into her apartment by several city of Oshkosh police officers. She does not dispute that officers had probable cause to believe the apartment contained evidence of a crime, but asserts they violated her Fourth Amendment rights because exigent circumstances did not exist to validate their entry without a warrant. We conclude that exigent circumstances did exist and the entry was lawful. We affirm.

Background

¶ 2 Two of the police officers testified at the suppression hearing related to Parisi's motion. Their relevant, undisputed testimony is as follows.

¶ 3 Officer Derek Sell responded to a complaint of drugs at 1319 Clayton Court, Apartment 108. Sell met with the complainant, who described smelling burnt marijuana related to that apartment approximately an hour before Sell's arrival and also indicated that he had smelled marijuana there several times per week for several months. Sell went into the apartment complex hallway, in the area of Apartment 108, which was on the ground **474 floor. Due to a sinus condition, he could not smell burning marijuana, but he pressed his ear up to the apartment door and heard what sounded like an adult male and adult female conversing. Sell confirmed in his testimony that he was "positive" the voices were coming from Apartment 108. He knocked on the apartment door three separate times, each time announcing that he was a police officer. After he did this, no one answered the door and he "could no longer hear any voices inside."

¶ 4 Sell testified that another officer was positioned "on the outside patio door area." Sell asked that officer to come into the hallway to see if he could smell *259 anything. Sell stated that the officer was "probably at the point of just leaving the patio door and coming to me" around the time Sell knocked on the apartment door and announced a police presence. Because of this, Sell explained, there was about a "one to two minute[]" window of time where no one

was observing the patio door area outside the apartment. Sell confirmed that when the other officer was in the hallway by Apartment 108, the officer indicated that he could smell the burning marijuana.

¶ 5 Several additional officers arrived on the scene, including an officer with a drug-detecting dog, which alerted to Apartment 108. Believing there were persons in the apartment who were aware police were at the door and out of concern evidence would be destroyed if they waited for a search warrant,¹ officers decided to enter the apartment without a warrant. Sell and other officers entered through the outside patio door, which had been slightly ajar prior to their entry. No persons were found in the apartment, but Sell observed "in plain view what appeared to be consistent with a baggie of marijuana on the living room coffee table area."

¹ Sell testified that "[i]t appeared that whoever may have been inside was aware of our presence, and based on past experience ... as time goes by, the ability for suspects to destroy evidence increases."

¶ 6 Officer Joseph Framke testified as follows. He arrived at the scene after the drug dog had alerted on Apartment 108. He explained that he had experience with drug investigations, including smelling burning marijuana, and stated that he smelled such an odor in the hallway area outside of that apartment. A collective decision was made to enter the apartment to secure it because the officers believed there were people inside *260 who were not responding to a known police attempt to make contact and the officers were concerned evidence would be destroyed if they waited for a warrant. Upon entry, Framke observed a rolled up plastic baggie on the couch "in plain view." He testified that "[i]t's very

common that controlled substances, including marijuana, are packed in such fashion.” A field test of the substance in that baggie indicated it was marijuana. The officers applied for and received a warrant to search the apartment.

¶ 7 Parisi was charged with possession of tetrahydrocannabinols with intent to deliver. According to the criminal complaint, Apartment 108 was Parisi's residence and several baggies of marijuana were found throughout the apartment, along with \$630 in cash. Parisi moved to suppress the evidence, and after the circuit court denied the motion, she pled no contest. Sentence was withheld and Parisi was placed on probation. She appeals, challenging the circuit court's denial of her motion to suppress.

Discussion

[1] ¶ 8 Parisi contends exigent circumstances did not exist to justify the officers' **475 warrantless entry into her apartment. We disagree.

[2] [3] [4] ¶ 9 Warrantless entry into a residence is generally prohibited by the Fourth Amendment to the United States Constitution. *State v. Robinson*, 2010 WI 80, ¶ 24, 327 Wis.2d 302, 786 N.W.2d 463. An exception to this rule allows for such entry where there is probable cause to believe evidence of a crime will be found in the *261 residence² and there is “a risk that evidence will be destroyed” if time is taken to obtain a warrant, i.e., an exigent circumstance. *Id.*, ¶¶ 26, 30. “In such instances, an individual's substantial right to privacy in his or her home must give way

to the compelling public interest in effective law enforcement.” *Id.*, ¶ 24. The test for whether an exigent circumstance existed is an objective one—“whether a police officer, under the facts as they were known at the time, would reasonably believe that delay in procuring a search warrant would ... risk destruction of evidence.” *State v. Hughes*, 2000 WI 24, ¶ 24, 233 Wis.2d 280, 607 N.W.2d 621. The burden is on the State to prove that an exigent circumstance existed. *Robinson*, 327 Wis.2d 302, ¶ 24, 786 N.W.2d 463. In reviewing an order granting or denying a motion to suppress evidence, we will uphold a circuit court's factual findings unless they are clearly erroneous, but we review de novo whether those facts satisfy a particular constitutional standard. *Id.*, ¶ 22.

2 Parisi does not contest the circuit court's conclusion that the officers had probable cause to believe evidence of a crime would be found in Apartment 108. In light of the uncontested evidence at the suppression hearing, she would not have been likely to succeed had she made such a challenge. *See State v. Hughes*, 2000 WI 24, ¶¶ 21–22, 233 Wis.2d 280, 607 N.W.2d 621 (“The quantum of evidence required to establish probable cause to search is a ‘fair probability’ that contraband or evidence of a crime will be found in a particular place.... The unmistakable odor of marijuana coming from Hughes' apartment provided this fair probability.”) (citation omitted).

¶ 10 Here, as the officers stood outside the apartment door, they were aware marijuana was being burned inside Apartment 108. Our supreme court has held that the smell of burning marijuana gives “rise to a reasonable belief that the drug—the evidence—was *262 likely being consumed by the occupants and consequently destroyed.” *Hughes*, 233 Wis.2d 280, ¶ 26, 607 N.W.2d 621. As the *Hughes* court also observed based on the facts before it, an even greater exigency is

the possibility of the intentional and organized destruction of the drug by apartment occupants once they were aware of the police presence outside the door. Marijuana and other drugs are highly destructible.... It is not unreasonable to assume that a drug possessor who knows the police are outside waiting for a warrant would use the delay to get rid of the evidence.

Id., ¶ 26; see also *Robinson*, 327 Wis.2d 302, ¶ 31, 786 N.W.2d 463 (“Drugs like marijuana are easily and quickly destroyed.”). In this case, with the occupants of Apartment 108 quieting or ceasing their conversation and not answering the door after Sell knocked and announced the police presence, “the possibility of the intentional and organized destruction of the drug” existed.

¶ 11 Parisi asserts that “law enforcement did not possess certainty that anyone was situated within Ms. Parisi’s apartment.” The record indicates otherwise. Although the circuit court did not make a specific finding as to whether Sell did or did not hear individuals speaking in the apartment prior to knocking on the door, the court did find the undisputed testimony of Sell and Franke to be “reasonable **476 and believable.” And Sell’s testimony was that he heard an adult male and an adult female “talking inside Apartment 108.” He further confirmed he was “positive” the voices were coming from inside of that apartment and this was because he had “had [his] ear pressed up to

the door.” In addition, two officers smelled the odor of burning marijuana, and *263 the drug dog alerted to the door of Apartment 108.³ In that it is very unlikely the marijuana was burning without the aid of one or more persons, this provided additional support for the belief that there were persons in the apartment.⁴

3 We treat the evidence related to the drug dog’s alert to Apartment 108 as valid. We need not analyze potential constitutional issues related to the alert because Parisi has not challenged its validity. We note for completeness, however, that the alert occurred *prior to* the United States Supreme Court’s ruling in *Florida v. Jardines*, —U.S.—, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013), which held, based on the facts of that case, that “[t]he government’s use of trained police dogs to investigate the home and its immediate surroundings is a ‘search’ within the meaning of the Fourth Amendment.” *Id.* at 1417–18.

4 Although no direct evidence was presented at the suppression hearing of occupants within the apartment escaping out the back patio door, the undisputed evidence was that around the time Sell knocked on the apartment door and announced the police presence, the officer posted to watch the patio door left to come into the building, so that the patio door was unobserved for “about one to two minutes.” It is also undisputed that prior to the officers subsequently entering this ground floor apartment through the patio door, that door was “slightly ajar.”

[S] ¶ 12 Parisi also contends exigent circumstances did not exist because “neither [officer] testified to hearing any sounds of destruction or so much as the flush of a toilet.” The exigent circumstance exception, however, does not require that officers observe actual destruction of evidence taking place before making entry. To state the obvious, once an officer’s presence is known and a toilet is flushed, at least some of the evidence has already been disposed. The exception rather requires only that officers have a reasonable belief “that delay in procuring a search warrant would ... *risk* destruction of evidence.” *Hughes*,

233 Wis.2d 280, ¶ 24, 607 N.W.2d 621 (emphasis added).

*264 ¶ 13 After Sell knocked on the apartment door and announced the police presence, the individuals he previously heard conversing in the apartment became quiet and did not answer the door, creating a reasonable inference that they were trying to avoid police detection.⁵ An officer could reasonably believe that a person (or persons) who appears to be attempting to avoid police detection in this manner when the odor of burning marijuana is in the air is more likely to also attempt to prevent evidence from being discovered by the police, including through destruction of such evidence. An officer could also reasonably infer that the now-quiet occupants may have ceased conversing and not answered the door because upon announcement of the police presence, they became otherwise engaged in destroying evidence. See **477 *id.*, ¶ 26 (“It is not unreasonable to assume that a drug possessor who knows the police are outside waiting for a warrant would use the delay to get rid of the evidence.”).

⁵ Although there was nothing unlawful about the previously conversing occupants ceasing their conversation and not answering the door, as is often the case, lawful actions—or inactions—nonetheless can create an incriminating inference. *State v. Robinson*, 2010 WI 80, ¶ 32, 327 Wis.2d 302, 786 N.W.2d 463; *State v. Waldner*, 206 Wis.2d 51, 59–60, 556 N.W.2d 681 (1996); see also *United States v. Robles*, 37 F.3d 1260, 1263–65 (7th Cir.1994) (concluding that exigent circumstances justifying warrantless entry existed where agents who were aware of drugs in a residence knocked on door and identified themselves as law enforcement agents but the occupants, who the agents had observed through a window, did not answer door).

¶ 14 Parisi appears to also assert that the exigent circumstances exception to the warrant

requirement should not apply here because Sell created the exigent circumstances by knocking on the door. This position has been soundly rejected by both our supreme court *265 and the United States Supreme Court. In *Robinson*, which involved suspected drug activity in Robinson's apartment, our supreme court addressed a nearly identical argument and held that the officers did not “impermissibly create[] the exigent circumstances merely by knocking on [Robinson's] door and announcing” themselves as police. *Robinson*, 327 Wis.2d 302, ¶¶ 4, 32, 786 N.W.2d 463. In so acting, the court concluded, the officers “were conducting themselves in an utterly appropriate and lawful manner,” and added that “[w]hen law enforcement agents act in an entirely lawful manner, they do not impermissibly create exigent circumstances.” *Id.*, ¶ 32 (quoting *United States v. MacDonald*, 916 F.2d 766, 772 (2d Cir.1990)). The court continued: “It was not the officers' knock and announcement that created the exigent circumstances.... Robinson's choice to run from the door [after police knocked and announced they were police] created the exigent circumstances that justified the officers' warrantless entry.” *Id.*

¶ 15 Similarly, in *Kentucky v. King*, — U.S. —, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011), another police knock-and-announce case involving the smell of burning marijuana coming from behind an apartment door, the United States Supreme Court held that where police do not create the exigency “by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed.”

Id. at 1854, 1858. The Court added, “the Fourth Amendment requires only that the steps preceding the seizure be lawful,” and specifically held that the officers’ “bang[ing]” on the door and merely announcing their police presence was conduct which “was entirely consistent with the Fourth Amendment.” *Id.* at 1858, 1863. Here, Sell merely knocked on the door to Apartment 108 and announced his police presence in an *266 obvious attempt to make contact with the occupants. This action was appropriate, lawful and reasonable; thus, the exigency exception to the warrant requirement was not undermined by Sell’s actions.

¶ 16 Parisi cites to our decision in *State v. Kiekhefer*, 212 Wis.2d 460, 569 N.W.2d 316 (Ct.App.1997), in support of her assertion that no exigent circumstances existed. In that case, after smelling an odor of burning marijuana coming from behind Kiekhefer’s closed bedroom door, officers entered his bedroom unannounced. *Id.* at 466, 569 N.W.2d 316. Although we concluded that the officers’ entry was unlawful, *id.* at 480, 569 N.W.2d 316, *Kiekhefer* is of no assistance to Parisi because there was “no indication that Kiekhefer was aware” of the officers’ presence outside his door. *Id.* at 477, 569 N.W.2d 316. As our supreme court noted while analyzing *Kiekhefer* in *Hughes*, the officers in *Kiekhefer* “entered the room based upon the odor alone, in the absence of any other facts suggesting exigency.” *Hughes*, 233 Wis.2d 280, ¶ 28, 607 N.W.2d 621. Here, in addition to the smell of burning marijuana, the police had strong reason to believe the previously conversing occupants were aware police were at the door trying to make contact, and after Sell knocked

and announced the police presence, he could no longer hear them conversing and no one answered the door. As previously indicated, it is not a far stretch to conclude that those seeking to avoid detection by the **478 police when the smell of marijuana is present would also be likely to destroy the marijuana to prevent that evidence from being discovered. *See id.*, ¶ 35 (With the smell of marijuana emanating from the apartment, the police “knew that once the people inside the apartment were alerted to their presence, the likelihood of intentional evidence destruction was extremely high.”).

*267 ¶ 17 *Kiekhefer* is also distinguishable because, as we stated in that case, the suspected contraband there—“a large quantity of marijuana”—“could not be easily or quickly destroyed in Kiekhefer’s bedroom.” *Kiekhefer*, 212 Wis.2d at 478, 569 N.W.2d 316. In the case now before us, had the officers taken the time to procure a warrant before entry, the occupants would have had an entire apartment, presumably including sinks and toilets, to utilize for destruction of the suspected marijuana.

¶ 18 Faced with the facts of which the officers were aware when they decided to enter the apartment, “a police officer ... would reasonably believe that delay in procuring a search warrant would ... risk destruction of evidence.” *See Hughes*, 233 Wis.2d 280, ¶ 24, 607 N.W.2d 621. The Fourth Amendment did not require the officers to take that risk.⁶

⁶ The State also argues that, even if we did not conclude that exigent circumstances existed, the independent source doctrine should nonetheless preclude suppression of the evidence. *See State v. Carroll*, 2010 WI 8, ¶

44, 322 Wis.2d 299, 778 N.W.2d 1 (discussing the independent source doctrine). Because we conclude that exigent circumstances existed, we need not and do not address this issue. *See Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559 (Cl.App.1983) (this court need not address other issues when one is dispositive).

Parisi also argues that evidence obtained from within her residence should be suppressed as “fruit of the poisonous tree.” Because we have concluded that

the tree from which the fruit was obtained was not poisonous, the evidence is not suppressed.

Judgment affirmed.

All Citations

359 Wis.2d 255, 857 N.W.2d 472, 2014 WI App 129