



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT IV**

February 23, 2016

To:

Hon. Patrick J. Taggart  
Circuit Court Judge  
Sauk Co. Courthouse  
515 Oak Street  
Baraboo, WI 53913-0449

Vicki Meister  
Clerk of Circuit Court  
Sauk Co. Courthouse  
515 Oak Street  
Baraboo, WI 53913-0449

Michael Xavier Albrecht  
Asst. District Attorney  
515 Oak Street  
Baraboo, WI 53913-2416

Frances Philomene Colbert  
Community Justice, Inc.  
214 N. Hamilton St., Ste. 101  
Madison, WI 53703-2178

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Charles H. Wise  
121 Ash Street, Apt. #5  
Sauk City, WI 53583

You are hereby notified that the Court has entered the following opinion and order:

---

2013AP2236-CRNM      State of Wisconsin v. Charles H. Wise (L.C. # 2011CM252)

Before Lundsten, J.

Charles Wise appeals a judgment convicting him, following a jury trial, of resisting an officer and disorderly conduct. Attorney Frances Colbert has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14);<sup>1</sup> *Anders v. California*, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

sufficiency of the evidence, a number of trial court rulings, and the sentence. Wise was sent a copy of the report, and has filed a response complaining that he was not granted a hearing on his request for accommodation of his mental disability under the ADA. Upon reviewing the entire record, as well as the no-merit report and response, we conclude that there are no arguably meritorious appellate issues.

### *Sufficiency Of The Evidence*

We begin by addressing whether there is any non-frivolous basis to challenge the sufficiency of the evidence, both because discussing the evidence produced at trial places many of the other potential issues in context, and because a successful claim on that issue would result in a vacation of the conviction and directed verdict for acquittal, rather than a retrial.

The general test for sufficiency of the evidence is whether the evidence is “so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (quoting *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)). With respect to the charges in this case, the elements the State needed to prove for the resisting an officer count were that (1) Wise resisted an officer—that is, opposed the officer by force or threat of force directed to the officer personally; (2) the officer was acting in an official capacity—that is, performing a duty the officer was employed to perform; (3) the officer was acting with lawful authority—that is, performing his or her duty in accordance with the law; and (4) Wise knew that the officer was acting in an official capacity and with lawful authority and that his conduct would resist the officer. *See* WIS. STAT. § 946.41(1) (2009-10) and WIS JI—CRIMINAL 1765. The elements the State needed to prove for the disorderly conduct charge were

that: (1) Wise engaged in profane or otherwise disorderly conduct of such a nature as to unreasonably offend the public's sense of decency; and (2) the conduct, under the circumstances as they then existed, tended to cause or provoke a disturbance. *See* WIS. STAT. § 947.01 (2009-10) and WIS JI—CRIMINAL 1900.

Sauk Prairie police officer Katy Carter testified that she was called to Wise's apartment building in response to a complaint that several other residents of the building were feeling threatened, intimidated, and harassed by a neighbor. After speaking with three residents who indicated that they were uncomfortable with comments being made by Wise, Carter contacted Wise outside of his apartment. Wise refused to discuss the situation with Carter unless Carter identified who had made complaints against him—which she would not do—and he went back into his apartment. Carter advised the complaining residents to contact her if there were additional problems, and left the building.

Within an hour of the first contact, Carter received another dispatch of a disturbance at the same address. When she arrived, she found Wise sitting in a lawn chair outside the building, with loud music coming from his apartment, and she could smell alcohol on his breath. Carter again attempted to discuss the situation with Wise, and Wise again indicated that he did not want to speak with her and wanted to know who had complained about him. Two additional officers arrived at the scene while Carter was speaking with Wise. Wise wanted the officers to leave because he did not believe he had been causing a disturbance, and he became increasingly loud and upset during the conversation. Eventually, based upon Wise's loud music and his loud and boisterous voice while speaking with the police, Carter decided to place Wise under arrest for disorderly conduct.

As Carter and another officer escorted a handcuffed Wise to Carter's squad car, Wise dug in his heels and kicked his legs around in a manner that led to him nearly sitting on the ground three or four times, so that the officers had to lift him up before moving forward. Wise also started yelling profane comments at the officers, which were recorded through the squad car surveillance system. At some point during the walk, Wise's pants fell down. Carter testified that she and another officer stopped walking as soon as Wise complained, and pulled his pants back up before continuing toward the squad car. Once in the squad car, Wise engaged in a continuous stream of shouting and profanity throughout the drive to the station, while also kicking at the seat in front of him and hitting his head against the back of the cage. Carter's testimony was corroborated by that of the other two officers on the scene, as well as the squad car recording.

Wise testified and much of his testimony was consistent with many of the facts testified to by Carter and the other two officers. He agreed that he had been sitting in his lawn chair when approached by Carter; that he had refused to talk to her if she would not tell him who was complaining about him; and that his voice may have gone up in volume during the conversation because he got nervous, although he denied yelling. Wise also freely admitted that, by the time he was placed in the squad car, he was "cursing at the top of [his] lungs," and that he was "as profane, as loud, and as angry as [he'd] ever been in [his] lifetime." Where Wise's account differed from that of the officers was with respect to when and how his pants came down, and how long the pants were down before the officers pulled them back up.

According to Wise, his pants started to come down when Carter inadvertently stepped on the cuff of one of his pant legs as they were approaching the parking lot where the squad car was parked. Wise said he reacted by trying to stop walking, to keep his pants from sliding down. He said the reason he became so angry and started cursing was that the officers kept walking him

toward the squad car while his pants were sliding down until the pants were all the way to his ankles, and his genitalia was exposed to many of his neighbors, who were outside or watching from windows.

Wise also presented testimony from a neighbor, Dana Jeffers. Jeffers said that her granddaughter was looking out the apartment window and told Jeffers she had to come see something. When Jeffers looked out the window, she saw Wise standing right near the squad car with his pants down and naked from the waist down, yelling at the two officers standing next to him that he wanted his pants pulled up. Jeffers said the officers “[e]ventually” pulled Wise’s pants back up. She could hear Wise continuing to yell profanities from the back of the squad car, and did not appreciate that her granddaughter had to hear that.

The crux of the resisting an officer charge, then, was whether Wise was already fighting against being walked to the squad car before his pants slid down, and/or whether the officers continued trying to walk Wise to the squad car while his pants were down. In short, if the jury believed the testimony of the officers, it could conclude beyond a reasonable doubt that Carter was acting in an official capacity while investigating complaints at the apartment building; that she was acting with lawful authority when she arrested Wise for disorderly conduct in conjunction with his playing loud music and raising his voice during Carter’s investigation of the complaints; that Wise initially resisted being walked to the squad car in a forceful manner because he did not agree that he had caused a disturbance, rather than because his pants were falling down—or indeed, that Wise’s pants slid down as the result of his contortions; and that Wise was well aware that Carter was acting in an official capacity and with lawful authority when she arrested him, and that his kicking his legs around and trying to sit down was using force to oppose the officer.

As to the disorderly conduct charge, since Wise acknowledged his loud and extended use of profanity, the only question was whether he did so in circumstances that would tend to cause a disturbance. Given the number of people in and around the apartments who were subjected to Wise's tirade, including Jeffers's granddaughter, as well as the responding officers, we agree with counsel's assessment that it would be frivolous to challenge the sufficiency of the evidence on that element.

#### *Evidentiary Ruling*

Prior to trial, the circuit court ruled that the numerous profane statements that Wise made after being arrested were not made during a custodial interrogation. We see no evidence to the contrary that would undermine the circuit court's determination that the statements were therefore admissible.

#### *Assistance Of Counsel*

Wise faults the circuit court for not granting him a hearing on his request for accommodation of his mental disability under the ADA. The gist of his argument seems to be that he was entitled to counsel due to his disabilities, and that one or more of the attorneys appointed on his behalf by the court (to be paid by the county, subject to reimbursement of \$25 per month) provided ineffective assistance. In particular, Wise complains that counsel refused to call witnesses or to present evidence that Wise had requested. Wise does not, however, identify who those witnesses were, or what additional evidence he believes counsel should have presented. Wise also complained to the circuit court that counsel had failed to prepare him to testify. Given that there was an audio recording of the entire incident, however, we are not

persuaded that there is any arguably meritorious argument to be made on the element of prejudice.

*Sentence*

A challenge to Wise’s sentence would also lack arguable merit because the court imposed a sentence of time served—that is, two days on each count—in accordance with Wise’s own recommendation. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved). The court also imposed fines on each count, but made provisions for those fines to be paid through community service if Wise preferred.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Frances Colbert is relieved of any further representation of Charles Wise in this matter pursuant to WIS. STAT. RULE 809.32(3).

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*