

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN DAVID WILKE- PETITIONER

vs.

STATE OF WISCONSIN- RESPONDENT
APPENDIX FOR PETITION FOR A WRIT OF CERTIORARI TO
WISCONSIN COURT OF APPEALS
PETITION FOR WRIT OF CERTIORARI

Jonathan David Wilke #460976

Wisconsin Secure Program Facility

P.O. Box 1000

Boscobel, Wisconsin 53805

TABLE OF CONTENTS FOR APPENDIX

APPENDIX A OPINION BY THE WISCONSIN COURT OF APPEALS

APPENDIX B ORDER DENYING REVIEW BY THE WISCONSIN SUPREME
COURT

APPENDIX C MARCH 9, 2020 JURY TRIAL TRANSCRIPTS

State v. Wilke

Court of Appeals of Wisconsin. July 11, 2023 2023 WI App 44 995 N.W.2d 482 (Table) 2023 WL 4445534 (Approx. 2 pages)

2023 WI App 44

Unpublished Disposition

See Rules of Appellate Procedure, Rule 809.23(3), regarding citation of unpublished opinions. Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

2023 WI App 44

Court of Appeals of Wisconsin.

STATE of Wisconsin, Plaintiff-Respondent,

v.

Jonathan David WILKE,[†] Defendant-Appellant.

Appeal No. 2020AP1995-CR

July 11, 2023

APPEAL from a judgment and an order of the circuit court for Milwaukee County, Cir. Ct. No. 2017CF3559: T. CHRISTOPHER DEE, Judge. *Affirmed*.

Before Brash, C.J., Donald, P.J., and White, J.

Opinion

PER CURIAM.

*1 ¶1 **Jonathan David Wilke**, *pro se*, appeals a judgment convicting him of multiple serious felonies and an order denying his motion for postconviction relief. **Wilke** argues that: (1) the circuit court should not have allowed victim J.J.'s identification of him in a lineup to be admitted at trial; (2) the error was not harmless; (3) the lineup was impermissibly suggestive; and (4) the circuit court erred in allowing trial testimony about victim T.J.'s reaction as she viewed the lineup. We affirm.

¶2 **Wilke** slowly walked up to a minivan parked in an alley, approaching from the front, in the late hours of April 18, 2017. He paused in the headlights to put on his glasses and then opened fire on a family inside the vehicle. **Wilke** did not know his victims. T.J., the mother, was shot nine times. Her sons D.J., eighteen, and J.J., fourteen, and her grandchild A.B., six, were in the minivan with their mother. After a jury trial, **Wilke** was convicted of one count of attempted first-degree intentional homicide with use of a dangerous weapon and as a habitual criminal, three counts of first-degree recklessly endangering safety with use of a dangerous weapon, one count of unlawfully possessing a firearm after being convicted of a felony as a serious violent crime repeater, and one count of unlawfully possessing a firearm after being adjudicated delinquent, as a habitual criminal. The circuit court sentenced **Wilke** to a total of thirty-six and one-half years of initial confinement and nineteen and one-half years of extended supervision.

¶3 **Wilke** first argues that the circuit court erred in admitting fourteen-year-old J.J.'s identification of him in the lineup because **Wilke** did not have an attorney present. The State concedes that the lineup was constitutionally defective. *See United States v. Wade*, 388 U.S. 218, 224-26 (1967) (the accused is entitled to the assistance of counsel at a lineup conducted after being charged). However, the State argues—and we agree—that the error was harmless.

¶4 An "error is harmless if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *State v. Harvey*, 2002 WI 93, ¶49, 254 Wis. 2d 442, 647 N.W.2d 189 (citation omitted). Even if J.J.'s identification of **Wilke** from

Appendix A



OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

October 30, 2023

To:

Hon. T. Christopher Dee
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Sonya Bice
Electronic Notice

Jonathan David Wilke 460976
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

No. 2020AP1995-CR State v. Wilke, L.C.#2017CF3559

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Jonathan David Wilke, pro se, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

Samuel A. Christensen
Clerk of Supreme Court

~~Appendix B~~ Appendix B

**Additional material
from this filing is
available in the
Clerk's Office.**