No. 24-1100

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHNNIE E. RUSSELL,

Plaintiff-Appellant,

v.

RYAN COMSTOCK, COLIN POWELL, and DAVE WOHLGEMUTH,

Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Wisconsin
Case No. 2:21-cv-00151 Hon. J. P. Stadtmueller

REPLY BRIEF FOR PLAINTIFF-APPELLANT JOHNNIE E. RUSSELL

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Reply to Appellee Powell's Jurisdictional Statement

Officer Powell still maintains that Russell filed his notice of appeal late, depriving this Court of jurisdiction. Powell says that because in the past Russell's mail sometimes has gotten from the prison to the district court in one day, we should presume that happened here. *See* Powell Br. 1-2. Under Powell's logic, because Russell's envelope was postmarked in Milwaukee on January 18, 2024, the notice of appeal must have been deposited in the internal prison mailbox on January 17, one day after the deadline. The upshot of Powell's position is that Russell lied when he declared that he placed his notice of appeal in the prison mailbox on January 12, even though that's what counsel advised him to do. *See* Doc. 19, Jurisdictional Memorandum, Ex. A at 1 (¶ 3) (Russell Declaration); *id.* at 1-2 & Ex. B (¶ 1) (Khan Declaration).

Powell's argument makes no sense, and not only because there's no reason to think that Russell ignored counsel's advice and then filed a perjurious declaration. According to the United States Postal Service, a letter placed in first-class mail ordinarily takes up to three business days to arrive. *See* USPS Domestic Delivery Times, https://www.stamps.com/usps/usps-delivery-times/ (last visited July 19, 2024). And circumstances here likely delayed Russell's envelope after he redeposited it in the prison mailbox on January 14, 2024. *See* Doc. 19, Jurisdictional Memorandum, Ex. A at 2 (¶ 4) (Russell Declaration). January 14 was a Sunday and the next day, Monday, January 15, was a federal holiday, both non-business days on which the mail

presumably did not move within the prison or the Postal Service. All told, then, the arrival of Russell's timely-filed notice of appeal in Milwaukee on January 18 is consistent with the facts as Russell has presented them.

This Court has jurisdiction under 28 U.S.C. § 1291.

Introduction and Summary of Argument

Over an hour after the first officer arrived on the scene, Officer Powell conducted a warrantless sweep of Russell's apartment based on facts that, when viewed in Russell's favor, do not support a reasonable belief that Russell's apartment harbored anyone posing a danger to the officers. The district court determined that the sweep was valid by relying on conclusions impermissibly drawn in Powell's favor. But even under the Powell-favorable facts improperly found by the district court, a protective sweep was not warranted. And because it is clearly established that a warrantless sweep is unlawful when conducted without a reasonable belief that the area harbors someone who poses a danger to officers, Powell is not entitled to qualified immunity.

Powell maintains he had a reasonable belief that Russell could be in his apartment posing a danger to the officers. But he glosses over the facts showing that Russell was not on the premises: The first officer on the scene told the Racine Police Department Dispatch that Russell had driven away; Russell's car was not on the property; and one of the apartment managers told Powell unequivocally that Russell had left in his car. Powell also relies on a supposedly unaccounted-for third party to claim a sweep of Russell's

apartment was necessary to keep that individual safe. But the apartment managers confirmed that the third party had left, which is presumably why they never asked Powell to look for a third party. Even if they had, the potential presence of a third party alone is not sufficient to invoke the protective-sweep doctrine.

As our opening brief explains (at 18-23), to justify his warrantless sweep, Powell needed a reasonable belief that he was in as much danger just outside of Russell's apartment as he would have been inside it. Powell barely tries to make that showing. Instead, he argues that because Russell was generally at large, a weapon was unaccounted for, and a third party on the scene *might* have been injured, the warrantless sweep was lawful. But warrantless sweeps are justified only when they help ensure officers' safety, and none of these generalized concerns—which could accompany a wide range of crime investigations—put Powell at a safety risk that would be mitigated by entering and sweeping Russell's apartment. Moreover, Powell and his colleagues easily could have avoided danger (assuming there was any) by staying on the first floor and waiting for a search warrant to arrive.

Argument

I. The facts bearing on whether Officer Powell had a reasonable suspicion that Russell's apartment harbored someone posing a danger to officers on the scene are disputed, precluding summary judgment.

Officer Powell is correct that the question here is "whether a reasonable officer held a reasonable suspicion" that Russell's apartment harbored

someone posing a danger to officers on the scene. Powell Br. 27. But the (purported) facts that Powell offers to support reasonable suspicion are disputed, so the district court erred in granting summary judgment.

A. The key fact—Russell's location—is disputed.

Powell argues that no evidence supports a reasonable belief that Russell had left the area at the time of the sweep. Powell Br. 27. That is incorrect. It is, at the least, unclear whether a reasonable officer would believe that Russell was in his apartment, which is the only fact that arguably could support Powell's warrantless sweep. Because this fact is disputed, the district court erred in granting summary judgment to Powell. *Gupta v. Melloh*, 19 F.4th 990, 996-97 (7th Cir. 2021).

1. Powell argues that a reasonable officer could infer that Russell was in his apartment and posing a threat because one of his two cars was parked nearby. Powell Br. 25. But Russell could drive only one car at a time, and the officers were informed that Russell had left in his vehicle. *See, e.g.*, App. 74 ("[s]uspect left nb in a 90's buick gray"). The presence of his other car, therefore, does not support a reasonable belief that Russell was present. Moreover, before the warrantless sweep, Investigator Spiegelhoff told the apartment managers and other officers that the Racine Police were likely looking for Russell's missing car, indicating that the police believed Russell had left the premises in that vehicle. App. 123 at 14:41:56-14:41:59.

2. Powell notes that no record document conclusively demonstrates that the information that Officer Coca sent to the Racine Police Dispatch—that Russell had left the apartment building in his car—was relayed to Powell and other officers. Powell Br. 32; *see* App. 74. True, but irrelevant at summary judgment. For starters, it is reasonable to assume that after Powell and his fellow officers arrived, Coca or others who were already on the scene told them about Russell's location before they left. App. 77-78 (indicating that Coca arrived at 1:15 p.m., Powell arrived at 2:31 p.m., and the two overlapped on the scene for 35 minutes before Coca departed at 3:06 p.m.).

Moreover, a jury could reasonably infer that the Racine Police Dispatch served its normal function and that the officers obtained Coca's dispatch report about Russell's whereabouts before going to the crime scene. Certainly, the opposite inference that Powell suggests—that Dispatch did *not* relay the information to the officers—is implausible. After all, the Racine Police Department itself describes Dispatch as a tool to "facilitate incident responses and *communication in the field*." App. 72 (emphasis added). So, if key information reported to Dispatch by responding officers is not communicated to new officers arriving on the scene, the dispatch process would not be serving its ordinary purpose. A reasonable jury could find that Dispatch served its ordinary purpose here.

Powell also suggests that the confusion on the scene, demonstrated by the officers mistakenly arresting Marvitz when they arrived, indicates that they did not receive the information that Coca had dispatched. Powell Br. 32.

That's a non sequitur. General confusion on the scene has nothing to do with whether Dispatch served its purpose. No information about Marvitz was ever reported to Dispatch, so confusion about his identity does not reveal anything about what information was communicated from Dispatch to the officers concerning Russell's whereabouts.

3. Powell argues that apartment manager Howe's conduct somehow casts doubt on his unequivocal statements to police officers that Russell had left the area. *See* App. 123 at 14:41:23-14:41:24, 14:41:27-14:41:40. True, after repeatedly confirming to Powell that Russell and his car were gone, Howe did not stop the officers from searching Russell's apartment or correct Marvitz when he said he was uncertain whether Russell was on the property. *See* Powell Br. 31. But that behavior does not support a reasonable belief that Russell was still present, especially when the record is viewed in the light most favorable to Russell, as required here. *Koch v. Village of Hartland*, 43 F.4th 747, 750 (7th Cir. 2022).

When Howe walked onto the scene, officers were detaining Marvitz, ignoring Howe's clarification that Marvitz was an apartment manager. App. 123 at 14:40:13-14:40:38. The officers then asked Marvitz and Howe the same questions more than once, speaking over the two when they tried to respond. App. 123 at 14:41:08-14:41:31. Perhaps Howe thought it would not matter if he tried to stop the officers or correct Marvitz, because he had just been ignored when he tried to assist the officers. In any case, Howe's

understandably deferential behavior does not negate his clear statements that Russell had left the area in his car.

4. Powell observes that, at one point, Marvitz told the officers that he did not know Russell's location. Powell Br. 18. Even accepting that Marvitz was uncertain about Russell's location, others on the scene indicated, unmistakably, that Russell had left. As already mentioned, Coca's dispatch report stated Russell had left the apartment complex. App. 74. Spiegelhoff's affidavit also reported that Russell had left. App. 85 (¶ 6); *see* Opening Br. 6, 13-14. And Howe remained unequivocal that Russell had left the apartment complex in his car. App. 123 at 14:41:27-14:41:40. Marvitz's uncertainty about Russell's location does not call into question, let alone refute, other individuals' knowledge that Russell was not at the apartment complex. *See* Opening Br. 25-26.

Moreover, it is at best unclear what Marvitz meant when he responded to the officers' questions about Russell's location. Recall that Marvitz responded to Investigator Spiegelhoff's question "[s]o, John Russell is not here, he took off?" by saying "not that I'm aware of." App. 123 at 14:41:21-14:41:24. Marvitz then later told Spiegelhoff and the other officers he had "no idea if [Russell is] in his apartment." App. 123 at 14:41:27-14:41:30; Powell Br. 28. A reasonable jury could conclude Marvitz meant what he initially said about Russell's whereabouts. As our opening brief explains (at 12), even when parties agree about what words were said, it is the fact finder's task to decide what inferences to draw from the conversation. *Miller v. Gonzalez*, 761

F.3d 822, 828 (7th Cir. 2014) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003)).

In drawing an inference here, a fact finder would consider the context: Marvitz had just been detained, and his responses to the officers' questions were likely more deferential than they otherwise would have been (or than Howe's responses were). A jury could conclude that a reasonable officer would believe what Marvitz said about Russell's location when he initially responded to Spiegelhoff's question, particularly given its consistency with Howe's clear and repeated statements that Russell and his car were gone.

Remember, too, that Spiegelhoff herself interpreted Marvitz's responses to the officers' questions as indicating that Russell was not in his apartment. Spiegelhoff swore in her search-warrant affidavit that she "spoke with the building manager, Johnny Marvitz, … who stated Russell left 1915 Washington Avenue." App. 85 (¶ 6); *see* Opening Br. 6, 13-14. Powell says that Spiegelhoff's affidavit should be disregarded because it was drafted after the sweeps of Cannon's and Russell's apartments. Powell Br. 32-33. That makes no sense. The pertinent line in Spiegelhoff's affidavit refers to what Marvitz told her when she arrived on the scene *before* the sweeps: that Marvitz told her that Russell had left. App. 85 (¶ 6). Spiegelhoff did not say that, after sweeping the apartments, the officers knew that Russell had left (which would have nothing to do with what Marvitz said to her).

5. Powell attributes some significance to Russell's pro se joinder in a statement of material facts, drafted by Defendants' counsel, which asserts

that Marvitz was "uncertain if Russell had gone back to his apartment." Powell Br. 32 (quoting App. 110-11). To begin with, even if Russell believed that this reflected Marvitz's state of mind, that would have little or no bearing on what a reasonable officer would have believed at the time. Moreover, even accepting Marvitz's uncertainty about Russell's location, as just explained (at 7-8), Marvitz's lack of knowledge about that topic doesn't cast doubt on, let alone negate, other people's statements indicating that they *did* have knowledge on the topic (in this case, Howe's and Coca's unambiguous statements about Russell's location).

B. The other purported facts on which Powell relies either conflict with the record or are immaterial.

1. A better reading of Marvitz's gesture is that he was indicating that Cannon's first-floor apartment door was left open, not that Russell's second-floor apartment was left unattended.

Powell asserts that Marvitz gestured to the police officers that Russell's second-floor apartment was left open and unattended after the stabbing, a conclusion Powell relies on to justify the warrantless sweep. Powell Br. 28. That's not a fair interpretation of the evidence, let alone a necessary one. The portion of the video Powell cites shows Marvitz gesturing first toward *Cannon's* first-floor apartment several times and explaining that *Cannon's* door was left open. App. 123 at 14:42:05-14:42:24. At one point during this explanation, Marvitz gestures in the opposite direction, to his left. App. 123 at 14:42:08-14:42:09. Presumably, this is the section of the video that Powell

maintains depicts Marvitz's gesture toward Russell's apartment. *See* Powell Br. 28 (citing body-cam footage).

Resolving interpretive disputes over the meaning of video evidence is for the fact finder. *See Kailin v. Village of Gurnee*, 77 F.4th 476, 481 (7th Cir. 2023). A fact finder here could decide that a better understanding of the gesture is that Marvitz was indicating that Cannon's first-floor door was wide open, not that Marvitz was pointing toward Russell's second-floor apartment. During this part of the conversation, Marvitz was describing Cannon's apartment and the visitor who had previously been there. App. 123 at 14:42:05-14:42:24. It is unlikely that Marvitz employed a gesture to change the subject of the conversation entirely, mid-sentence, to Russell and then immediately returned to discussing Cannon. Moreover, when referring to Russell's apartment in an earlier part of the conversation, Marvitz did not point to his left but rather upward toward the second floor. App. 123 at 14:41:28-14:41:30.

2. Marvitz did not ask officers to look for an unknown third party, and even if he had, that would be immaterial.

Powell argues that Marvitz told the police officers to "look for an unknown third party." Powell Br. 18. That assertion is based on an incorrect understanding of a conversation between Marvitz and the officers. Powell maintains that, while speaking to the officers, Marvitz "felt obligated" to mention that a third party might be present and asked officers to "[m]ake sure that there was nobody in [Cannon's] apartment too." Powell Br. 33-34.

That distorts Marvitz's statement. Marvitz actually said "we *had* to make sure that there was nobody in that apartment too," App. 123 at 14:42:05-14:42:06 (emphasis added), referring to a search of Cannon's apartment that he and Howe had *already* performed. Indeed, Marvitz then added that police could "check *again*" after Howe said that the police knew that the third party was not present. *Id.* at 14:42:28 (emphasis added), 14:42:25.

All told, it is apparent that Marvitz knew that no third party was present and simply was offering the police a chance to confirm for themselves. This deferential attitude is consistent with Marvitz's other interactions with the officers. *See supra* at 8. But even if we assume (counterfactually) that the body-cam footage raises genuine disputes over this interaction, when a video's depiction of material facts could be interpreted multiple ways, a fact finder must resolve the dispute. *See Kailin*, 77 F.4th at 481.

And even accepting Powell's (inaccurate) reading of the conversation, the existence of an unaccounted-for third party would not provide support for a reasonable officer to believe that the third party was in Russell's apartment. Powell argues, opaquely, that "there is a possibility that the third-party indicated by Marvitz may have been injured in Russell's apartment." Powell Br. 32. If Powell means that the third party was injured while in Russell's apartment and remained there afterward, Powell doesn't offer any basis to support this speculation, which is especially fantastical given the actual facts: Marvitz said the third party had been visiting *Cannon's* apartment and

the apartment managers asked him to go home. App. 123 at 14:42:11-14:42:18.

Perhaps, on the other hand, Powell means to suggests that the third party was injured in the fight between Russell and Cannon and somehow made his way to Russell's apartment afterwards. That would also make no sense. After all, if the third party had been injured in the encounter, Howe and Marvitz would have discussed it when they talked to the police officers about the third party—and they did not. *See* App. 123 at 14:42:11-14:42:18.

3. The remote possibility that Russell had left the scene and later returned undetected does not justify the warrantless sweep of Russell's apartment.

Powell states that because there was "an ongoing investigation, there is a possibility that Russell could have returned to the property." Powell Br. 32. But there were multiple officers on the scene at all times. App. 74-79. It is extraordinarily unlikely that Russell could have returned to the property, parked his car, and entered his apartment, all without being noticed by one of the officers or apartment managers. Moreover, no one present said that Russell or his car had returned. In fact, both Coca and Howe said the opposite. App. 74; App. 123 at 14:41:27-14:41:40. And that Russell was generally at large and *could* have returned to his apartment does not support a reasonable officer's belief that Russell's apartment harbored a dangerous person. *United States v. Delgado*, 701 F.3d 1161, 1164-65 (7th Cir. 2012); *see also*

Payton v. New York, 445 U.S. 573, 576 (1980) (explaining that suspicion of a serious crime does not alone justify warrantless entry into a suspect's home).

C. An officer, like Powell, who conducts a sweep without a reasonable belief that the area to be swept harbors someone who poses a danger is not protected by qualified immunity.

As just shown, when the record is viewed in the light most favorable to Russell, the protective-sweep exception does not apply. And unless an officer relies on and demonstrates that a particular exception to the warrant requirement applies, a warrantless search violates the Fourth Amendment. *United States v. Key*, 889 F.3d 910, 912 (7th Cir. 2018). So, just as disputes of fact here preclude summary judgment on the protective-sweep question, they also preclude summary judgment on qualified immunity. *See* Opening Br. 17-18.

II. None of Powell's other arguments supports affirmance.

As just shown, if the facts are reviewed in a light favorable to Russell, as they must be at summary judgment, the district court's holding should be reversed. This Court need go no further.

Our opening brief explains that even viewing the facts in Powell's favor —and assuming that a reasonable officer could believe that Russell was in his apartment when the sweep occurred—Powell was not entitled to conduct a warrantless sweep of Russell's apartment. That is so because, even on those facts, Powell would not have had a reasonable belief that he was in as much danger outside of Russell's apartment as he would be inside it. *See*

Opening Br. 18-23. Because Powell offers little response on this score, we rest largely on our opening brief, and now turn to Powell's other contentions.

A. Powell argues that because Russell committed a serious crime, his location was unknown, his apartment was left unattended, and the knife had not been located, the officers reasonably believed they were in danger standing outside of Russell's second-floor apartment. Powell Br. 36, *see also id.* at 21. Our opening brief considers these arguments, so we reiterate our responses only briefly here.

First, suspicion of a serious crime alone does not justify a warrantless sweep. Opening Br. 16; *see Flippo v. West Virginia*, 528 U.S. 11, 14 (1999) (per curiam); *Payton v. New York*, 445 U.S. 573, 576 (1980). Second, a warrantless sweep is unjustified when officers simply do not know a potentially dangerous individual's whereabouts. Opening Br. 24-26; *United States v. Delgado*, 701 F.3d 1161, 1164-65 (7th Cir. 2012); *see also United States v. Pichany*, 687 F.2d 204, 207-08 (7th Cir. 1982). Rather, facts and rational inferences must support a reasonable belief that the individual is in the specific area to be searched. *See* Opening Br. 24; *Maryland v. Buie*, 494 U.S. 325, 334 (1990); *see also United States v. Schmitt*, 770 F.3d 524, 531 (7th Cir. 2014). Lastly, even if Russell possessed the unaccounted-for knife, a reasonable officer would not have believed that Russell posed a threat from inside his apartment to officers outside his apartment. *See* Opening Br. 20-22.

B. If it were reasonable for Powell to feel unsafe prior to conducting the sweep, presumably the first officers on the scene—who arrived more than

an hour before Powell did—would have conducted the sweep. *See* Opening Br. 22.

Powell responds that the sweep did not occur until after he and Spiegelhoff arrived and were told about Marvitz's "concerns" that Russell's apartment was left unattended. Powell Br. 23. But, as already explained (at 10-11), a reasonable jury could easily find that Marvitz did not have those concerns. Besides, the apartment managers told the first officer on the scene (Coca) that Russell had left. App. 74. Any reasonable officer who arrived an hour after other officers had canvassed the scene and interviewed witnesses would conclude that if the previous officers had decided not to sweep Russell's apartment, then his apartment did not pose such an urgent threat that they needed to enter it without a warrant.

C. Even assuming key facts in Powell's favor—that a reasonable officer would believe that Russell was in his apartment and that the officers were in danger in the hallway outside—the officers didn't need to be in the hallway to begin with. The officers were not there to execute a search or arrest warrant. In fact, the officers were not serving any law-enforcement function by going to the second floor, and Powell doesn't argue otherwise. So, assuming that Russell was in his second-floor apartment and the officers felt in danger in the hallway, they had an easy way to avoid that danger: They could have left the second floor and waited safely on the first floor until a warrant arrived.

This position is supported by this Court's decision in *United States v. Tapia*, 610 F.3d 505 (7th Cir. 2010), where a warrantless sweep of a home's basement was justified only because there was no reasonable alternative way for the officers to avoid danger while securing the premises. *Id.* at 511. That is, although the officers could have secured the premises simply by guarding the door to the basement rather than entering it, there was good reason to believe that taking that approach would have left the officers "vulnerable to being attacked from behind," thus triggering proper application of the protective-sweep doctrine. *Id. Tapia*'s necessary implication is that if the officers could have secured the premises and stayed safe without entering the basement, the warrantless sweep of the basement would have been unlawful. *See id.* Here, as noted, Powell and other officers easily could have made a different decision and ensured their safety by remaining on the first floor while they waited for the warrant.

D. That the officers allowed the apartment managers to accompany them to stand directly in front of Russell's door to unlock it shows that the officers could not have reasonably believed they were in danger. *See* Opening Br. 22. Attempting to distinguish *United States v. Groce*, 255 F. Supp.2d 936 (E.D. Wis. 2003), Powell retorts that the officers waited for the apartment managers to leave the second floor before they entered Russell's apartment. Powell Br. 23. That sidesteps the problem. Under the protective-sweep doctrine, the officers must have been in the same danger outside the apartment as they would have been inside it. *United States v. Arch*, 7 F.3d

1300, 1303 (7th Cir. 1993). If, as Powell contends, the apartment managers weren't in danger because they left the second-floor hallway before the sweep was carried out, then they must not have been in danger when they were standing in the hallway. The same must be true, then, for Officer Powell. Assuming (counterfactually) that Russell was in his apartment, Powell's argument shows that any potential for danger would have begun only when the officers entered Russell's apartment, which they would not have had a lawful reason to do.[1]

E. Powell argues that he had a reasonable belief that he "or others" were in danger because an unaccounted-for third party was on the property. Powell Br. 21. As previously discussed (at 10-12), no facts support a reasonable belief that there was an unaccounted-for third party, let alone one who was injured or in Russell's apartment. In any case, Powell misinterprets the scope of *Maryland v. Buie*, 494 U.S. 325 (1990), arguing that it seeks to "protect not only the officers, but also *any* individuals on the scene." Powell Br. 20 (emphasis added by Powell). From that (flawed) premise, Powell asserts that a warrantless sweep is justified whenever an unknown third party's location or safety is in doubt or a concerning incident has occurred

[1] Powell emphasizes the modest duration and scope of his warrantless sweep. Powell Br. 25-27. As our opening brief explains (at 16), regardless of its duration and scope, a warrantless sweep is unjustified if it is not supported by a reasonable belief that the area to be searched houses someone who poses a danger to officers.

in an apartment building, where many unidentified people reside. *See* Powell Br. 21; *see also id.* at 18.

That's not correct. A legitimate warrantless sweep must be "aimed at protecting the … *officers"* while they are carrying out legitimate police functions—such completing a lawful arrest, as in *Buie*, 494 U.S. at 335-36 (emphasis added). As the district court observed, the protective-sweep doctrine allows police "to ensure *their own* safety without unnecessarily intruding on the Fourth Amendment rights of a criminal defendant." App. 132 (citing *Buie*, 494 U.S. at 327) (emphasis added). Applying the protective-sweep doctrine fairly, then, means that a warrantless sweep can be justified only by a reasonable belief that an officer on the arrest scene could be harmed. As explained above and in our opening brief, a jury could find that Powell did not have that reasonable belief here.[2]

Conclusion

This Court should reverse and remand for a trial on the merits of Russell's claim that the warrantless search of his apartment violated the Fourth Amendment.

[2] As our opening brief shows (at 27-29), even on Powell's view of the facts, Powell is not entitled to qualified immunity.

Respectfully submitted,

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July 19, 2024

Certificate of Compliance

In accordance with Federal Rule of Appellate Procedure 32(g), I certify that this reply brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) and Circuit Rule 32(c) because it contains 4,566 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2016, set in Palatino Linotype in 14-point type.

/s/ Brian Wolfman
Brian Wolfman