STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2011AP002907-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANTONIO D. BROWN,

Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction and an Order Denying Post Conviction Relief Entered in the Circuit Court for Milwaukee County, Honorable Rebecca F. Dallet, Presiding

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BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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TABLE OF CONTENTS

Page

ISSUES PRESENTED 1

POSITION ON ORAL ARGUMENT AND PUBLICATION 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 4

A. Sentence Credit 4

B. The Stop of the Vehicle 5

ARGUMENT 8

I. Mr. Brown is Entitled to Sentence Credit from the Date of His Arrest to the Date He was Sentenced. 8

A. Standard of review and principles of law 8

B. An extended supervision revocation sentence begins when the person is received at the institution, thereby severing the connection between cases for sentence credit purposes. 9

II. The Police Lacked Reasonable Suspicion or Probable Cause to Stop the Vehicle for a Defective Tail Lamp and Therefore the Stop of the Vehicle Violated Mr. Brown's Constitutional Protections Against Unreasonable Seizures. 12

A. Standard of review. 12

B. The police lacked reasonable suspicion or probable cause to stop the vehicle for the traffic code violation of operating a motor vehicle with a defective tail lamp. . 12

III. Alternatively, Mr. Brown was Denied the Effective Assistance of Counsel When Counsel Failed to Argue that Wis. Stat. § 347.13(1) Does Not Require All Tail Lamp Bulbs Be Operational. 14

A. Standard of review and principles of law..... 14

B. Counsel's failure to argue that Wis. Stat. § 347.13(1) does not require all tail lamp bulbs be operational was deficient and prejudicial. 15

CONCLUSION 17

APPENDIX 101

CASES CITED

***Kimmelman v. Morrison*,**
477 U.S. 365 (1986) 15,16

State v. Beets,
124 Wis. 2d 372, 369 N.W.2d 382
(1985) .....3, *Passim*

State v. Cleveland,
118 Wis. 2d 615, 338 N.W.2d 500 (1984) 14

State v. Floyd, 2000 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155 9

State v. Longcore, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), *aff'd*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620 12

State v. Pallone, 2000 WI 77, 236 Wis. 2d 162, 613 N.W.2d 568, *cert. denied*, 531 U.S. 1175 (2001) (citations omitted) 12

State v. Popke, 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569 12

State v. Presley, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713 .....4*, Passim*

State v. Thiel, 2003 WI 111, 264 Wis. 2d 571, 665 N.W.2d 305 14,15

Strickland v. Washington, 466 U.S. 668 (1984) 14

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

<u>United States Constitution</u>

Fourth Amendment..... 12,14

Sixth Amendment..... 14

Fourteenth Amendment..... 14

Wisconsin Constitution
Article I, § 7 of the Wisconsin Constitution..... 14

Article 1, § 11 of the Wisconsin Constitution..... 12

Wisconsin Statutes

302.113(8m) 8

302.114(8m) 8

304.06(3) 8

304.072 10

304.072(4) .....3, *Passim*

347.13(1) 7,13,15

57.072(4) 10

809.23(1) 2

941.29(2) 2

973.10(2) 8

973.155 .....3, *Passim*

973.155(1) 8,9

OTHER AUTHORITIES CITED

1989 Wis. Act 31, § 1704..... 10

1997 Wis. Act 283, § 244..... 10

WIS JI—CRIM. SM-34A, V.A.3.b,. cmt. 23 (June 1995)..... 10

ISSUES PRESENTED

1. Is Mr. Brown entitled to sentence credit from the date of his arrest in this case to the date he arrived at prison to begin serving both this sentence and a revocation sentence in an earlier case, or only to the date of revocation?

   The circuit court concluded that Mr. Brown is only entitled to sentence credit from the date of his arrest to the date he was revoked in the earlier case.

2 Did the police have reasonable suspicion or probable cause to stop the car in which Mr. Brown was a passenger for a defective tail lamp violation when two tail lamp bulbs on the driver's side were illuminated?

   The circuit court answered yes.

3. Was Mr. Brown denied the effective assistance of counsel when his attorney failed to argue that the tail lamp statute did not require all tail lamp bulbs to be operational?

   The circuit court answered no.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested because the issues can be developed and resolved by the parties' briefs.

Publication is warranted to clarify that, in the context of revocation of extended supervision, a person is entitled to sentence credit pursuant to Wis. Stat. § 973.155 on a

concurrent sentence on new charges until the date the person is received at the institution on the revocation order. *See* Wis. Stat. (Rule) 809.23(1). The need for clarification has arisen because a person revoked from supervision no longer returns to circuit court for an extended supervision reconfinement hearing, but rather the department determines the amount of reconfinement. This issue is pending in at least one other case in this appellate district from the denial of a post conviction motion in the Milwaukee County Circuit Court, *State v. John Oliver Huff Jr.*, District I Case No. 2011AP2268-CR[1]. Publication is warranted to give circuit courts guidance on this recurring issue.

STATEMENT OF THE CASE

On July 8, 2010, the defendant, Antonio D. Brown was charged by criminal complaint with possession of a firearm by a felon, contrary to Wis. Stat. § 941.29(2) (2). The complaint alleged that, on July 3, 2010, Milwaukee police officers stopped a vehicle where Mr. Brown, a convicted felon, was located in the back seat. (2:1). During the subsequent search of the car, the officers discovered a .38 caliber revolver under the front passenger seat. (*Id*.).

On August 10, 2010, defense counsel filed a motion to suppress evidence alleging that the stop and search of the vehicle were unconstitutional and, on January 13th and 21st, 2010, the circuit court conducted an evidentiary hearing on

[1] The briefs filed in ***State v. John Oliver Huff, Jr.,*** District I Case No. 2011AP2268-CR are located in this Court's clerk's office and on the Court's website at: http://wscca.wicourts.gov/appealHistory.xsl;jsessionid=34D8A380000626F5D3DA16D1B3AAA50F?caseNo=2011AP002268&cachedId=3A6130192A6C2637ABE0985832B1B274&recordCount=1&offset=0&linkOnlyToForm=false&sortDirection=DESC.

the motion. (9; 38, 39). The court denied the suppression motion. (39:28-36; App. 101-109) .

On January 26, 2011, the defendant entered a guilty plea to the charge. (40:2-15). On January 28, 2011, the court imposed a sentence of 5 years imprisonment (3 years initial confinement/2 years extended supervision) to run concurrently to Mr. Brown's extended supervision revocation sentence. (41:16; 19). Defense counsel stated that there was not any sentence credit and the court ordered zero days of sentence credit pursuant to Wis. Stat. § 973.155. (41:19; 19).

On January 31, 2011, Mr. Brown timely filed a notice of intent to pursue post conviction relief and, on November 18, 2011, he filed a post conviction motion. (18; 28; App. 117-25). The motion requested an order vacating his plea and sentencing and suppressing all evidence seized during the stop of the vehicle. (28: 1, 8; App. 117, 124).

The motion also requested 209 days of sentence credit pursuant to Wis. Stat. § 973.155. (28:6; App. 122). Mr. Brown argued that under Wis. Stat. § 304.072(4) and ***State v. Beets***, 124 Wis. 2d 372, 369 N.W.2d 382 (1985), he is entitled to credit from the date of his arrest (July 3, 2010) to his January 28, 2011 sentencing date in this case. (28:6-7; App. 122-23).

On November 21, 2011, the court issued a decision and order on the post conviction motion. (29; App. 112-16). The court denied the motion to vacate the plea and sentencing and, instead of 209 days, ordered 195 days of sentence credit. (*Id*.).

On December 12, 2011, Mr. Brown timely filed a notice of appeal. (31).

STATEMENT OF FACTS

A. Sentence Credit

The police took Mr. Brown into custody on July 3, 2010 at the scene. (38:4, 15-19, 21). Bail was set at $5000 and he did not post this bail during the proceedings. (33:7, *See* 1). At the time of his initial appearance on July 8, 2010, there was a felony violation of supervision hold on Mr. Brown. (33:6-7).

Mr. Brown's extended supervision on a prior case, Milwaukee County Case No. 04CF1991, was revoked by a revocation order dated January 14, 2011. (28:9, App. 125). He was admitted to Dodge Correctional Institution on February 2, 2011 on both the January 14th revocation order and the January 31, 2011 judgment of conviction in this case. (*Id*.).

The post conviction motion requested 209 days of sentence credit pursuant to Wis. Stat. § 973.155. (28:6, App. 122). Mr. Brown argued that under Wis. Stat. § 304.072(4) and ***Beets***, he is entitled to credit from the date of his arrest (July 3, 2010) to his January 28, 2011 sentencing date in this case. (28:6-7; App. 122-23).

The court granted 195 days of sentence credit from the date of Mr. Brown's arrest to January 14, 2011. (29:5; App. 116). It denied sentence credit for the 14 days between the revocation order in Case No. 04CF1991 and his sentencing date. (*Id*.). Relying on ***Beets*** and ***State v. Presley***, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713, the circuit court reasoned that Mr. Brown's custody on his extended supervision hold converted into a revocation and sentence on the date of the revocation order. (29:5; App. 116).

B. The Stop of the Vehicle

At the suppression hearing, Milwaukee Police Officers Michael Wawrzonek and William Feely testified that, on July 3, 2010, they observed a 1977 Buick Electra. (38:3-5, 25-26). According to the officers, this car had a defective tail light and they then stopped it for a defective tail lamp. (38:5-6, 26). A firearm was found during a subsequent search of the vehicle. (38:17, 20-22, 31).

According to Wawrzonek, two of the tail light panels were working properly on the drivers' side. (38:5, 10). One of the three driver's side panels, which was one of the red lights, was out. (38:5, 9-10, 26). According to Feely, the driver's side middle tail light was out. (38:26).

The driver of the vehicle, Willie Lipsey, testified that on July 3, 2010, just before the police stopped the car, as he was pumping gas, he observed that the tail lights were operational. (39:4-9). According to Mr. Lipsey, Exhibit 3, a photograph of the back of the car, shows its tail light structure. (39:8; *See* 44:Ex. 4).

Mr. Lipsy testified that each of the two light compartments has four lights. (39:9, 14). A photograph of the driver's side rear light compartment shows four lights under a plastic panel. (44: Ex. 4). The plastic panel is mostly red and the right end of the panel, closest to the license plate, is white. (39:9; 44: Ex. 4).

Mr. Lipsey also testified that when the car is on the two parking lights (the first and third lights) on each side are on. (39:14-16). According to his testimony, when the car is driving down the street, there are four lights illuminated – the two parking lights on each side. (39:15-16).

Mr. Lipsey testified that there are three lights under the red panel with the first and third light being the parking lights and the middle light being the brake light. (39:9, 15-16). The fourth light, the reverse light, is a white light, next to the license plate. (*Id*.). He testified that the car had to be in reverse for that light to be lit. (39:18).

The state argued that based on the officers' testimony, there was a defective tail lamp and the officers conducted an appropriate stop based on that defective tail lamp. (39:21-22, 24). Defense counsel argued that there was no violation of law because the middle light, the brake light, was operational and does not light up when the car is parked. (39:24-26).

The court denied the motion to suppress. (39:28-36). The court found the officers' testimony to be credible. (39:31-32; App. 104-105). It found incredible Mr. Lipsey's testimony that he remembered that the tail lamps were working. (39:32; App. 105). The court concluded that the stop of the vehicle was justified because the police had reasonable suspicion of a traffic violation. (39:33; App. 106). The court implicitly found that the traffic violation was a defective tail light. (*See* 39:28-36; App. 101-109).

At the January 26, 2010 plea hearing, the court further explained why the police had reasonable suspicion to stop the car for a traffic violation: the police could stop the car if they reasonably believed that a tail light was out, even if it was later shown that that light was not supposed to be on. (40:7-8; App. 110-11). (*Id*.).

Also, given the age of the car, the officers could have been mistaken as to which lights are supposed to be on and which lights are not supposed to be on. (*Id*.).[2]

In the post conviction motion, Mr. Brown argued that the stop of the vehicle was unconstitutional because the police did not have reasonable suspicion that there was a violation of operating a motor vehicle with defective tail lamps. (28:4-5; App. 120-21). He argued that even assuming the officers' testimony that one of the rear lights was out, this was not a violation of the traffic code. (28:4; App. 120). He reasoned that according to Wis. Stat. § 347.13(1) a vehicle need not have all of its tail lights operating, but rather required that only two tail lights be in good working order. (*Id*.). He argued alternatively that defense counsel's failure to argue that the vehicle did not violate Wis. Stat. § 347.13(1) because this statute did not require all tail lights to be operational denied him the effective assistance of counsel. (28:5-6; App. 121-22). He requested an evidentiary hearing on this claim. (28:6; App. 122).

The court denied the post conviction motion for these reasons: (1) even if defense counsel had brought Wis. Stat. § 347.13(1) to the court's attention, the result of the proceedings would have been the same; and (2) the officers objectively believed that one of the vehicle's lights was defective. (29:2-3; App. 113-14.).

Other facts will be discussed below as necessary.

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[2] There was testimony and argument about the circumstances and constitutionality of the search of the vehicle. The court found that the search of the vehicle was justified. (39:33-35; App. 106-108). Mr. Brown is not challenging the court's ruling regarding the search of the vehicle on appeal.

ARGUMENT

I. Mr. Brown is Entitled to Sentence Credit from the Date of His Arrest to the Date He was Sentenced.

Mr. Brown challenges the circuit court's denial of sentence credit for the 14 days between the date of his revocation order (January 14, 2011) in Milwaukee County Case No. 04CF1991 and the date he was sentenced on this case (January 28, 2011). He is entitled to sentence credit for this period of time.

A. Standard of review and principles of law

Wisconsin Statute § 973.155(1) establishes the boundaries for sentence credit:

> (a) A convicted offender shall be given credit toward the service of his or her sentence for *all days spent in custody in connection with the course of conduct for which the sentence was imposed*. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:
>
> 1. While the offender is awaiting trial;
> 2. While the offender is being tried; and
> 3. While the offender is awaiting imposition of sentence after trial.
>
> (b) The categories in par. (a) and sub (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113(8m), 302.114(8m), 304.06(3), or 973.10(2) placed upon the person for the

> same course of conduct as that resulting in the new conviction.

Wis. Stat. § 973.155(1) (emphasis added). The Wisconsin Supreme Court has noted that, at its core, Wis. Stat. § 973.155 is "designed to afford fairness" to ensure "that a person did not serve more time than he is sentenced." ***State v. Floyd***, 2000 WI 14, ¶23, 232 Wis. 2d 767, 606 N.W.2d 155 (citing ***Beets***, 124 Wis. 2d at 379). The application of Wis. Stat. § 973.155 to undisputed facts presents a question of law that this court reviews de novo. ***Presley***, 292 Wis. 2d 734, ¶ 4.

B. An extended supervision revocation sentence begins when the person is received at the institution, thereby severing the connection between cases for sentence credit purposes.

Pursuant to Wis. Stat. § 973.155, two requirements for sentence credit exist: 1) the defendant must be "in custody"; and 2) the custody must be "in connection with the course of conduct for which the sentence was imposed." Wis. Stat. § 973.155(1), *see also* ***Presley***, 292 Wis. 2d 734, ¶ 6. Mr. Brown was "in custody" as he was confined to the jail and not released on both this case and the extended supervision hold.

The issue here is the second prong of § 973.155. This is because once a defendant begins serving a sentence in one case, he is no longer entitled to credit for time spent in custody awaiting sentencing on another case. ***Beets***, 124 Wis. 2d at 379. The sentencing on one case severs the connection with the custody on the other case. ***Id***. Thus, central question for this case becomes: When does the "connection" sever for a defendant who is in custody for new charges and the State revokes his extended supervision on a prior conviction?

Both the plain language of Wisconsin statutes and Wisconsin case law demonstrate that the connection severs when the defendant arrives at a correctional institution to begin serving the revocation sentence, not on the date of revocation. Wisconsin Statute § 304.072(4) states:

> The sentence of a revoked parolee or person on extended supervision resumes running on the day he or she *is received at a correctional institution* subject to sentence credit for the period of custody in a jail, correctional institution or any other detention facility pending revocation according to the terms of s. 973.155.

Wis. Stat. § 304.072(4) (emphasis added). The Wisconsin Jury Instructions—while outlining sentence credit—also state that a revocation sentence resumes running when the defendant arrives at the institution. *See* WIS JI—CRIM. SM-34A, V.A.3.b,. cmt. 23 (June 1995) (citing Wis. Stat. § 57.072(4), which has since been renumbered to § 304.072 and now includes extended supervision. *See* 1989 Wis. Act 31, § 1704; 1997 Wis. Act 283, § 244). Thus, even though the State may revoke the defendant's supervision at an earlier date, the defendant does not begin serving a sentence "in connection" with the revocation until the date the defendant arrives at the correctional institution.

In ***Presley***, this Court concluded that according to the ***Beets*** court "the lynchpin to the uncoupling of the connection between the new and old charges was the act of sentencing, *not the revocation determination*." ***Presley***, 292 Wis. 2d 734, ¶ 9 (emphasis added, citing 124 Wis. 2d at 379). This Court held that the reconfinement hearing, and not the extended supervision revocation date, severs the connection between the old and new charges. ***Id***. at ¶ 10. The ***Presley*** court relied on Wis. Stat. § 304.072(4), which according to this Court: "unambiguously states that the sentence begins once the

offender is transported and received at a correctional institution, not when the revocation occurs." ***Id***. at ¶ 10.

In this case, in the absence of a reconfinement hearing in the circuit court[3], the connection between the custody on the two cases was not severed until Mr. Brown was sentenced on this case on January 28, 2011. On this date, according to Wis. Stat. § 304.072(4), Mr. Brown had not yet started serving his revocation sentence because he had not yet been received at the institution on the revocation sentence. *See* ***Presley***, 292 Wis. 2d 734, ¶ 14. Further, according to this Court's reasoning in ***Presley***, the department's revocation order had not uncoupled the connection between the custody for the old and new charges. *See* ***Id***. at ¶ 9.

Thus, even though Mr. Brown's supervision was revoked by an order dated January 14, 2011, he did not start serving the revocation sentence until February 11, 2011 when he arrived at Dodge Correctional Institution on both the revocation sentence and the sentence in this case. Although Mr. Brown's extended supervision was revoked before his sentencing in the other case, his first sentence (the sentence in this case) did not commence until the date of sentencing in this case. Mr. Brown is therefore entitled to 209 days of sentence credit from the date he was arrested in this case (July 3, 2010), to the date he was sentenced on this case (January 28, 2011).

[3] Subsequent to ***Presley***, the Legislature eliminated reconfinement hearings. *See* 2009 Wisconsin Act 28.

II. The Police Lacked Reasonable Suspicion or Probable Cause to Stop the Vehicle for a Defective Tail Lamp and Therefore the Stop of the Vehicle Violated Mr. Brown's Constitutional Protections Against Unreasonable Seizures.

A. Standard of review.

When reviewing a motion to suppress, appellate courts apply a two-step standard of review. ***State v. Pallone***, 2000 WI 77, ¶ 27, 236 Wis. 2d 162, 613 N.W.2d 568When reviewing a motion to suppress, appellate courts apply a two-step standard of review. ***State v. Pallone***, 2000 WI 77, ¶ 27, 236 Wis. 2d 162, 613 N.W.2d 568, *cert. denied*, 531 U.S. 1175 (2001) (citations omitted). First, an appellate court will uphold a circuit court;s findings of historical facts unless sthose facts are clearly erroneous. ***Id.*** Second, an appellate court reviews *de novo* the application of constitutional principles to those facts. ***Id.***

> (citations omitted). First, an appellate court will uphold a circuit court's finding of historical facts unless those facts are clearly erroneous. ***Id***. Second, an appellate court reviews *de novo* the application of constitutional principles to those facts. ***Id***.

B. The police lacked reasonable suspicion or probable cause to stop the vehicle for the traffic code violation of operating a motor vehicle with a defective tail lamp.

The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Wisconsin Constitution protect citizens against unreasonable searches

and seizures. U.S. CONST., Amend. IV and WIS. CONST., Art 1, § 11. "A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred, or have grounds to reasonably suspect a violation has been or will be committed." ***State v. Popke***, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569 (citation omitted).

When an officer conducts a traffic stop on the basis of a specific offense, "it must indeed *be* an offense; a lawful stop cannot be predicated upon a mistake of law." ***State v. Longcore***, 226 Wis. 2d 1, 9, 594 N.W.2d 412 (Ct. App. 1999), *aff'd*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620. Here, the stop of the vehicle was unconstitutional because it was predicated on a mistake of law. The officers did not have reasonable suspicion or probable cause that the driver of the vehicle had committed, was committing or was about to commit the traffic code violation of operating a motor vehicle with defective tail lamps.

Wis. Stat. § 347.13(1) provides, in relevant part, that: "[n]o vehicle originally equipped at the time of manufacture and sale with 2 tail lamps shall be operated upon a highway during hours of darkness unless both such lamps are in good working order." Wis. Stat. § 347.13(1). There is no requirement under this statute that all of the tail lamps on the vehicle be in good working order – only that two tail lamps be in good working order.

Here, the car was equipped with a total of four tail lamp bulbs – two on the drivers' side and two on the passenger side. According to the officer's testimony, the car had two tail lamps on the left side that were operational. The officer stopped the vehicle for a defective tail lamp because the officer believed that the middle side driver's tail light was

out. Even so, having two operational tail lamp bulbs on the driver's side is not a violation of Wis. Stat. § 347.13(1). All that is required is that two tail lamp bulbs be in good working order. Here, the vehicle had at least two lamps bulbs operational on the left side.

Therefore, the officers incorrectly believed that the driver's side tail light was defective and a violation of the traffic code. Because there was neither probable cause nor reasonable suspicion of a traffic violation, the stop of the vehicle was unconstitutional and the evidence obtained during the search of the vehicle must be suppressed.

III. Alternatively, Mr. Brown was Denied the Effective Assistance of Counsel When Counsel Failed to Argue that Wis. Stat. § 347.13(1) Does Not Require All Tail Lamp Bulbs Be Operational.

A. Standard of review and principles of law

Alternatively, should this court conclude that trial counsel failed to sufficiently argue that the vehicle had not violated the defective tail light statute because there was no requirement that all of the tail lamp bulbs be operational, Mr. Brown argues that trial counsel's failure to so argue denied him the effective assistance of counsel. The United States and Wisconsin constitutions guarantee a criminal defendant the right to the effective assistance of counsel. U.S. Const. amends. VI, XIV, WI Const. art. I, § 7; ***State v. Thiel***, 2003 WI 111, ¶18, 264 Wis. 2d 571, 665 N.W.2d 305. To establish the denial of the effective assistance of counsel, the defendant must prove first, that counsel's performance was deficient, and second, that counsel's deficiencies prejudiced his defense. ***Id***. (citing ***Strickland v. Washington***, 466 U.S. 668, 687 (1984)).

Counsel's performance is deficient when it falls below objective standards of reasonableness. ***Id***., at ¶19 (citing ***Strickland***, 466 U.S. at 688.) In the Fourth Amendment context, the United States Supreme Court has specifically articulated the following standard for ineffective assistance of counsel claims.

> Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice.

Kimmelman v. Morrison**,** 477 U.S. 365, 375 (1986). *See* ***State v. Cleveland***, 118 Wis. 2d 615, 618, 338 N.W.2d 500, 514 (1984).

A claim of ineffective assistance of counsel is a mixed question of fact and law. ***Thiel***, 264 Wis. 2d 571, ¶ 21. This Court reviews *de novo* the questions of whether trial counsel's deficiencies were prejudicial. ***Id.***, at ¶¶ 20-21. The circuit court's findings of fact should be upheld unless clearly erroneous. ***Id.***, at ¶ 20.

B. Counsel's failure to argue that Wis. Stat. § 347.13(1) does not require all tail lamp bulbs be operational was deficient and prejudicial.

In Mr. Brown's case, trial counsel's performance was deficient when he failed to argue that there was no statutory requirement that *all* of the tail lamp bulbs be operational and that the vehicle did not violate the tail lamp statute. For the reasons argued in Issue II, Section B above, the vehicle did not violate Wis. Stat. § 347.13(1) because two of the driver's side tail lamp bulbs were working.

Contrary to the post conviction court's conclusion, Mr. Brown was prejudiced by counsel's failure to present this argument. The officers' objective view of the vehicle was that it had two lights operating. Even if the officers objectively believed, given the type of car, that the middle light was out and that the statute required the middle light to be on, this was a mistake of law.

Because the stop was unconstitutional, the evidence obtained from the search must be suppressed. As a result, the outcome of the court proceeding would have been different. Without the firearm as evidence, the State would not have been able to continue prosecuting Mr. Brown for the charge of felon in possession of a firearm. The case would have been dismissed, instead of Mr. Brown pleading guilty to the charge. Because there "is a reasonable probability that the verdict would have been different absent the excludable evidence," Mr. Brown was prejudiced by trial counsel's deficient performance. *See* ***Kimmelman***, 477 U.S. 365 at 375.

CONCLUSION

For all of the above reasons Mr. Brown requests that this court reverse the circuit court's denial of his post conviction motion to suppress evidence and vacate his plea and sentencing and for 209 days of sentence credit and remand this case with an order to: 1) vacate the plea and sentencing; and 2) suppress the evidence obtained during the stop and search of the vehicle. Alternatively he requests an order amending the judgment of conviction to include 209 days of sentence credit pursuant to Wis. Stats. § 973.155.

Dated this 26th day of April, 2012.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 4,206 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 26th day of April, 2012.

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A P P E N D I X

I N D E X
T O
A P P E N D I X

Page

Circuit Court's 1/21/11 Oral Decision Denying Defendant's Suppression Motion 101-109

Circuit Court's 1/26/11 Explanation of Decision Denying Suppression Motion..... 110-111

Circuit Court's 11/21/11 Decision and Order on Defendant's Post Conviction Motion 112-116

Defendant's Rule 809.30 Motion for Post Conviction Relief 117-125

Amended Judgment of Conviction issued 1/4/12 126

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 26th day of April, 2012.

Signed:

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