STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2011AP2916-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

ANDREW M. EDLER,

Defendant-Respondent.

APPEAL FROM AN ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE, ENTERED IN THE CIRCUIT COURT FOR SHEBOYGAN COUNTY, THE HONORABLE TERENCE T. BOURKE, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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STATEMENT OF ISSUE

Is Edler's informational question as to whether an attorney can be present at an interrogation, asked over fifteen minutes before the formal interrogation began, and answered quickly and honestly by the police, a clear unequivocal invocation of Edler's *Miranda* right to counsel, so as to render Edler's waiver of his *Miranda*

rights after being formally apprised of his rights ineffectual and his subsequent confession inadmissible?

The trial court answered this question yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The state believes that neither oral argument nor publication is necessary as the arguments will be fully developed in the parties' briefs and the issues presented involve the application of well-settled legal principles.

STATEMENT OF THE CASE

This is an appeal from an order filed November 21, 2011, in the Sheboygan County Circuit Court (36; A-Ap. 101-02[1]) in which the Honorable Terence T. Bourke, granted Edler's motion to suppress evidence obtained pursuant to an interrogation conducted on April 20, 2011.

A criminal complaint filed April 22, 2011, charged Edler with two counts of party to a crime of arson of a building and one count of party to a crime of selling/possessing/manufacturing Molotov cocktails, contrary to Wis. Stat. §§ 943.02(1)(a), 939.50(3)(c), 939.05, and 943.06(2), 939.50(3)(h), 939.05 (1:1-2; A-Ap. 103-04).

According to allegations in the complaint, the charges were based in part on statements Edler made to the police on April 20, 2011 (1:2-4; A-Ap. 104-06).

An information filed April 27, 2011, charged Edler with two counts of party to the crime of arson of a building and one count of party to the crime of

[1]Record 36 is listed as two pages. However, the order consists of one page. Page two is a duplicate of page one.

selling/possessing/manufacturing Molotov cocktails (8:1-2; A-Ap. 110-11).

On June 10, 2011, Edler filed a motion to suppress statements and derivative evidence asserting that the statements he made to the police on or after March 30, 2011, were obtained in violation of his Fifth Amendment rights (19; A-Ap. 112-15).

A hearing on the suppression motion was held on August 30, 2011 (42:1-38; A-Ap. 116-53). The court issued its oral ruling on November 7, 2011, finding that there was no Sixth Amendment violation but granting Edler's motion to suppress his April 20, 2011 statements based on the police violating Edler's Fifth Amendment right to counsel during a custodial interrogation (35:1-9; A-Ap. 154-62). The written order granting Edler's motion for suppression was filed on November 19, 2011 (36; A-Ap. 101-102).

The state appealed from the order granting the motion to suppress (40:1-2).

STATEMENT OF FACTS

On March 30, 2011, Detective Gerald Urban, an eight-year veteran of the Sheboygan County Sheriff's Department, interviewed Andrew Edler in connection with Edler's possible involvement in a burglary (42:9-11; A-Ap. 124-26). During the custodial interrogation, Detective Urban changed his focus from a burglary to an alleged arson incident (42:11; A-Ap. 126). Shortly after the interview ventured into the arson area, Edler advised Detective Urban that he would like a lawyer from this point on and Detective Urban stopped the questioning (42:11-12; A-Ap. 126-27). Detective Urban advised Edler that he should be quiet as Edler had invoked his right to an attorney (42:12; A-Ap. 127).

On March 31, 2011, Edler, still in custody, reinitiated contact with Detective Urban (42:12-13; A-Ap. 127-28). However, during this contact there was no substantive discussion about either the burglary or the arson cases (42:13; A-Ap. 128). Edler was formally charged with burglary on April 1, 2011, by the Sheboygan County District Attorney's office and counsel was appointed for Edler to represent him in the burglary case (42:13-14; A-Ap. 128-29). Edler was then released from custody when he bonded out on April 1, 2011 (42:14-15; A-Ap. 129-30). *See* Wisconsin Court System Circuit Court Access for Sheboygan County Case No. 2011CF0146.

On April 18, 2011, Detective Urban had an interview with Shawn Jones during which Jones implicated Edler as to the arson case Urban was investigating (42:15; A-Ap. 130). Shawn Jones agreed to wear a wire in setting up a conversation with Edler about the arson matter. The meeting was set up for April 18 and took place in Edler's home (42:15-16; A-Ap. 130-31). During the wired conversation with Jones, Edler made some inculpatory remarks about his involvement in the arson (42:16-17; A-Ap. 131-32).

On April 20, 2011, Detective Urban and Detective Judd went to Edler's home and arrested Edler for arson (42:16-17, 25-26; A-Ap. 131-32, 140-41). Edler's father was present when Detective Urban arrested Edler (42:26; A-Ap. 141). Edler's father told Edler that he should cooperate with law enforcement and should tell the truth (42:26; A-Ap. 141). Edler was then handcuffed, placed in the squad and Detective Urban sat next to Edler (42:26; A-Ap. 141). As the drive began, Urban told Edler that he should consider taking his father's advice about telling the truth (42:17; A-Ap. 132). About five minutes into the twenty-minute drive to the Sheboygan County Sheriff's Department, Edler asked Detective Urban, "Can my attorney be present for this?," and Urban told him yes (42:27; A-Ap. 142). During the rest of the ride, Edler did not discuss anything about wanting an attorney (42:27; A-

Ap. 142). Detective Urban did not question Edler about the charged burglary or the arson matters during transport (42:27; A-Ap. 142).

Upon arrival at the Sheboygan County Sheriff's Department, Edler was brought into the interview room and was read his *Miranda* rights (42:28; A-Ap. 143). When Detective Urban read the second right of the *Miranda* warning (the right to counsel), Edler interrupted Urban and asked if requesting an attorney would impact whether or not he would have to remain in custody and Urban apprised Edler that it would have no impact on Urban's decision as to whether or not Edler should remain in custody (42:29; A-Ap. 144). After the interruption, Urban re-read the *Miranda* warning in its entirety and Edler waived his rights and agreed to answer questions (42:29-30; A-Ap. 144-45). Edler then made several admissions implicating himself in the arson cases (1:2-4; A-Ap. 104-06).

THE SUPPRESSION ORDER SHOULD BE REVERSED BECAUSE EDLER DID NOT CLEARLY AND UNEQUIVOCALLY ASSERT HIS *MIRANDA* RIGHT TO AN ATTORNEY BEFORE BEING READ HIS RIGHTS, AND AFTER THE READING OF THE *MIRANDA* WARNING EDLER CLEARLY AND KNOWINGLY WAIVED HIS RIGHTS.

A. Introduction.

This appeal hinges on one issue; that being whether Edler clearly and unequivocally asserted his *Miranda* right to an attorney during his transport to the sheriff's department and at least fifteen minutes before the reading of his rights, so as to prohibit the police from attempting to start an interrogation. While side issues were discussed by the parties during trial briefing, such as the impact of Edler's clear request for an attorney during a previous custodial interrogation on a different matter or whether

Edler could anticipatorily assert his right to an attorney, the record shows that neither of these issues should trigger debate. This is true because Edler was released from custody for nineteen days after his clear *Miranda* invocation of his right to an attorney prior to the interrogation in dispute, and also because when Edler made his reference to an attorney that is the subject of this appeal, the prospect of interrogation was present. So the defining question is whether Edler's statement, "Can my attorney be present for this?" made in the squad about fifteen minutes before the actual interrogation began, is a clear assertion of Edler's *Miranda* right to counsel precluding the police under *Edwards v. Arizona*, 451 U.S. 477 (1981), from even initiating a custodial interrogation. Edler submits that it was and the trial court agreed with him.

As will be more specifically argued below, the state contends that Edler's statement is best described as a question about the scope of his rights and not an assertion of them. In any event it is ambiguous. Moreover, while under *Davis v. United States*, 512 U.S. 452 (1994), there is no requirement for the police to seek clarification upon receiving an ambiguous request for counsel in the *Miranda* context, there was the ultimate clarification opportunity given to Edler here; he was read the *Miranda* warning in its entirety and clearly waived his rights. The state submits that the police did not violate Edler's Fifth Amendment rights, did not badger Edler into talking to them, and provided Edler with all the prophylactic protection of his Fifth Amendment rights mandated by *Miranda v. Arizona*, 384 U.S. 436 (1966), *Edwards*, and their progeny. Edler's incriminating statements about his role in an arson case were improperly suppressed and the state asks this court to reverse the trial court on this issue.

B. Standard of Review and Applicable Law.

The sufficiency of a defendant's invocation of his *Miranda* right to counsel is a question of constitutional fact. *State v. Jennings*, 2002 WI 44, ¶ 20, 252 Wis. 2d 228, 647 N.W.2d 142. Constitutional facts are reviewed under a two-part standard. The circuit court's findings of fact are to be upheld unless clearly erroneous, and the application of constitutional principles to those evidentiary facts are reviewed de novo. *Id.*

When an accused invokes his *Miranda* right to counsel during a custodial interrogation, the police must not conduct any further custodial interrogations unless the accused has obtained counsel or initiates the new contact with the police. *Edwards*, 451 U.S. at 484-85. The rationale of *Edwards* is that once a suspect invokes his *Miranda* right to counsel, any subsequent waiver that comes at the authorities behest is the product of unlawful pressures on the defendant. *Maryland v. Shatzer*, 130 S. Ct. 1213, 1219 (2010). The *Edwards* rule prevents the police from taking advantage of the mounting pressures of continuous police custody and breaking down the original resolve of the defendant to not answer questions without an attorney present. *See Shatzer*, 130 S. Ct. at 1219-20. The *Edwards* rule is not a constitutional mandate but rather a judicially created rule designed to protect a suspect's Fifth Amendment rights. *Id.* at 1220. As a judicial rule, the *Edwards* rule is only justified by its prophylactic purpose. *Id.* The *Edwards* rule is designed to prevent the police from badgering a defendant from waiving his previously asserted *Miranda* right to counsel. *Montejo v. Louisiana* 556 U.S. 778, 787 (2009). The need for *Edwards* protections dissipate when a subject, who asserts his *Miranda* right to counsel during a custodial interrogation, is released from custody for fourteen continuous days after the custodial invocation. *Shatzer*, 130 S. Ct. at 1223. The fourteen-day break from custody after the custodial invocation provides ample time for a suspect to get re-acclimated to normal life, and to shake

off any of the residual coercive effects of his/her prior custody. *Id.* Confessions obtained after a two-week break in custody and a waiver of *Miranda* rights are most unlikely to be compelled, and should not be suppressed. *Id.* The loss of *Edwards* protections after being released from custody for fourteen continuous days spares a reviewing court from a fact intensive inquiry, in analyzing a new interrogation, as to whether a subject had ever, anywhere, asserted the *Miranda* right to counsel. *Id*. at 1223-24.

The applicability of the *Edwards* rule requires a court to determine whether the accused has actually invoked his right to counsel. *Davis*, 512 U.S. at 458. The invocation of the *Miranda* right to counsel must unambiguously request counsel. *Id*. at 459. If a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have only understood that a subject might be invoking his right to counsel, the *Edwards* rule requiring the police to refrain from initiating a custodial interrogation is not engaged. *Id.* The United States Supreme Court refuses to provide *Edwards* protections when a suspect might want a lawyer. *Davis*, 512 U.S. at 462.

A fair summary of the applicable law is that a person in custody who clearly invokes his *Miranda* right to an attorney may not be re-approached by the police for a custodial interrogation, unless the subject initiates the contact or the subject has been released from custody for at least fourteen continuous days after the assertion and before the new attempt. Once the police attempt to interrogate a subject in custody, that subject may stop the interrogation and prevent the police from initiating a new custodial questioning if the subject clearly, unequivocally, and unambiguously asserts his/her Fifth Amendment *Miranda* right to counsel. Whether or not a subject's reference to an attorney is a clear assertion of the right to counsel, is an objective inquiry based in light of all the circumstances present.

C. Application of the Law to Facts of this Case.

There is little dispute as to the applicable facts in this case. The controversy arises over how these facts are interpreted. First off, the state argues that two possible issues triggered by the facts in this case are not critical to resolving this dispute. The first is whether Edler was "fair game" for a police initiated custodial interrogation when he was arrested on April 20, 2011, nineteen days after he had been released from custody. Edler argued half-heartedly to the trial court that he was off limits on April 20 because of his March 30, 2011 invocation of his *Miranda* right to counsel (28:5). However the law on this issue is crystal clear. The primary purpose of the *Edwards* rule prohibiting police initiated contact to a subject who has invoked his *Miranda* right to counsel, is to prevent police badgering and police exploitation of the debilitating effects of continuous custody. These compelling circumstances are no longer present when a subject has been released from custody for fourteen continuous days after his/her *Miranda* invocation. *See Shatzer*, 130 S. Ct. at 1223. Edler suggested to the trial court that it remains open to debate as to whether Wisconsin would adopt the *Shatzer* modification of the *Edwards* rule by pointing out that there is no Wisconsin case on the impact of a break in custody to *Edwards* applications (28:5 n.1). However, the United States Supreme Court authored the *Edwards* rule. Wisconsin has embraced the rule. Now the United States Supreme Court has modified its own rule in *Shatzer*. It is illogical to suggest that Wisconsin would adopt a United Stated States Supreme Court created rule and not endorse that court's adaptations to the rule. Moreover, the applicability of the *Edwards* rule is not a matter of constitutional dimension, as it is not a constitutional right but rather a judicially created prophylaxis. *See Shatzer*, 130 S. Ct. at 1220. The state submits that it should be without dispute that Edler was 'fair game" for a police initiated custodial interrogation at the time Edler was arrested on April 20, 2011.

The second possible issue deals with the timing of Edler's disputed reference to an attorney during police transport on April 20, 2011. It is undisputed that this reference occurred at least fifteen minutes before the police actually attempted a custodial interrogation. So, Edler was either making an ambiguous and anticipatory invocation of his *Miranda* right to counsel, or a clear and anticipatory assertion of his right. The issue of the validity of an anticipatory assertion of the *Miranda* right to counsel was addressed but not definitively resolved by the Wisconsin Supreme Court in *State v. Hambly*, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48. Nevertheless, the state leaves that battle for another day as it concedes under the circumstances present here, particularly the police mentioning to Edler that he should heed his father's advice to tell the truth, that it was evident that an attempted interrogation was forthcoming. However, while the state does not fight in this instance Edler's right to invoke his *Miranda* right to counsel during the police transport, it maintains that the lack of temporal proximity between the challenged statement and the onset of the interrogation is a factor in determining the core issue as to whether Edler's squad car question was clear or ambiguous.

Accordingly, the central issue in this case is whether Edler asserted his *Miranda* right to an attorney during the police transport on April 20, 2011, so as to trigger the prophylactic protections of the *Edwards* rule. The law concerning the clarity of a *Miranda* invocation is articulated in the seminal case of *Davis.* In *Davis* the high court opined that determining whether a reference to an attorney is a clear or ambiguous assertion of the *Miranda* right to counsel is an objective inquiry based on all the circumstances present. *Davis,* 512 U.S. at 459. Edler's statement made during transport was, "Can my attorney be present for this?" (42:27; A-Ap. 142). While the record is unclear, the assumption, an assumption that the state does not challenge, is that "this" meant an upcoming interrogation. The salient facts surrounding Edler's statement are as follows:

- Edler was interrogated on March 30, 2011, by Detective Urban concerning Edler's role in a burglary case (42:9-11; A-Ap. 124-26).

- During this interrogation, Edler clearly asserted his *Miranda* right to counsel terminating the interview (42:11; A-Ap. 126).

- Edler was formally charged with burglary on April 1, 2011, and counsel was appointed for him (42:13-14; A-Ap. 128-29).

- Edler bonded out on the burglary charge and was released from custody on April 1, 2011 (42:14-15; A-Ap. 129-30).

- On April 20, 2011, Edler was arrested at his family residence for arson (42:16-17, 25-26; A-Ap. 131-32, 140-41).

- After Edler was arrested, Edler's father, in front of the police, told Edler to tell the truth (42:26; A-Ap. 141).

- Edler was handcuffed, and placed in a squad next to Detective Urban (42:26; A-Ap. 141).

- As the drive to the Sheboygan County Sheriff's Department began, Detective Urban told Edler that Edler should consider taking his father's advice about telling the truth (42:17; A-Ap. 132).

- About five minutes into the twenty-minute drive, Edler asked Detective Urban if Edler's lawyer could be present and Detective Urban told Edler, yes (42:27; A-Ap. 142).

- Edler made no further mention of an attorney throughout the rest of the ride (42:27; A-Ap. 142).

- Throughout the entire ride, Edler was not read the *Miranda* warning and was not questioned about either the charged burglary matter or the uncharged arson case (42:27; A-Ap. 142).

- Upon arrival at the Sheboygan County Sheriff's Department, Edler was brought into an interview room and read the *Miranda* warning (42:28; A-Ap. 143).

- During that portion of the *Miranda* warning dealing with Edler's right to counsel, Edler interrupted Detective Urban and asked if his requesting an attorney would impact on whether he would be placed in custody or on whether he would go to jail (42:29-30; 24:Ex. 3 minute 16:51:20).

- Detective Urban told Edler that he was already in custody and that he would be willing to discuss the issue further after a reading of the rights. Urban then reread the *Miranda* warning in its entirety and Edler waived his rights and began to answer questions (42:29-30).

The state submits that in the context of these facts, Edler's statement, "Can my attorney be present for this?" was a question about his rights and not an assertion of them. The statement is ambiguous as it can be interpreted as a request for information, as easily as it can be interpreted as a clear expression of a desire not to answer any questions without an attorney present. Moreover, after making this statement, the police did not ignore Edler, or try to distract him with a new subject, but answered his query quickly, clearly, and correctly, that yes

his attorney could be present. Both parties, Edler and Urban, knew that Edler had an attorney on the charged burglary matter. Hence, it made perfect sense that Edler reference this lawyer when being transported for questioning about the arson. However, asking if his lawyer could attend an interrogation is a different matter than requesting that his lawyer be present. It is akin to asking, "Do I have to answer questions when you interview me?," and being told no, you don't have to answer questions. This would not be considered an invocation of the *Miranda* right to silence nor is the question posed here by Edler an invocation of his *Miranda* right to counsel. In either instance, no clarity as to the subject's intent can be gleaned from a question about a right and its answer. Clarity comes with how the subject responds to the information. Edler did not give a response, did not show how he wished to proceed or not proceed armed with the information that his attorney could be present, if he so wished. Under these circumstances, Edler's statement is ambiguous as it relates to a desire to have a lawyer assisting him during a custodial questioning.

Both Edler, in his trial brief, and the trial court, in its ruling, placed significant import on the fact that Edler had an attorney for the charged burglary matter. The trial court correctly noted that Edler's talking to the police on April 20 did not violate his Sixth Amendment rights as the arson matter was an uncharged, different offense, but did feel that Edler's earlier retention of counsel clarified any ambiguity in the challenged statement in Edler's favor. Specifically, the trial court opined that the facts that Edler already had counsel on the burglary charge, and had asserted his *Miranda* right to counsel when interrogated on the burglary on March 30, meant that he was clearly asserting his *Miranda* right to counsel on April 20 when he asked "Can my attorney be present for this?" (35:7; A-Ap. 160). The state counters that the facts that Edler had counsel, and Edler had previously asserted a *Miranda* right to counsel on an earlier occasion, point just as clearly to interpreting Edler's question as a request for

information and not an assertion of a right. This is so because Edler had demonstrated in the past that he knew how to clearly request counsel when he wished to, and also because since Edler had an attorney and the parties all knew this, a question about whether the lawyer could attend questioning would be reasonably interpreted as a question about the scope of a right and not an affirmative assertion that Edler would not answer questions without counsel.

A key factor in this case is that Edler made his statement at least fifteen minutes before the formal interrogation began. It was clearly anticipatory. Leaving aside whether a person can assert his *Miranda* right to counsel anticipatorily, particularly when the interrogation while expected is not temporally imminent, the distance from the challenged lawyer reference to the actual onset of questioning is a factor in an ambiguity analysis. The "ambiguous assertion" cases deal with the issue of whether the defendant having been advised his *Miranda* rights does enough to trigger *Edwards* protections to both stop an ongoing interrogation and to prevent future ones. In these instances, the defendant is being protected from further questioning. Conversely, in our case, Edler seeks protection from being even read the *Miranda* warning. The *Edwards* prophylactic is being stretched from its intended role to protect against compelled statements to protect against the warning, a warning that itself is a prophylactic measure. The state contends that the goal to protect a defendant from what is also a protective measure is a minimal one when compared to the societal cost of excluding incriminating statements. As the United States Supreme Court said in *Montejo* and *Minnick v. Mississippi*, a court created prophylactic rule must be assessed not only on the basis of what is gained, but also on the basis of what is lost. *See Montejo*, 556 U.S. at 793*; Minnick v. Mississippi*, 498 U.S. 146, 161 (1990). Under this calculus, the state submits that there is far less risk for a compelled/coerced confession in requiring from a defendant clarity when asserting his *Miranda* right to counsel fifteen minutes before even being led to the

interrogation theater and being fully advised of his *Miranda* warning, than when a defendant references an attorney after the interrogation process has begun and the warning has been read.

In his trial brief, Edler seeks solace in *Georgia v. Taylor*, 274 Ga. 269, 553 S.E.2d 598 (2001) (28:7). In *Taylor*, the Georgia Supreme Court did find a defendant's statement, "Can I have a lawyer present when I do that?" a clear assertion of his *Miranda* right to counsel. *Id*. at 272. In making this finding the court reasoned that the phrase "can I" is the colloquial equivalent of saying "I want." *Id*. at 273. However, *Taylor* is distinguishable from our case in several respects. First, the defendant's assertion in *Taylor* occurred after Taylor had been read her *Miranda* rights and the questioning had begun. Second, Taylor's question "Can I have a lawyer present when I do that?" when she did not have an attorney is a more clear preference for wanting an attorney, than when Edler asked if his already retained attorney had a right to be present at an interrogation in the future. Thirdly, the *Taylor* court was motivated in part about what they perceived to be poor police conduct in handling Taylor's challenged statement, accusing the police of trying to steer Taylor away from obtaining counsel. *See id.* at 273. In our case, the police answered Edler's question about his lawyer quickly and accurately.

Similar to the state's position is *Commonwealth of Virginia* v. *Redmond*, 264 Va. 321, 568 S.E.2d 695 (2002), where the Virginia Supreme Court held that statements made by a defendant during an ongoing custodial interrogation; "Can I speak to my lawyer? I can't even talk to [a] lawyer before I make any kinds of comments or anything?" were more likely a desire on the part of the defendant to obtain information about his *Miranda* rights than an assertion of them. *See id.* at 330.

Finally the state submits that the discussion between Edler and Detective Urban during the actual reading of the *Miranda* warning exposes the ambiguities

of Edler's statement made in the squad. When advised of his *Miranda* right to a lawyer, Edler interrupted Urban and said "Now if I . . . request a lawyer, does that mean you still have to bring me into custody and I have to go sit in the jail?" (Exhibit 3, minute 16:51:20). This exchange clearly shows that Edler is concerned about his rights and what they might entitle him to, but is not concerned about asserting a desire to have a lawyer assist him in handling questions. This exchange reveals the range of possible motivations for inquiring about the right to a lawyer and therefore reveals the ambiguity of Edler's statement in the police squad, made at least fifteen minutes before an attempt at an interrogation had begun.

In this case, Edler made one reference to an attorney during transport to the sheriff's department. The statement was not a clear request for an attorney to assist him in handling questions or even a demand for the attorney's presence at an upcoming interrogation. Rather his statement, "Can my attorney be present for this?" is only a clear request for an explanation as to the scope of his rights. Edler was not badgered by the police after making this statement and was dutifully read his full *Miranda* warning at least a quarter of an hour after making the statement. Edler's ambiguous question should not trigger the *Edwards* rule. This is especially so, since he would be using the rule as protection from the protective measure of being read his rights, rather than protection to stop an ongoing interrogation. The state respectfully submits that the trial court improperly suppressed Edler's statements made to detective Urban after Edler knowingly waived his Fifth Amendment rights.

CONCLUSION

For all of the forgoing reasons, the state respectfully submits that the order on defendant's motion

to suppress evidence should be reversed, and the case be remanded for further proceedings.

Dated this 20th day of April, 2012.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,636 words.

Dated this 20th day of April, 2012.

_____
DAVID H. PERLMAN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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 20th day of April, 2012.

_____
DAVID H. PERLMAN
Assistant Attorney General

APPENDIX CERTIFICATION

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 Wis. Stat. § 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 20th day of April, 2012.

_____

DAVID H. PERLMAN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(13)

I hereby certify that:

I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. § (Rule) 809.19(13).

I further certify that:

This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

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

Dated this 20th day of April, 2012.

_____
DAVID H. PERLMAN
Assistant Attorney General