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STATE OF WISCONSIN

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I N S U P R E M E C O U R T

**CLERK OF SUPREME COURT
OF WISCONSIN**

CASE NOS. 2012 AP 1863 CR
2012 AP 1769 CR
2012 AP 1770 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

CHARLES E. BUTTS,

Defendant-Appellant-Petitioner

ON REVIEW OF A DECISION OF THE COURT OF APPEALS
AFFIRMING NONFINAL ORDERS ENTERED IN THE WALWORTH
COUNTY CIRCUIT COURT, THE HONORABLE JOHN R. RACE,
PRESIDING, AND THE KENOSHA COUNTY CIRCUIT COURT, THE
HONORABLE ANTHONY G. MILISAUSKAS, PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT-PETITIONER

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CASES CITED

<u>Coleman v. Alabama</u> 399 U.S. 1, 9 (1970)	1,2
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THE PRELIMINARY HEARING IS A CRITICAL STAGE
OF THE CRIMINAL PROCEEDING

The State overlooks a Preliminary Hearing as a critical stage of a State's criminal process. Coleman v. Alabama, 399 U.S. 1, 9 (1970). The State of Wisconsin overlooks the Coleman case. The Coleman case requires a "right to counsel at the Preliminary Hearing to protect the accused against an erroneous or improper prosecution." How can this be done if the State is allowed to call anyone to read a police report. The reader-witness could know nothing about the case. What does defense counsel do at this critical stage when the witness knows nothing about the case? Meaningful cross-examination will not take place. The Coleman case makes clear that the purpose of the lawyer's cross-examination is to demonstrate fatal weaknesses in the State's case "that may lead the magistrate to refuse to bind the accused over." Coleman, supra at p.9.

PLAUSIBILITY CANNOT BE DETERMINED
BY READING POLICE REPORTS

The magistrate at a Preliminary Hearing is to determine probable cause and make a finding that the story has a "plausible basis." Wilson v. State, 59 Wis.2d 269, 294(1973). How can the magistrate determine whether the story has a plausible basis when a witness is allowed to

read a report. That witness may have nothing to do whatsoever with the case. It could be a stranger off the street, secretary from the District Attorney's Office or a clerical employee from some other department of county government. It makes a mockery and sham to suggest that the magistrate can determine whether the story has a plausible basis by reading reports and the defense council is expected to cross examine those circumstances. The State's Brief does not cite, much less discuss, Coleman v. Alabama, 399 U.S. 1, 9 (1970). It is the law of the land and the State ignores it.

Dated this 30th day of January, 2014

Respectfully submitted,

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CERTIFICATION

I certify that this brief of appellant meets the form and length requirements of Rule 809.19 (8)(b) and (c) in that it is:

Typewritten (pica, 10 spaces per inch, mono font, double-spaced, 1-1/2 inch margins on left and 1 inch on other three sides.

The length of the Brief is 2 pages.

Dated this 30th day of January, 2014.

Signed,

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CERTIFICATE OF COMPLIANCE WITH WIS. STATS.
§(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. Stats. §(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 30th day of January, 2014

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