STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Appeal No. 2013 AP 000830 CR

STATE OF WISCONSIN,

Plaintiff – Respondent,

v.

TINA M. JACOBSEN,

Defendant – Appellant.

BRIEF OF DEFENDANT – APPELLANT

APPEAL FROM AN ORDER DENYING MOTION FOR POST-CONVICTION
RELIEF PURSUANT TO WIS. STAT. SEC. (RULE) 809.30(2)(h)
ENTERED IN THE CIRCUIT COURT FOR OUTAGAMIE COUNTY
THE HONORABLE MARK J. MCGINNIS PRESIDING

JOHN MILLER CARROLL LAW OFFICE

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ISSUES PRESENTED FOR REVIEW

Whether the trial court erred in denying Jacobsen's post-conviction motion to withdraw her plea on the grounds that she received ineffective assistance of counsel; where trial counsel failed to consult with the defendant regarding multiplicity and duplicity challenges and to move the court to dismiss the Criminal Complaint and/or Information based on the grounds of multiplicity, duplicity, vagueness and/or indefiniteness which rises to the level of a manifest injustice?

The Circuit Court answered: No.
The Defendant-Appellant submits: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested. However, publication is requested, as the issues presented for review present novel questions of law that will recur in theft prosecutions.

STATEMENT OF THE CASE

On May 31, 2011, the State filed a Criminal Complaint, in the Outagamie County Circuit Court, charging Jacobsen with eight criminal counts:

> **Count 1: Theft- Business Setting Over $10,000**
>
> The above named defendant between the dates of 01/01/2009 and 12/31/2009, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of money having a value greater than $10,000, of another did transfer such money without the owner's consent, contrary to the defendant's authority, and with intent to convert the property to her own use, contrary to sec. 943.20(1) (b) and (3) (c).

939.50(3) (g), 973.046(1g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars, or imprisoned more than ten years, or both.

Count 2: Theft - Business Setting Over $10,000

The above named defendant between the dates of 01/01/2010 and 12/31/2010, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of money having a value greater than $10,000, of another did transfer such money without the owner's consent, contrary to the defendant's authority, and with intent to convert the property to her own use, contrary to sec. 943.20(1) (b) and (3) (c). 939.50(3) (g), 973.046(1g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars, or imprisoned more than ten years, or both

Count 3: Theft- Business Setting Over $10,000

The above named defendant between the dates of 01/01/2011 and 4/12/2011, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of negotiable instruments having a value greater than $10,000, of another did use such negotiable instrument without the owner's consent, contrary to the defendant's authority, and with intent to convert the property to her own use, contrary to sec. 943.20(1) (b) and (3) (c). 939.50(3) (g), 973.046(1g) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars, or imprisoned more than ten years, or both.

Count 4: Business Setting Over $10,000

The above named defendant between the dates of 01/01/2011 and 4/12/2011, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of money having a value greater than $10,000, of another did transfer such money without the owner's consent, contrary to the defendant's authority, and with intent to convert the property to her own use, contrary to sec. 943.20(1) (b) and (3) (c). 939.50(3) (g), 973.046(1g) Wis. Stats., a Class G Felony,

and upon conviction may be fined not more than Twenty Five Thousand Dollars, or imprisoned more than ten years.

Count 5: Theft Business Setting (>$5000 - $10,000)

The above named defendant between the dates of 01/01/2008 and 12/31/2008, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of money having a value greater than $10,000, of another did transfer such money without the owner's consent, contrary to the defendant's authority, and with intent to convert the property to her own use, contrary to sec. 943.20(1) (b) and (3) (bm), 939.50 (3) (h), 973.046(1g) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars, or imprisoned not more than six years, or both.

Count 6: Fraudulent Writings

The above named defendant on or about Tuesday, March 15, 2012 in the Town of
Grand Chute, Outagamie County, Wisconsin, being an employee of a corporation, with the intent to defraud, did falsify any record belonging to the corporation, contrary to sec. 943.39(1), 939.50(3)(h), 973.046(1g) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars, or imprisoned not more than six years or both.

Count 7: Misdemeanor Theft

The above named defendant on or about Sunday, January 01, 2006, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of money of another, did transfer such money without the owner's consent, contrary to the defendant's authority, and with intent to convert said property to her own use, contrary to sec. 943.20(1)(b) and (3)(a), 939.51(3)(a) Wis. Stats. a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars, or imprisoned more than nine months, or both.

Count 8: Misdemeanor Theft

> The above named defendant on or about Sunday, January 01, 2006, in the Town of Grand Chute, Outagamie County, Wisconsin, by virtue of her employment, having possession of money of another, did transfer such money without the owner's consent, contrary to the defendant's authority, and with intent to convert said property to her own use, contrary to sec. 943.20(1)(b) and (3)(a), 939.51(3)(a) Wis. Stats. a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars, or imprisoned more than nine months, or both.
>
> (R.2)

In the probable cause section of the Criminal Complaint, it was alleged that the Community Blood Center had identified "two schemes" conducted by Jacobsen in committing the theft acts. Firstly, the Criminal Complaint stated it was "reported that throughout …..1/1/2006-4/12/2011 Jacobsen regularly issued herself a reimbursement through payroll that was not supported by documentation nor approved." (R.2: 4). Secondly, the Criminal Complaint essentially alleged that Jacobsen would issue herself checks under the guise of vendor payment. (R.2: 4-5). Related to such, the Criminal Complaint indicated that between "3/15/11 and 4/30/11" that Jacobsen "had used this scheme 17 times[.]" (R.2:5).

After the filing of the Criminal Complaint, Jacobsen retained Attorney Michael D. Peterson ("Attorney Peterson"). Attorney Peterson filed a Notice of Retainer on or about June 8, 2011.

An Initial Appearance was held on June 9, 2011 before Court Commissioner Brian Figy of the Outagamie County Circuit Court.

The matter was scheduled for a Preliminary Hearing for July 18, 2011; however, on that date, Jacobsen, through counsel, waived her statutory right to a preliminary hearing.

On or about July 12, 2011, the State filed an Information reflecting all counts, as alleged, in the Criminal Complaint.

Thereafter, Jacobsen appeared before Court, the Honorable Mark J. McGinnis presiding, for an Arraignment on August 15, 2011. Jacobsen, through counsel, entered pleas of not guilty to all counts contained in the Information.

On November 8, 2011, Jacobsen, with counsel, appeared before the Court. At the November 8th hearing, originally scheduled for a pre-trial conference, Jacobsen pleaded no contest to Count 1, Count 2 and Count 5. All remaining counts, Count 3, Count 4, Count 6, Count 7 and Count 8, were dismissed but read-in. Relying on the Criminal Complaint and an on-the-record colloquy between Jacobsen and the court[1] as a factual basis, the Court accepted

[1] In response to the Court, Jacobsen stated:

Jacobsen's pleas of no contest and accordingly found her guilty on counts 1, 2 and 5.

On January 30, 2012, the case proceeded to a Sentencing Hearing. The Court sentenced Jacobsen as follows:

> **Count 1**: 7 Year Bifurcated Prison Sentence: two years of initial confinement followed by 5 years extended supervision;
> **Count 2**: 6 ½ Year Bifurcated Prison Sentence: 18 months of initial confinement followed by 5 years extended supervision (consecutive to Count 1);
> **Count 5**: 4 ½ Year Bifurcated Prison Sentence: 18 months of initial confinement followed by 3 years extended supervision (consecutive to Count 2);

At the sentencing hearing, in fact, it was represented to the Court that the string of theft acts at issue here occurred as much as 289 times.[2] The Court relied on this representation as well.[3]

Jacobsen filed a timely notice of intent to pursue post-conviction relief. (R.20). On October 9, 2012 Jacobsen, through retained counsel, filed a Motion for Post-Conviction Relief Pursuant to 809.30 (2)(h). (R.23). In the motion

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"When I was employed at the Community Blood Center, I had written company checks to myself and also had changed payroll dollar amounts to myself in order to support a gambling addiction that I do have." (R.36:9).

[2] (R.37:14).
[3] (R.36:49, 52).

Jacobsen argued that she was alleged a new trial because she was afforded ineffective assistance of trial counsel. Firstly, Jacobsen alleged that trial counsel was constitutionally ineffective for failing to consult with her regarding multiplicity and duplicity challenges and to move the court to dismiss the Criminal Complaint and/or Information based on the grounds of multiplicity, duplicity, vagueness and/or indefiniteness. Additionally, Jacobsen alleged that her plea was not knowingly, voluntarily, or intelligently entered; Jacobsen does not raise this issue on appeal.

On December 4, 2012, the trial court conducted a hearing on Jacobsen's post-conviction motion. (R. 38). Later, on March 27, 2013 the trial court denied the motion. (R.39, R.27). This appeal follows.

STATEMENT OF THE FACTS

As indicated above, a Complaint (R.2) was filed on May 31, 2011 charging Jacobsen with the charges as laid out above. These charges were a combination of two separate and distinct schemes committed by Jacobsen during her continuous employment at the Community Blood Center. (R.

38:17). After the charges were filed Jacobsen retained Attorney Michael Peterson (Peterson) as trial counsel. (R.4).

Also indicated above, Jacobsen filed a *Motion for Post-Conviction Relief Pursuant to Wis. Stat. Sec. 809.30(2)(h)* on October 19, 2012. (R.23). Jacobsen contended that trial counsel was ineffective for failing to advise her of multiplicity and duplicity challenges, and for failing to move the court to dismiss the Criminal Complaint and/or Information based on the grounds of multiplicity, duplicity, vagueness and/or indefiniteness.

At the Motion Hearing on December 4, 2012 Peterson testified that he did not identify the issue of multiplicity or duplicity to Jacobsen because he believed the issue did not have merit. (R.38:19). Peterson further testified that this conclusion was made by reviewing the jury instructions, as well as a brief glance at the statute; not from additional research. (R.38:45).

Jacobsen's testimony at the Motion Hearing supported Peterson's testimony that the issue of multiplicity and duplicity had not been discussed. Jacobsen indicated that if the issue had been brought to her attention she would have followed Peterson's advice and raised the issue. (R. 38:65).

Jacobsen also testified that although the Complaint alleged thefts in 2006 that there was no factual basis for these allegations because no thefts were committed at this time. (R.38:56-57). However, Jacobsen states that Peterson advised her that it did not matter because these charges would be read-in. (R. 38:63). Jacobsen further stated that she had advised Peterson that the amounts she was alleged to have taken in 2008 were incorrect. (R.38:68-69). Nonetheless, Jacobsen proceeded with the plea agreement because she assumed Peterson's advice was correct. (R. 38:117).

Throughout the Motion Hearing the Court interjected with questions aimed at Jacobsen's credibility. (R.38:76-85, 89-115). However, none of these questions were aimed at the main issue to be addressed by the post-conviction motion; whether or not Jacobsen was advised of the potential issues in how the charges were filed against her. The fact is both Peterson and Jacobsen testified that this issue was never discussed. (R.38:19, R.38:65). Furthermore, Peterson acknowledged that his research into any potential issues in Jacobsen's case was limited to reviewing the jury theft jury instructions. (R.38:18-19).

Following the witnesses testimony, the trial court decided that at any time that Jacobsen and Peterson's testimonies did not coincide, that the Court finds that Peterson is credible and Jacobsen is not. (R.38:123-127). The issue of multiplicity was again not discussed until the trial court advised counsel to focus briefing on this issue. (R.38:132).

On March 27, 2013, the circuit court orally denied Jacobsen's motion. Essentially, the circuit court held that Peterson was not ineffective in his failure to raise the issue of multiplicity and duplicity. (R. 39:13). Going further, the circuit court held that in the instant case the statutes authorize multiple charges when the maximum is surpassed. (R. 39:18). In support of this position the circuit court cited *State v. Grayson*, 172 Wis. 2d 156 and *State v. Lomagro*, 113 Wis. 2d. 582. These findings will be addressed below.

ARGUMENT

I. JACOBSEN IS ENTITLED TO WITHDRAW HER NO CONTEST PLEAS BASED ON THE MANIFEST INJUSTICE CREATED BY THE INEFFECTIVE ASSISTANCE OF COUNSEL

If Jacobsen establishes that trial counsel provided ineffective assistance of counsel, she has established a manifest injustice necessary for plea withdrawal. *See Bentley*, 201 Wis.2d at 311. Therefore, the focus of the instant appeal is appropriately directed at the charging process used and whether i). trial counsel's performance was deficient; and ii). if so, did the deficiency prejudice of the defendant.

II. JACOBSEN WAS AFFORDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO ADVISE HER OF POTENTIAL MULTIPLICITY AND DUPLICITY CHALLENGES AND TO MOVE THE COURT TO DISMISS THE CRIMINAL COMPLAINT AND/OR INFORMATION BASED ON THE GROUNDS OF VAGUENESS AND/OR INDEFINITENESS

a. Standard of Review

Where a fact-finding hearing has been held, as here, a claim of ineffective assistance of counsel presents a mixed question of fact and law on appeal. *State v. O'Brien*, 223 Wis. 2d 303, 324, 588 N.W. 2d 8 (1999). The Court of

Appeals must affirm the trial court's findings of historical fact concerning counsel's performance, unless those findings are clearly erroneous. *Id*. at 324-25. However, the question of ineffective assistance is one of law, subject to independent review. *O'Brien*, 223 Wis. 2d at 325.

b. The Trial Court's Finding of Facts and Conclusions of Law

As stated above, the trial court determined the issue of multiplicity and duplicity were not challengeable and therefore counsel was not ineffective.

c. Legal Standard for Ineffective Assistance of Counsel

To establish deficient performance, the movant must show facts from which a court could conclude that counsel's representation was below the objective standards of reasonableness. *See* State v. McMahon, 186 Wis.2d 68, 80, 519 N.W.2d 621 (Ct.App.1994). To establish prejudice, the defendant must show facts from which a court could conclude that its confidence in a fair result is undermined. Strickland, 466 U.S. at 694, 104 S.Ct. 2052.

d. Failure to Consult With Jacobsen Regarding Multiplicity And Duplicity Challenges And Failure To Move The Court To Dismiss The Criminal Complaint and/or Information Based On The Grounds Of Multiplicity, Duplicity, Vagueness And/Or Indefiniteness Was Ineffective

In this case, the State charged Jacobsen with eight counts. Jacobsen ultimately pleaded no contest to three of those counts. (R. 2). Here, counts 1, 2, 3, 4, 5, 7, and 8, as alleged by the State, included allegations of multiple, not single, acts. Indeed, the State selectively applied temporal units in order to achieve higher class felony value in many of the counts. In other words, the State, in it owns choosing, aggregated certain acts and then divided the aggregated acts by time in order to charge higher class felony charges under Wis. Stat. § 943.20(1)(b). This was improper.

Multiplicity is defined as the charging of a single criminal offense in more than one count. *State v. Grayson*, 172 Wis. 2d 156, 159, 493 N.W.2d 23, 25 (1992) (citing *Harrell v. State*, 88 Wis.2d 546, 555, 277 N.W.2d 462, 464-65 (1979)). Duplicity presents the inverse problem of multiplicity; duplicity is joining in a single count of more than one distinct offense. *State v. Rabe*, 96 Wis. 2d 48, 61, n.

6, 291 N.W.2d 809 (1980). The counts, as charged out by the State, are either multiplicitous or duplicitous, vague and indefinite under *State v. George*, 69 Wis. 2d 92, 230 N.W.2d 253 (1975).

In *George*, Louis George and Robert Tollefson were charged with numerous counts of commercial gambling under Wis. Stat. § 945.03. *Id*. The circuit court, on the defendants' motions, dismissed majority of the counts on the grounds of multiplicity, duplicity, vagueness and indefiniteness. *Id*. The counts against the defendants in that case alleged that the defendant "regularly" participated in gambling. *Id*. In support thereof, the complaint alleged numerous different time frames, different bettors and vague references to different sports games in which bets or offers to bet occurred. *Id*. at 94-95.

The Wisconsin Supreme Court found that the circuit court properly dismissed the counts. *Id*. More specifically, the Court found that "If the various counts of the complaint allege a series of continuous crimes they are multiplicitous because they divide a single charge (continuous commercial gambling) into several counts. If the several counts allege single bets they are duplicitous in that they join several

transactions in a single offense, with the possibility that some but not all members of a jury could believe defendant guilty of one offense and others believe him guilty of another." *George*, 69 Wis. 2d at 98-99, 230 N.W.2d 253. On that point, the Court stated that the established rule is that:

> 'Only one prosecution may be had for a continuing crime. When an offense charged consists of a series of acts extending over a period of time, a conviction or acquittal for a crime based on a portion of that period will bar a prosecution covering the whole period. *George*, 69 Wis. 2d 92, 97-98 (citing 1 Anderson, Wharton's Criminal Law and Procedure (1957), p. 351, sec. 145).

By analogy, the *George* case is directly on point to the instant case. The State filed a complaint containing seven theft-related counts spanning a period of over five years. Each count spanned as much as a years' time and each count alleged several separate and distinct acts. Just as in *George*, if the counts are interpreted as a continuing offense, then they are multiplicitous because it charges more than one count for the same continuous course of conduct; conversely, if the counts are interpreted as single offenses, they are duplicitous, vague and indefinite. See *George*, 69 Wis. 2d at 100.

Another Wisconsin Supreme Court decision supporting Jacobsen's claims is *State v. Spraggin*, 71 Wis.2d

604, 239 N.W.2d 297 (1976). In *Spraggin*, the defendant was charged with receiving stolen property under Wis. Stat. § 943.34. Id. at 608. The stolen items at issue in *Spraggin* were a television set and a revolver which were recently reported stolen in local burglaries in Beloit. *Id.* at 608-09. The defendant was originally charged with two separate counts of receiving stolen property. *Id.* at 613.

However, on the day of jury trial, the State moved to consolidate the two charges into one felony count contending that that the "items in question were both received by the defendant at the same time." *Id.* at 613. Over the defendant's objection, the trial court allowed the State amend to the counts into one. *Id.* Subsequent testimony at jury trial, however, revealed that the stolen television set and the stolen revolver were received at different dates and times but from the same person. *Id.* More specifically, the defendant received the stolen television after she received the stolen revolver. *Id.* On the day in which the defendant received the stolen television, she paid the person for both stolen items. *Id.* Over the State's argument that because the defendant paid for the stolen items at the same time (as opposed to receiving the items at the same time), the Wisconsin Supreme Court held

that the trial court erred by allowing the State to proceed under the amended information in that case where the aggregate value for the two items achieved felony status when, independently, the items may have only been misdemeanors. *Id*. at 614-16.

Especially noteworthy in *Spraggin* is language where the Wisconsin Supreme Court explained:

> A rule that would allow the value of items received as separate offenses to be aggregated for one offense, on the basis of conspiracy, is anomalous. Our modern 'party to a crime' statute, sec. 939.05(2)(c), Stats., more justly makes the conspirator 'fence' a punishable party to the theft. A conspiracy of successful nickel-and-dime shoplifters still are criminally responsible for only multiple misdemeanors, not felony theft. Thus, when the reception of stolen items occurs on separate occasions, the ends of justice and the form of the defined crime are met by multiple misdemeanor counts, not by the forbidden joinder of separate crimes in one count for an aggregate felony value. Sec. 971.12(1), Stats.

Spraggin, 71 Wis. 2d at 614, 239 N.W.2d at 306 (emphasis supplied).

Citing Wis. Stat. § 971.36, the State contends that the charging process in the instant case was proper. However, Wis. Stat. § 971.36 does not save the illegal charging process. Wis. Stat. § 971.36 is a pleading statute and not a penal

statute. Wis. Stat. § 971.36 certainly does not define a substantive crime or create a penalty structure distinct from the penalty provisions found under Wis. Stat. § 943.20. The title of Wis. Stat. § 971.36 is clearly "Theft; pleading and evidence; subsequent prosecutions." Ordinarily, under Wis. Stat. § 990.001, a statute's title is not part of the statutes. However, courts may consider titles of statutes to resolve doubt as to statutory meaning. See *Johnson v. State*, 76 Wis.2d 672, 251 N.W.2d 834 (1977); *In the interest of CDM*, 125 Wis.2d. 170, 172, 370 N.W.2d 287, 289 (Ct. App. 1985) ("We may consider titles of statutes to resolve doubt as to statutory meaning."). In any event, Wis. Stat. § 971.36 calls for a subsequent prosecution and not concurrent continuing offense prosecutions.

The trial court relied on *Grayson* in its analysis of the charging procedures. However, the trial court found that the *Grayson* decision allows the State to charge an additional offense for every time the accused person's thefts rise above the statutorily defined dollar amount. (R.39:19-20). However, Jacobsen contends that *Grayson* is substantially different than the instant appeal. In *Grayson,* Keith A. Grayson was charged with multiple offenses for failure to pay

child support for 120 days. Grayson appealed on the grounds that the charges were multiplicitous because he failed to pay support for one continuous time period. The Supreme Court held, "that the state governing felony child nonsupport permits multiple counts of felony child nonsupport, one for each 120-day term defendant fails to pay, when defendant fails to pay child support for one continuous period." In Grayson's case the statute defined the timeline for the charges, not the dollar amount. The theft statute, on the other hand, does not specify a time limit. The time limit in this Jacobsen's case was chosen by the State to maximize the charges.

The trial court relied on *State v. Lomagro*, 113 Wis. 2d 582, 588, 335 N.W.2d 583, 587 (1983) in its decision that the prosecution has the discretion to file charges for each calendar year. (R.39:20-21). However as stated in *Lamagro*, "this prosecutorial discretion to join separately chargeable offenses into one count is not unlimited. Rather, this discretion to join offenses is limited by the purposes of the prohibition against duplicity as discussed above. As stated by the Sixth Circuit in *United States v. Alsobrook,* 620 F.2d at 142-43." As discussed above, Jacobsen committed two very

different schemes; the amounts taken in each of these schemes were combined on an annual basis and then charged accordingly. There is no statute that defines this time period of charging. Furthermore, as Jacobsen testified, not all of the amounts were correct. Therefore, Jacobsen could have been convicted of crimes that did not occur simply because these charges were combined with other charges which she may have been guilty of.

e. The Ineffective Assistance of Counsel was Prejudicial

The ineffective assistance of counsel was prejudicial under the *Strickland* test because Jacobsen stands convicted of higher class felonies than she would have had the charging process been proper. A defendant need not show that her sentence would have been any less severe, because conviction for a more aggravated felony should be alone sufficient to establish prejudice. *Cf.* *State v. Fritz*, 212 Wis. 2d 284, 297, 569 N.W.2d 48, 54 (Ct. App. 1997) ("A second felony conviction is 'prejudice' irrespective of whether the actual time served would have been less under an accepted plea-bargained guilty plea.").

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court of Appeals reverse the circuit court's ruling denying the Defendant-Appellant's motion for post-conviction relief; and, further, the Court of Appeals should remand this matter to the circuit court.

Dated this 18th day of June, 2013.

Respectfully Submitted,
JOHN MILLER CARROLL
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FORM AND LENGTH CERTIFICATION

I, John M. Carroll, hereby certify that this brief conforms to the rules contained in s. 809.19 (8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4,209 words.

Dated this 18th day of June, 2013.

_____

John Miller Carroll
State Bar #1010478

ELECTRONIC BRIEF CERTIFICATION

I, John M. Carroll, hereby certify in accordance with Sec. 809.19(12)(f), Stats, that I have filed an electronic copy of a brief, which is identical to this paper copy.

Dated this 18th day of June, 2013.

_____

John Miller Carroll
State Bar #01010478