STATE OF WISCONSIN COURT OF APPEALS DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No. 13-AP-2366-CR
Circuit Court Case No. 12-CT-1089

vs.

NEIL A. MORTON,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND SENTENCE IMPOSED IN THE CIRCUIT COURT OF DANE COUNTY ON JULY 26, 2013, DANE COUNTY CASE NO. 12-CT-1089, THE HONORABLE JULIE GENOVESE, PRESIDING

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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STATEMENT OF ISSUES

I. Does the decision of the United States Supreme Court in Missouri v. McNeely, 569 U.S.___, 133 S. Ct. 1552 (2013) holding that the natural dissipation of alcohol in the bloodstream does not alone create an exigency for a warrantless blood draw apply retroactively to all cases pending on direct review or not yet final?

A hearing on defendant's motion to suppress the warrantless blood draw was held on June 28, 2013 in front of the Honorable Julie Genovese. The defense conceded that the officer complied with the requirements of State v. Bohling, 173 Wis.2d 529 (1993) in conducting the warrantless blood draw. (R. 34; p. 17-18) (App. A-20-21). The court determined that in light of Missouri v. McNeely, 569 U.S.___, 133 S. Ct. 1552 (2013), the warrantless blood draw was unconstitutional. Id. at 19. (App. A-22).

II. If the McNeely decision is to be applied retroactively is the appellant entitled to suppression of the evidence or does a good faith exception to the exclusionary rule exist?

The trial court, relying on State v. Dearborn, 2010 WI 84, determined that a good faith exception to the warrant requirement exists. The court stated "if the officer was relying on clear precedent at the time that there is a good faith exception and exclusion is not appropriate." (R. 34; p. 36-37) (App. A-39-40).

III. Whether the doctrine of judicial integrity and fundamental fairness require the exclusionary remedy of suppression for a warrantless blood draw?

This specific issue within the exclusionary rule analysis was not addressed in the trial court.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The parties' briefs will fully present and meet the issues on appeal and further develop the legal theories and authorities on each side. This appeal addresses the retroactive application of Missouri v. McNeely to an operating while intoxicated case where the appellant refused a blood test and may have important statewide impact. Therefore, this court could on its own motion order a 3 judge panel pursuant to Rule 809.41 (3) Wis. Stats.

STATEMENT OF THE CASE AND FACTS

On September 22, 2012 at approximately 3:00 a.m. Wisconsin Capital Police Officer Geoffrey McLendon was on routine patrol working third shift and traveling westbound on University Avenue in Madison. As the officer proceeded westbound on University Avenue he noticed a vehicle in front of him slamming on the brakes. (R. 34; p. 10) (App. A-13). He noticed that a vehicle which was parked on what he believed was Lake Street seem to wait a long time before it proceeded to make a right hand turn onto University Avenue. Id. at 12. (App. A-15). The vehicle caught his attention because he believed it waited until the last minute to pull out, thereby causing the vehicle in front of him to slam on its brakes. Id. 12-13. (App. A-15-16). The vehicle, which he described as a truck, turned into the proper lane and then signaled to move into the center line

finally signaling again so it was traveling in the furthest left lane west on University Avenue. Id. at 14. (App. A-17). According to McLendon the vehicle then approached the light at Monroe Street and made an appropriate left hand turn onto Monroe. Id. He got behind the vehicle and saw a pick up truck "sitting in the bike lane—half of his vehicle was in the bike lane, the other half was in the traffic lane, so then I proceeded to follow the vehicle." Id. The truck proceeded down Monroe Street and according to McLendon was moving within its lane and a few times it's tires hit the fault line. Id. at 19. He stopped the vehicle on Monroe Street and the driver was identified as Neil Morton. Id. at 21-22. (App. A-24-25). Morton's eyes were bloodshot and he had slurred speech. Morton refused the field sobriety tests and was placed under arrest. He was subsequently transported to Meriter Hospital for a blood draw where he refused the test. (App. A-3). Over his objection a warrantless blood draw was conducted and the test result indicated a blood alcohol concentration of .22 g/100ml. (R. 3).

A formal complaint was issued charging him with operating a motor vehicle while intoxicated and with a prohibited alcohol concentration as a third offense and he was also citied with an Implied Consent Violation. (R. 3).

He made his initial appearance on October 22, 2012. (R. 4). Numerous pretrial motions were filed on November 21, 2013. (R. 6-14). On April 17, 2013 the Supreme Court issued its decision in Missouri v. McNeely, (Slip Opinion 11-1425) concluding "that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test

without a warrant." McNeely, (Slip Opinion) at 1-2. Once the McNeely decision was rendered the defendant filed a Motion to Suppress Evidence Based Upon an Unconstitutional Automobile Stop as well as a Motion to Suppress a Blood Test on April 23, 2013. (R. 18-19). The court requested that the parties submit written legal arguments with respect to the issue of whether McNeely was to be applied retroactively or not. (R. 21-22). The defense argued that the retroactivity rule of Griffith v. Kentucky, 479 U.S. 314 (1987) applied to the case and anticipating the State's good faith exception argument under State v. Dearborn, 2010 WI 84, that suppression was the appropriate remedy in a case involving a warrantless blood draw. As anticipated the State argued that State v. Dearborn controlled and that a good faith exception precluded the application of the exclusionary rule. (R. 22).

A hearing challenging the stop of the vehicle and addressing the McNeely issue was held on June 28, 2013. (R. 23, 34). During the hearing the State played a video of the squad cam regarding the driving behavior. (R. 24, 34). (App. A-4-A-42). After hearing testimony and watching the video the court denied the motion challenging the stop of the vehicle. The parties agreed that for purposes of the McNeely motion that Mr. Morton refused and objected to the warrantless draw of his blood and that the defense was not challenging that the Informing the Accused was properly read to him. The defense further agreed that the other Bohling factors were met. (R. 34; p. 23-24). (App. A-26-27). The parties agreed that it was strictly a legal argument as to whether the McNeely decision and the exclusionary rule applied to the case.

The court found that in fact the warrantless blood draw, based on McNeely, was unconstitutional but concluded under State v. Dearborn, 2010 WI 84 that "if the officer was relying on clear precedent at the time that there is a good faith exception and exclusion is not appropriate." Id. at 40. (App. A-43).

Prior to the plea and sentencing hearing scheduled for July 26, 2013 the defendant filed a Notice of Motion and Motion for Relief and Stay Pending Appeal. (R. 26). At the plea and sentencing hearing Neil Morton entered a plea of no contest to count one of the criminal complaint, operating while under the influence of an intoxicant as a third offense. Neil Morton was placed on probation for a period of two years and allowed to participate in the OWI Treatment Court. A 12 month jail sentence in the Dane County Jail was imposed and stayed and 14 days conditional jail time was ordered along with a thirty six (36) month revocation, a one thousand five hundred and 00/100 dollars ($1,500.00) fine plus costs; mandatory assessment and the installation of an Ignition Interlock Device for a period of 36 months upon licensure. (R. 35; p. 7-9).

With respect to the motion for stay pending appeal the State argued against staying Morton's sentence. After hearing argument from the defense with respect to the McNeely issue and the defense contention that the facts were very similar to McNeely, the court denied the motion for relief pending appeal. (R. 35; p. 17-19) (App. A-20-22). Morton was taken into custody at the conclusion of the hearing.

A Notice of Intent to Pursue Post-Conviction Relief was filed on August 12, 2013 and a timely Notice of Appeal was filed on October 23, 2013 which brings this appeal before the court. (R 32-33).

Further facts will be set forth herein as necessary below.

ARGUMENT

I. THE DECISION OF THE UNITED STATES SUPREME COURT IN MISSOURI V. MCNEELY, 569 U.S.___, 133 S. Ct. 1552 (2013) HOLDING THAT THE NATURAL DISSIPATION OF ALCOHOL IN THE BLOODSTREAM DOES NOT ALONE CONSTITUTE AN EXIGENCY FOR A WARRANTLESS BLOOD DRAW IN EVERY CASE APPLIES RETROACTIVELY TO ALL CASES PENDING ON DIRECT REVIEW OR NOT YET FINAL.

A new rule of substantive criminal law is presumptively retroactive to all cases, whether on direct appeal or on collateral review. See Bousley v. United States, 523 U.S. 614, 620-21 (1998); State v. Howard, 211 Wis.2d 269, 283-85 (1997), overruled on other grounds by State v. Gordon, 2003 WI 69, ¶40. In Griffith v. Kentucky, 479 U.S. 314 (1987) the Court retroactively applied the rule of Batson v. Kentucky, 476 U.S. 79 (1986) concluding that a defendant in a criminal case could establish a prima facie case of racial discrimination which violated the Fourteenth Amendment and applied that rule to cases then pending on direct state or federal review or not yet final when Batson was decided. In Griffith the Court dispensed with the "clear break exception" which limited the retroactive application of a new constitutional rule even to cases on direct review "if the new rule specifically overruled the precedent of this Court or disapproves a practice this Court had arguably sanctioned in prior cases, or overruled a longstanding practice that

lower courts had uniformly approved." Griffith citing United States v. Johnson, 457 U.S. 537, 551 (1982).

Wisconsin follows the federal rule announced in Griffith. In State v. Dearborn, 2010 WI 84 the appellant maintained and the State conceded that pursuant to the United States Supreme Court's holding in Arizona v. Gant, 556 U.S. (2009) that the search of his truck violated his constitutional right to be secure against unreasonable searches and seizures. In Dearborn, the court found that the Gant decision did in fact apply to the appellant but declined to exclude the recovered evidence, instead applying a good faith exception to the exclusionary rule.

This case was pending on April 17, 2013 when Missouri v. McNeely was decided. In United States v. Johnson, 457 U.S. 537 (1982) the Court held that "subject to [certain exceptions], a decision of this Court construing the Fourth Amendment is to be applied retroactively to all convictions that were not yet final at the time the decision was rendered." Id. at 462. The Supreme Court's pronouncement in Missouri v. McNeely that the natural dissipation of alcohol in the bloodstream does not alone constitute an exigency for a warrantless blood draw applies to this case since it was "not yet final" at the time McNeely was decided.

II. SUPPRESSION OF THE WARRANTLESS BLOOD TEST RESULT IS THE APPROPRIATE REMEDY AND A GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE SHOULD NOT BE APPLIED.

In State v. Dearborn, 2010 WI 84 the court held that the exclusionary rule did not apply to the appellant whose constitutional rights were violated under Arizona v. Gant, 556 U.S. (2009) since the officer who conducted the illegal search reasonably relied on clear and unsettled Wisconsin precedent which was subsequently overruled. The court adopted the good faith exception to the exclusionary rule in State v. Ward, 2000 WI 3 and affirmed the principles of United States v. Leon, 468 U.S. 897, 918 (1984) in State v. Eason, 2001 WI 98 holding that the exclusionary rule should not apply in circumstances where there was objectively reasonable reliance by police officers upon a warrant issued by an independent magistrate. The Dearborn court determined that the benefits of applying the exclusionary rule were "exceedingly low" and that the most important factor in its analysis was the deterrent effect of that rule upon officer misconduct. Dearborn at ¶49. Since "the officers reasonably relied on clear and settled Wisconsin Supreme Court precedent" the good faith exception to the exclusionary rule precluded suppression. Id. However, there exists a real tension in the law between the retroactivity rule of criminal procedure and the "good faith" reliance doctrine under Fourth Amendment analysis. The Griffith court expressly declined to adopt any exception to the retroactive application of a new rule for the conduct of criminal prosecutions pending on direct review not yet final "with no exception for cases in which the new rule constitutes a "clear break" with

the past." Griffith at 336. If the Court was interested in creating an exception to the retroactive application of new rules for the conduct of criminal prosecutions which precluded the suppression remedy it would have done so in Griffith. The Griffith Court was concerned about courts not choosing to apply their ' "best understanding" of constitutional principles to the resolution of then pending cases should they abdicate "the integrity of judicial review, rendering their constitutional function to "not one of adjudication but in effect of legislation.' " Griffith at 322-23. Suppression of the evidence is the only appropriate remedy in this case because by carving out a good faith exception the unconstitutional warrantless drawing of Morton's blood over his objection is left un-remedied. Griffith also applies to "rule[s] for the conduct of criminal prosecutions." Griffith at 328. By declining to carve out an exception in Griffith it is respectfully submitted that the decision actually supports the application of the exclusionary rule. See Breyer J. (dissenting opinion) United States v. Davis, 113 S. Ct. 2419 (2011); Abrahamson C.J. (dissenting opinion) "The majority disobeys controlling precedent, leaves an acknowledged constitutional violation un-remedied, allows the law to provide different results for similarly situated defendants, and establishes a serious imbalance in how future Fourth Amendment issues will be brought to the court and resolved." Dearborn at ¶54.

In Dearborn, the court determined that "the exclusionary rule is inappropriate only when the officer reasonably relies on clear and settled precedent." Id. at ¶46. However, there is a real distinction between the Supreme Court's decision in Gant which overruled

the Belton line of cases and its decision in McNeely because McNeely never overruled Schmerber v. California, 389 U.S. 750 (1966). In Schmerber the reason a warrantless blood draw was upheld was because the facts demonstrated that the officer "might have reasonably believed he was confronted with an emergency in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence." Id. at 70. Schmerber did not create a blanket exception for warrantless blood draws, indeed it reaffirmed the totality of circumstances and case by case approach required when determining the existence of an exigency obviating the warrant requirement. As the court in McNeely noted, "…our analysis in *Schmerber* fits comfortably within our case law applying the exigent circumstance exception. In finding the warrantless blood draw reasonable in *Schmerber*, we considered all of the facts and circumstances of the particular case and carefully based our holding on those specific facts." McNeely (Slip Opinion p. 8). Thus Schmerber was a fact specific decision and the specific and particularized facts which supported the finding of indigency were as follows:

> "Particularly in a case such as this, where time had to be taken to bring the accused to the hospital and to investigate the scene of the accident, there was no time to seek out a Magistrate and secure a warrant. Given these specific facts, we conclude that the attempt to secure evidence of blood-alcohol content **in this case** was an appropriate incident to petitioner's arrest."

Schmerber at 770-771. (emphasis added).

In State v. Bohling, 173 Wis.2d 529 (1993) the court relied on Schmerber to

justify the warrantless blood draw but chose a different interpretation instead of accepting the fact that Schmerber was based precisely on a specific and particular set of facts to establish the exigency. The court concluded that Schmerber could be read in either one of two ways: "(a) that the rapid dissipation of alcohol in the bloodstream alone constitutes a sufficient exigency for a warrantless blood draw to obtain evidence of intoxication following a lawful arrest for a drunk driving related violation or crime – as opposed to taking a blood sample for other reasons, such as to determine blood type; or – (b) that the rapid dissipation of alcohol in the bloodstream, coupled with an accident, hospitalization, and the lapse of two hours until arrest, constitute exigent circumstances for such a blood draw." Bohling at 539. The court then determined that the more reasonable interpretation was the first one, namely "exigency based solely on the fact that alcohol rapidly dissipates in the bloodstream." Id. The court went on to determine that the Schmerber decision, logically analyzed, indicated "that the exigency of the situation presented was caused solely by the fact that the amount of alcohol in a person's bloodstream diminishes over time." Id. at 539-540. Respectfully, the court misinterpreted the holding in Schmerber which did not create a per se exigency based upon the dissipation of alcohol from the blood. This raises the question of how can an officer's reliance on Bohling be considered "clear and settled precedent" when the Bohling court misconstrued Schmerber to stand for the creation of a per se exigency exception to the warrant requirement when the foundation of Fourth Amendment jurisprudence is premised upon a case by case analysis under the totality of the

circumstances and the Supreme Court expressly declined to accept a per se exigency exception in McNeely. The fundamental fairness concern of course is that although the holding in Bohling may have been clear it was wrong and "…even if the defendant wins (on the constitutional question), he loses (on relief)" (Breyer dissenting). Davis at 2438.

In United States v. Davis, 131 S. Ct. 2419 (2011) the Supreme Court determined that even though a search of the defendant's vehicle contravened the court's holding in Arizona v. Gant, 556 U.S.___, 129 S. Ct. 1710 (2009) and violated his Fourth Amendment rights, the circuit court's decision declining to suppress the revolver found pursuant to the search was correct. The court concluded that searches conducted in "objectively reasonable reliance on binding appellate precedence are not subject to the exclusionary rule." Davis at 2424. Justice Breyer in his dissent in Davis articulated his serious concern about the erosion of the Fourth Amendment when he asked: "[t]hus if the Court means what it says, what will happen to the exclusionary rule, a rule that the Court adopted nearly a century ago for federal courts, *Weeks v. United States*, 232 U.S. 383, and made applicable to state courts a half century ago through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643?" Davis at 2439. The progression of the good faith reliance exception to the warrant requirement has over time resulted in the systematic evaporation of Fourth Amendment protections. Prior to Davis the Court only deviated from the remedy of suppression under the "good faith" exception a handful of times. The exclusion of the remedy of suppression was indeed left to special circumstances and what about the case where the heretofore binding precedent turns upon

a particular court's misunderstanding, as in Bohling where it interpreted Schmerber to create a per se exigency based on the elimination of alcohol from the human body? Thus the court's majority decision in Davis placed "determinative weight upon the culpability of an individual officer's conduct, and it would apply the exclusionary rule only where a Fourth Amendment violation was "deliberate, reckless, or grossly negligent," then the "good faith" exception will swallow the exclusionary rule." Breyer, J. dissenting at 2438.

As noted by Chief Justice Abrahamson's dissenting opinion in Dearborn, the Court has created exceptions for good-faith reliance on judicially-issued warrants (United States v. Leon, 468 U.S. 897 (1984)) and other exceptions to the warrant requirement for clerical errors of court employees (Hudson v. Michigan, 547 U.S. 586, 594 (2006) and even on withdrawn judicial warrants which remained in the system as a result of negligence (Herring v. United States, 129 S. Ct. 695 (2009). In Illinois v. Krull, 480 U.S. 340, 349-50 (1987) the court applied the good faith exception to the exclusionary rule based on objective reasonable reliance on a statute which authorized warrantless administrative searches but was later determined to have violated the Fourth Amendment. In State v. Ward, 2000 WI 3 the court adopted the good faith exception to the exclusionary rule applying the exception to "objectively reasonable reliance on settled law subsequently overruled" and later in State v. Eason, 2001 WI 98 applied "the exception to objectively reasonable reliance on a warrant subsequently invalidated." Dearborn at ¶37. In Ward and Eason the officers actually had search warrants. In Krull, the statute specifically authorized the warrantless search.

The good faith exception to the exclusionary rule should not be applied and extended to a warrantless blood draw because the correct reading of Griffith requires it and because "[s]uch an invasion of bodily integrity implicates an individual's 'most personal and deep rooted expectations of privacy.'" Missouri v. McNeely, (Slip Opinion p. 4-5 citing Winston v. Lee, 470 U.S. 753, 760 (1985). The warrantless intrusion of the sanctity of an individual's body is a violation which simply can not go un-remedied.

III. THE DOCTRINE OF JUDICIAL INTEGRITY AND FUNDAMENTAL FAIRNESS REQUIRES ADHERENCE TO THE EXCLUSIONARY RULE FOR A VIOLATION OF A WARRANTLESS BLOOD DRAW.

Wisconsin courts have long maintained the traditional rule of judicial integrity in exclusionary rule analysis. Long before the application of the Fourth Amendment to the states in Mapp v. Ohio, 367 U.S. 643 (1961) Wisconsin adopted the exclusionary rule in State v. Hoyer, 180 Wis. 407 (1923) to give effect to Article 1, Section 11 of the Wisconsin Constitution. Indeed Hoyer has been described as "a watershed in Wisconsin law" and in its prescience provided greater protection for individual rights than the rule applied by the federal courts at that time. State v. Orta, 2000 WI 4, ¶7. Wisconsin courts have also recognized that suppression in some cases is necessary "to preserve the integrity of the judicial process" even in cases where fault could not "be attributed to law enforcement officers." Dearborn at ¶78 (Abrahamson, C.J. dissenting). See State v. Hess, 2010 WI 82 ¶64-67, 70; State v. Knapp, 2005 WI 127, ¶79 ("aside from deterring police misconduct, there is another fundamental reason for excluding the evidence under

circumstances present here, the preservation of judicial integrity."). Unlike the constitutional violation in Gant which the Wisconsin Supreme Court left un-remedied in Dearborn, this case involves the sanctity of an individual's bodily integrity. Comparing the search of a vehicle incident to arrest which uncovered a revolver in Davis to the taking of a a blood sample from an individual without consent and without a warrant is like comparing apples and oranges; both are instrumentalities of crime but one is compelled from the human body. It is long recognized that compelled intrusions into the human body raise significant constitutionally protected privacy concerns. See Skinner v. Railway Labor Executive's Assn., 489 U.S. 602, 616 (1989).

The United States Supreme Court's interpretations of the Federal Constitution do not bind an individual state from creating different interpretations and higher standards under their own state constitution. See Cooper v. California, 386 U.S. 58, 62 (1967). "[A] state is free *as a matter of its own law* to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards." Oregon v. Hass, 420 U.S. 714, 719 (1975). (emphasis in original). Therefore, the Wisconsin Supreme Court is neither bound by Davis or by its own decision in Dearborn when it comes to the application of the exclusionary rule to warrantless blood draws. There is a significant, indeed fundamental, reason for the application of the exclusionary rule to these facts and those similarly situated; judicial integrity.

Wisconsin has a storied history of utilizing the exclusionary rule to effectuate and

enforce Article 1, Section 11 of the Wisconsin Constitution even before the exclusionary rule of Weeks. Historically Wisconsin has granted greater protection under Article 1, Section 11 than that available to it under the Fourth Amendment. Indeed, the Hoyer court's adoption of the exclusionary rule was not just simply limited to the concept of deterrence. The Hoyer court stated:

> "We see no reason in logic, justice, or in that innate sense of fair play, which lies at the foundation of such guaranties, why a court of justice, rejecting as abhorrent the idea of the use of evidence extorted by violation of a defendant's right to be secure in person and exempt from self-incrimination, though it may result in murder going unwhipt of justice, should yet approve of the use, in the same court of justice, by state officers, of that which has been obtained by other state officers through, and by a plan violation of constitutional guarantees of equal standing and value, though thereby possibly a violation of the prohibition law may go unpunished.
>
> Section 11, art. 1, Wis. Const., supra, is a pledge of the faith of the state government that the people of the state … shall be secure in their persons, houses, papers, and effects against unreasonable search and seizure. This security has vanished, and the pledge is violated by the state that guarantees it, when officer of state, acting under color of state given authority, search and seize unlawfully. The pledge of this provision and of section 8 are each violated when use is made of such evidence in one of its own courts by other of its officers. That a proper result – that is, a conviction of one really guilty of an offense – may be thus reached is neither an excuse for, nor a condonation of, the use by the state of that which is so the result of its own violation of its own fundamental charter. Such a cynical indifference to the state's obligations should not be judicial policy.
>
> State v. Hoyer, 180 Wis. 407, 417, 193 N.W. 89 (1923).

Here, the intrusive nature of the search, the piercing of the defendant's skin to obtain blood, raises heightened constitutionally protected privacy concerns. The denial of the remedy of suppression here will undermine judicial integrity, leave a serious constitutional violation un-remedied and will culminate in the full erosion of the Fourth

Amendment finally asphyxiated by the tidal wave of "good faith" exceptions. Article 1, Section 11 of the Wisconsin Constitution requires greater protection to its citizens, indeed fundamental fairness demands it.

CONCLUSION

Under Griffith v. Kentucky, the Supreme Court's decision in Missouri v. McNeely concluding "that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant" applies to this case. Because a correct reading of Griffith requires it, but also and perhaps even more importantly, the doctrine of judicial integrity and this state's long storied protection of citizen rights under Article 1, Section 11 of the Wisconsin Constitution demands that compelled intrusions into the human body be protected by the exclusionary rule. This constitutional violation should not be left without a meaningful remedy and therefore in OWI cases where there is a non-consensual warrantless blood draw the Wisconsin Constitution and the doctrine of judicial integrity should provide for the suppression of the blood test result under the exclusionary rule.

Respectfully submitted this 17th day of January, 2014.

_____
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CERTIFICATION

Undersigned counsel hereby certifies that this appellate brief conforms to the rules contained in §809.19 (8) (b) and (c) Wis. Stats. for a brief produced with the proportional serif font. The length of this brief is 5,426 words.

Signed:

_____
Patrick J. Stangl

CERTIFICATION OF COMPLIANCE WITH RULE 809.19 (12)

The undersigned certifies that an electronic copy of this brief, excluding the appendix, if any, complies with the requirement of §809.19 (12). The electronic brief is identical in content and format to the printed brief filed this date.

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

Signed:

_____
Patrick J. Stangl

CERTIFICATION OF APPENDIX

I hereby certify that with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial 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.

Signed:

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Patrick J. Stangl

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