

STATE OF WISCONSIN  
IN SUPREME COURT

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\_\_\_\_\_  
No. 2014AP515-FT

\_\_\_\_\_  
STATE OF WISCONSIN,

Plaintiff-Appellant-Petitioner,

v.

DANIEL S. IVERSON,

Defendant-Respondent.  
\_\_\_\_\_

ON A PETITION FOR REVIEW OF A DECISION AFFIRMING AN  
ORDER GRANTING A MOTION TO SUPPRESS AND DISMISSING  
THE CASE ENTERED IN THE LA CROSSE COUNTY CIRCUIT  
COURT, THE HONORABLE RAMONA A. GONZALEZ, PRESIDING  
\_\_\_\_\_

BRIEF OF DEFENDANT-RESPONDENT  
\_\_\_\_\_

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**ISSUES PRESENTED FOR REVIEW**

Does a law enforcement officer have authority under Wisconsin law to stop and seize a driver without a warrant when the officer believes a passenger has committed a non-traffic forfeiture offense of littering in violation of WIS. STAT. § 287.81?

**STATEMENT ON ORAL ARGUMENT  
AND PUBLICATION**

Oral argument and publication are appropriate given that the Court has granted the State’s petition for review.

**STATEMENT OF THE FACTS AND  
THE PROCEDURAL HISTORY OF THE CASE**

On September 18, 2013, at about 1:00 a.m., Daniel Iverson was pulled over by Wisconsin State Trooper Michael Larsen while driving his Jeep SUV by northbound on Rose Street in the City and County of La Crosse. (Pet.-Ap. 114.) Trooper Larsen had witnessed the Jeep SUV driving in the right lane of the two northbound lanes of Rose Street and drift toward, but not over, the centerline and then back in the lane. (Pet.-Ap. 114-15.) The Jeep SUV did not cross the center line, did not enter the gutter area, and did not hit the curb. (Pet.-Ap. 119.) He also witnessed the Jeep SUV stop at two flashing yellow traffic control signals prior to proceeding into the intersections. (Pet.-Ap. 115, 119.) Trooper Larsen

testified that there was no other traffic approaching the intersections when the Jeep stopped prior to continuing through the intersections. (Pet.-Ap. 119.)

After the Jeep SUV proceeded through the second intersection, a cigarette butt was tossed from the passenger side of the SUV and landed in the right lane. (Pet.-Ap. 115-16.) The Jeep SUV then signaled and switched into the left lane. (Pet.-Ap. 116, 120.) Trooper Larsen testified that the Jeep SUV never sped and that there was nothing unusual about the lane change. (Pet.-Ap. 120.) He initiated the traffic stop after the Jeep SUV went over an overpass. (Pet.-Ap. 116.) Trooper Larsen indicated that he did not know if the driver, Mr. Iverson, authorized the passenger to throw the cigarette butt out the window. (Pet.-Ap. 118.) He also indicated that prior to the cigarette butt being thrown, he did not have reasonable suspicion to initiate a traffic stop. (Pet.-Ap. 121.)

After initiating the traffic stop, Trooper Larsen contacted Mr. Iverson and informed him that he had stopped him because a cigarette butt had been thrown from the vehicle. (Pet.-Ap. 116-17.) Iverson indicated that he was unaware that it had been thrown, and the passenger, Alex Paulson, informed Trooper Larsen that he had done it. (Pet.-Ap. 117.) Subsequently, cause was obtained to believe Mr. Iverson had been drinking, and he was ultimately cited for OWI and OWI-PAC. (R.1;1-2). There was uncontroverted evidence submitted to the circuit court that

citations for littering due to the tossing of cigarette butts are unheard of absent some other danger. (R.7-8; Aff. of J. Veenstra, ¶8.)

### **Proceeding in the Circuit Court**

Mr. Iverson moved to suppress evidence and dismiss the citations, arguing that Trooper Larsen's basis for the stop, an alleged violation of WIS. STAT. § 287.81(2)(b) by a passenger, absent any indication of permission to do so by the driver, did not give the officer authority to stop the driver, and further that the tossing of a cigarette butt is not actually a violation of that statute because a cigarette butt is not "solid waste" as defined by WIS. STAT. §§ 287.01(10) and 289.01(33). (R.7.) The State argued that it was a violation of the state statute and also that, though not cited as a basis for the stop by Trooper Larsen, it was a violation of the City of La Crosse ordinance prohibiting littering. (R.8:1-2; R.12:13-14; Pet. Ap. 122-23).

The circuit court granted Mr. Iverson's motion to suppress and dismiss, stating that the court believed that the stop for littering was a pretext for a stop to find out if there was a drunk driver, stating:

[H]e wasn't stopping him to cite him for the litter. He was stopping him to see if he was a drunk driver. That's really the reason for the stop. The real reason for the stop is not the litter. The litter is the excuse, and if that cigarette butt comes out of the driver's side, I'm with you, Trooper; I'm there; but not out of the passenger side. Motion to suppress is granted.

(Pet. Ap. 124-25)

The Court then entered an order granting Mr. Iverson's motion to suppress evidence and to dismiss his cases. (R.9; Pet.-Ap. 139.)

### **Proceedings in the Court of Appeals**

The State appealed. (R.10). The State argued that Trooper Larsen had authority to stop Mr. Iverson's Jeep SUV because Trooper Larsen believed that someone in the vehicle had violated Wis. Stat. § 287.81. That State also argued that the circuit court erred in considering Trooper Larsen's motivation for the stop of Mr. Iverson's Jeep SUV. Mr. Iverson argued (1) that the circuit court's decision should be affirmed because the court had a reasonable basis in the record for determining that the stop was not reasonable, but was rather a pretextual stop; (2) the Mr. Iverson had not violated WIS. STAT. § 287.81(2)(b); (3) Mr. Iverson himself had not violated the City of La Crosse littering ordinance; (4) the conduct, even if it did constitute a violation of the ordinance, did not justify the stop; and (5) pretextual stops should not be warranted under the Wisconsin Constitution, Art. 1, sec. 11. (Def.-Respondent's Court of Appeals Brief at pp. 4-5, 7-8).

The Court of Appeals requested supplemental briefing on this issue:

Whether the articulable suspicion that is used to justify an investigatory stop may be based upon a violation of a non-traffic forfeiture?

(Pet.-Ap. 110.)

The Court of Appeals then affirmed the trial court, albeit in different grounds, holding that an officer is not authorized, absent a warrant, to seize a driver based upon suspicion of a non-traffic forfeiture. *Iverson*, slip.op. ¶12.

The State moved for reconsideration, which was denied. (Pet. Ap. 132-37; 107). The State appeals.

### **SUMMARY OF THE ARGUMENT**

The Court of Appeals decision affirming the trial court's granting of Mr. Iverson's motion to suppress and dismiss should be affirmed. First, even assuming law enforcement has authority to seize a driver to investigate suspicion that a passenger violated a non-traffic forfeiture, Mr. Iverson contends that a cigarette butt being tossed does not violate WIS. STAT. § 287.81. Second, law enforcement is not authorized under WIS. STAT. §§ 968.24, 968.07 or 345.22 to stop a person for a violation of a non-traffic ordinance violation and those statutes are therefore in conflict with the apparent statutory authority based in WIS. STAT. § 110.07 authorizing stops for perceived violations of specified non-traffic forfeitures.

### **ARGUMENT**

The seizure of a driver without a warrant for the perceived violation of a non-traffic forfeiture by a passenger is not authorized by Wisconsin law. Further, there was no reasonable suspicion or cause that the passenger

had in fact violated WIS. STAT. § 287.81 to justify the stop, even assuming such authority does exist.

**A. Applicable Constitutional Provisions.**

The Fourth Amendment to the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Fourth Amendment.

Article I, section 11 of the Wisconsin Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Wisconsin Constitution, Art. I, sec. 11.

**B. Statutory Provisions.**

Section 968.07 of the Wisconsin Statutes provides in relevant part:

- (1) A law enforcement officer may arrest a person when:
  - (a) The law enforcement officer has a warrant commanding that such person be arrested; or
  - (b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or
  - (c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or
  - (d) There are reasonable grounds to believe that the person is committing or has committed a crime.

WIS. STAT. § 968.07.

Section 968.24 of the Wisconsin Statutes provides:

After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

WIS. STAT. § 968.24.

Section 345.22 of the Wisconsin Statutes provides:

A person may be arrested without a warrant for the violation of a traffic regulation if the traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation.

WIS. STAT. § 345.22.

Section 110.07(1)(a) of the Wisconsin Statutes provides in relevant part:

(1)(a) ... Members of the state traffic patrol shall:

1. Enforce and assist in the administration of this chapter and chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 125.07(4)(b), 125.085(3)(b), 167.31(2)(b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders or rules issued pursuant thereto.

2. Have the powers of sheriff in enforcing the laws specified in subd. 1. and orders or rules issued pursuant thereto.

3. Have authority to enter any place where vehicles subject to this chapter, ss. 167.31(2)(b) to (d) and 287.81 and chs. 194, 218 and 341 to 350 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof.

(2) The traffic officers employed pursuant to this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways.

(2m) In addition to the primary powers granted by subs. (1) and (2), any officer of the state traffic patrol shall have the powers of a peace officer under s. 59.28, except that the officer shall have the arrest powers of a law enforcement officer under s. 968.07, regardless of whether the violation is punishable by forfeiture or criminal penalty.

A state traffic officer shall at all times be available as a witness for the state but may not conduct investigations for crimes under chs. 939 to 948 other than crimes relating to the use or operation of vehicles. The primary duty of a state traffic officer shall be the enforcement of chs. 340 to 351 or of any other law relating to the use or operation of vehicles upon the highway. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employee concerning wages, hours, labor or working conditions; nor shall any such officer be required to serve civil process. The department may assign state traffic officers to safeguard state officers or other persons.

\* \* \* \*

WIS. STAT. § 110.07.

Chapter 287 of the Wisconsin Statutes, which is titled, “Solid Waste, Recovery, Reduction and Recycling” contains several interrelated sections relevant to the matter before the court. Wisconsin STAT. § 287.01 provides definitions governing the chapter, including the following relevant provisions:

Except as otherwise provided, in this chapter:

(1) “Department” means the department of natural resources.

....

(5m) “Person” includes any individual, corporation, limited liability company, partnership, association, local governmental unit, as defined in s. 66.0131(1)(a), state agency or authority or federal agency.

....

(10) “Solid waste” has the meaning given in s. 289.01(33).

....

WIS. STAT. § 287.01.

Section 287.81 of the Wisconsin Statutes provides in relevant part:

(1) In this section:

....

(am) “Highway” has the meaning given in s. 340.01(22).

....

(b) "Vehicle" has the meaning given in s. 340.01(74), but includes an electric personal assistive mobility device, as defined in s. 340.01(15pm), and an all-terrain vehicle, as defined in s. 340.01(2g).

....

(2) Except as provided in sub. (3), a person who does any of the following may be required to forfeit not more than \$500:

(a) Deposits or discharges any solid waste on or along any highway, in any waters of the state, on the ice of any waters of the state or on any other public or private property.

(b) Permits any solid waste to be thrown from a vehicle operated by the person.

....

WIS. STAT. § 287.81

Wisconsin Stat. 289.01 provides the definition of "solid waste," among other things, relating to the alleged littering in violation of WIS. STAT. § 287.81. It provides in relevant part, as follows:

Section 289.01, Definitions. In this chapter, unless the context requires otherwise:

\* \* \* \*

(9) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.

\* \* \* \*

(27) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(28) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

\* \* \* \*

(33) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31(10), special nuclear material, as defined in s. 254.31(11), or by-product material, as defined in s. 254.31()(1).

\* \* \* \*

WIS. STAT. § 289.01.

### C. Standard of Review.

The Fourth Amendment to the U.S. Constitution and Art. I, §11 of the Wisconsin Constitution forbid the state and its agencies from conducting unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *State v. Hess*, 2010 WI 82, ¶41, 327 Wis. 2d 524, 785 N.W.2d 568. A traffic stop is a seizure, which must be reasonable and thus based upon either probable cause or reasonable suspicion of a traffic violation stated by articulable facts. *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 733 N.W.2d 634; *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 756 N.W.2d 569. It is the State's burden to prove that a stop was reasonable. *Post*, 2007 WI 60, ¶ 12. A decision to stop a vehicle is reasonable under the Fourth Amendment where the police have probable cause to believe that a traffic violation has occurred. *Whren v. U.S.*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); *Delaware v. Prouse*, 440 U.S. 648, 659, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

The question of whether a traffic stop is reasonable is a question of constitutional fact. *State v. Knapp*, 2005 WI 127, ¶ 19, 285 Wis. 2d 86, 700 N.W.2d 899. A question of constitutional fact is a mixed question of law and fact to which appellate courts apply a two-step standard of review. *State v. Martwick*, 2000 WI 5, ¶ 16, 231 Wis. 2d 801, 604 N.W.2d 552. A circuit court's findings of fact are reviewed under the clearly erroneous

standard, and an appellate court independently reviews the application of those facts to constitutional principles. *Id.*; *State v. Payano-Roman*, 2006 WI 47, ¶ 16, 290 Wis. 2d 380, 714 N.W.2d 548.

**D. An officer lacks authority to seize a driver to investigate the commission of a non-traffic forfeiture by a passenger.**

This Court should uphold the Court of Appeals' decision holding that Trooper Larsen did not have authority to seize Mr. Iverson for suspicion of a forfeiture, Littering of Solid Waste, absent a warrant. *State v. Iverson*, slip op. ¶¶ 11-12 (Pet-Ap. 104-05). Certainly, there is a plethora of constitutional and statutory authority granting officers authority to stop a driver upon probable cause or reasonable suspicion that the driver has committed or is committing a traffic offense or crime. *See e.g.* WIS. STAT. §§ 968.07(1)(d), 968.24, 345.22; *State v. Popke*, 2009 WI 37, ¶ 13 and ¶ 23, 317 Wis. 2d 118, 765 N.W.2d 569. In *Popke*, for example, the driver had crossed the center line in violation of WIS. STAT. § 346.05, which gave the officer probable cause to believe that a traffic offense had occurred. *Id.* at ¶ 15.

The State cites *City of Milwaukee v. Nelson*, 149 Wis. 2d 434, 439 N.W.2d 562 (1988) for the proposition that an officer can seize a person for a non-traffic forfeiture that is not also a crime provided that: (1) the violation occurs in the officers presence, unless other factors exist; and (2) a statute authorizes the officer to make the warrantless arrest. *Nelson*, 149

Wis. 2d at 457-58. Respectfully, *Nelson*, is not on all fours with the present case. First, *Nelson* involved a local ordinance making loitering unlawful and the seizure of Nelson was for *his* alleged commission of the loitering offense. *Id.* at 440-441. It also did not involve the stop of a vehicle. Nelson was in a public place at the time he was questioned. *Id.* Here, we have a seizure of Mr. Iverson for an alleged forfeiture offense cigarette butt toss allegedly committed by his passenger. Whether a stop and seizure of the driver under those circumstances is warranted under the Fourth Amendment and Article 1, section 11 of the U.S. and Wisconsin Constitutions is not comparable.

The State argues that because courts have repeatedly held that “an officer may conduct a vehicle stop based solely upon an officer’s reasonable suspicion that a person has violated a non-criminal traffic regulation,” therefore, no sound reason exists for differentiating between traffic and non-traffic forfeiture offenses.” (State’s Brief at pp. 19-20).

Certainly the legislature could explicitly authorize law enforcement to stop vehicles based upon probable cause that a passenger has violated an ordinance or forfeiture, even if there is no particular reason to believe that the driver permitted the action, but it has not done so.<sup>1</sup>

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<sup>1</sup> It should be noted that WIS. STAT. § 287.81(2)(b) provides that a forfeiture can be assessed against someone who “permits” solid waste to be thrown from a vehicle. There was no evidence other than the fact that the cigarette butt was tossed to believe that the tossing of the cigarette butt was permitted by the driver here, assuming it qualifies as “solid waste.”

*State v. Krier*, Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991) supports Mr. Iverson's position and the holding of the Court of Appeals. In *Krier*, the Court of Appeals held that under WIS. STAT. § 968.24, if a person's activity can constitute "either a civil forfeiture or a crime, a police officer may validly perform an investigatory stop." *Id.* By logic, the lack of a criminal counterpart to the solid waste littering statute means that law enforcement lacks the authority to conduct the stop for the mere forfeiture, particularly if it is a passenger.

The State argues that WIS. STAT. § 110.07 provided Trooper Larsen with authority to investigate and stop vehicles for littering in violation of WIS. STAT. § 287.81. Mr. Iverson would concede that there appear to be conflicting statutes governing the authority for law enforcement to stop a vehicle if the driver has in fact violated the littering of solid waste statute under WIS. STAT. § 287.81. Wisconsin STAT. §§ 968.07 and 968.24 provide law enforcement authority relating to the commission of *crimes*. Wisconsin STAT. 345.22 provides law enforcement with authority to arrest for violation of a *traffic* regulation, but the solid waste littering statute here is not a traffic regulation as defined. Wisconsin STAT. § 110.07(1)(a)3. appears to provide authority to law enforcement to conduct a stop to "examine the [vehicles] and make arrests for all violations thereof" for various forfeiture offenses, including WIS. STAT. § 287.81. It is frankly unclear the level of suspicion or cause necessary to authorize a stop under

WIS. STAT. § 110.07. Nonetheless, Mr. Iverson would not concede that Trooper Larsen had probable cause and/or reasonable suspicion to believe that a violation of that statute occurred here.

**E. Even assuming an officer does have statutory authority to seize a driver for an alleged non-traffic forfeiture violation committed by a passenger in the driver’s vehicle, there was no reasonable suspicion or probable cause to believe that the statute was violated here.**

The State argues that Trooper Larsen had both reasonable suspicion and probable cause to believe that an occupant of Iverson’s vehicle had violated WIS. STAT. § 287.81(2). (State’s Brief at pp. 15-20). The State claims that the term “solid waste” is “broadly defined and includes “any garbage, refuse ... and other discarded or salvageable materials....” (State’s Brief at p. 14 *citing* WIS. STAT. §§ 287.01(1) and 289.01(33)).

Mr. Iverson would contend, to the contrary, that a violation of WIS. STAT. § 287.81 is limited to very specific facts and, in particular, a cigarette butt does not meet the definition of the term “solid waste” as set forth in the statutes.

First, a person violates the State’s solid waste littering statute if the person (1) deposits or discharges any solid waste on or along any highway, in any waters of the state, on the ice of any waters of the state or on any other public or private property; or (2) permits any solid waste to be thrown from a vehicle operated by the person. WIS. STAT. § 287.81(2)(a) and (b).

The term “solid waste” is statutorily defined as:

Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under s. 283, or source material, as defined in s. 254.31(10), special nuclear material, as defined in s. 254.31(11), or by-product material, as defined in s. 254.31(1).

WIS. STAT. § 289.01(33). “Garbage” is defined as “discarded materials resulting from the handling, processing, storage and consumption of food”. WIS. STAT. § 289.01(9). “Refuse” is defined as “all matters produced from industrial or community life, subject to decomposition, not defined as sewage.” WIS. STAT. § 289.01(28).

A cigarette butt is not “garbage” as defined, as it does not result from the handling, processing, storage and consumption of food. A cigarette butt is not “refuse” as it is not (or it is certainly not clear that it is) a matter produced from “community life” that is “subject to decomposition.”

Furthermore, “solid waste” is defined particularly. It is garbage, refuse and sludge “from a waste treatment plant or air pollution control facility.” A cigarette butt does not come from either of those facilities, assuming for the sake of argument that a cigarette butt could be considered “refuse.”

In addition to being “garbage, refuse and sludge” from those particular facilities, solid waste is also defined as:

... other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under s. 283, or source material, as defined in s. 254.31(10), special nuclear material, as defined in s. 254.31(11), or by-product material, as defined in s. 254.31(1).

WIS. STAT. § 289.01(33).

A passenger’s cigarette butt does not qualify as discarded material resulting from any of the defined operations, which appear to be geared toward large-scale production of waste materials, and further a cigarette butt being tossed is not a product of “community activities” as it is a singular event by an individual and not a group activity. The statute certainly appears to be geared toward larger scope operations and activities and not small individual acts like the tossing of a single cigarette butt.

Additionally, the statute provides that the discarded material must result from “industrial, commercial, mining and agricultural operations, *and* from community activities.” *Id.* (emphasis added). The inclusion of the conjunction “and” leads one to reasonably believe in interpreting the statute that the discarded materials would have to result from both one of the listed operations and from community activities to be considered “solid waste.” Given the specific definition of solid waste, Trooper Larsen did not have

either reasonable suspicion or probable cause to believe that a forfeiture violation occurred by Mr. Iverson's passenger, and thus he had no probable cause or reasonable suspicion for the stop, even assuming an officer is authorized to seize a driver for the forfeiture committed by a passenger in the presence of an officer.

### **CONCLUSION**

Mr. Iverson respectfully requests that this Court affirm the Court of Appeals' decision affirming the circuit court's order granting his motion to suppress evidence and dismissing his cases.

Dated this 1st day of June, 2015.

JOHNS, FLAHERTY & COLLINS, S.C.

/s/

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**CERTIFICATION OF FORM AND LENGTH**

I hereby certify that this brief conforms to the form and length requirements contained in Sec. 809.19(8) (b) and (c), Stats., for a brief and appendix produced with a 13-pitch proportional space font. The length of this brief is 4,217 words.

/s/ \_\_\_\_\_  
Joseph G. Veenstra, SBN 1028139

**CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements contained in Sec. 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.

/s/ \_\_\_\_\_  
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