STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2014AP1767-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRIAN I. HARRIS,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE KENOSHA COUNTY CIRCUIT COURT, THE HONORABLE MICHAEL WILK PRESIDING

# BRIEF OF PLAINTIFF-RESPONDENT

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## STATEMENT OF ISSUES

1. Did Officer Niebuhr exploit a *Miranda*[1] violation when he placed Brian I. Harris in the police squad, did not ask him any questions, and Harris blurted out incriminating statements?

[1] *Miranda v. Arizona*, 384 U.S. 469 (1966).

- The trial court answered this question no, finding Harris's statements to be voluntary and not the product of an interrogation.

2. When Detective Buchanan asked Harris if he wished to make a statement, was this question the functional equivalent of an interrogation?
   - The trial court answered this question no.

3. If the trial court erroneously admitted into evidence Harris's statements to the police, did this constitute harmless error?
   - This issue was not before the trial court.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

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

## STATEMENT OF FACTS

On August 13, 2011, Officer Justin Niebuhr, an eleven-year veteran of police service, with the last six being served with the Kenosha Police Department, was dispatched to 1121 63rd Street to investigate a possible ongoing burglary (96:5; 97:74-75). The complainant was the neighbor, Natasha Waterford, who lived in 1123 63rd Street

(96:6). Waterford had been awakened by loud noises that sounded like metal being struck, as though a person was trying to move or take something (97:65, 66). The noises disturbed Waterford because they were loud and she knew that no one lived where the noises were coming from, 1121 63rd Street (97:66-67). After hearing the noises for about five minutes, Waterford called the police, who responded immediately, at approximately 3:22 a.m. (97:69; 75).

Upon arriving and meeting with Waterford, Officer Niebuhr could hear a loud clanging of metal coming from inside 1121 and went to the front door of the supposedly vacant townhouse (96:6). The front door was locked and, looking through the window, Niebuhr saw only darkness. Niebuhr then tried the back door, but it too was locked (*id.*). At this point, Officer Niebuhr observed that there were two small windows on the back of the residence that led into the kitchen. He noticed that one of the windows was cracked and that its latch was undone at the top (*id.*). Niebuhr requested backup and soon Officer Gonzalez joined the scene (96:6-7).

Officer Gonzalez climbed through the small window, unlocked the back door and let Niebuhr inside (97:78). The metal banging continued as Officers Niebuhr and Gonzalez entered the kitchen until the officers walking made noises on the kitchen floor (*id.*). The banging had appeared to come from the basement. Before going to the basement, Officer Gonzalez cleared the main floor while two other responding

officers cleared the upstairs (96:7; 97:79). Then Officers Niebuhr and Gonzalez began to go down to the basement (96:7).

As the two officers proceeded down the stairs leading to the basement, they observed another set of stairs in the basement (96:7). There was a small crawl space under this second set of stairs from which Officer Niebuhr could see a pair of shoes sticking out (96:8). Officers Niebuhr and Gonzalez demanded that if anybody was in the basement they should come out, show themselves, and to this there was no response (*id.*). The officers continued slowly down the stairs and Niebuhr then saw Harris underneath the staircase in a seated position (97:81). Officer Niebuhr then placed Harris into custody (96:8; 97:81).

After placing Harris into custody, Officer Niebuhr looked around the basement and saw copper piping that was previously on the ceiling lying on the ground (96:8). Niebuhr also observed a grey duffel bag on the floor, and this duffel bag contained a saw and some replacement blades, a bolt-cutter type instrument, and some crowbars (96:8-9). Niebuhr also saw a flashlight on the floor that had a red lens over the light bulb. He further observed that Harris was wearing a black pair of work-styled hand gloves (96:9). Officer Niebuhr believed that he had some conversation with Harris in the

basement after arresting him (96:14).[2] Officer Niebuhr took Harris out of the townhouse and into his police squad (96:9).

Once in the squad, Officer Niebuhr attempted to contact the owner of the vacant townhouse where Harris had been found and attended to paperwork (96:9). Harris, without being questioned, began talking in the back of the squad, advising that he had been homeless for seven years, that he frequently goes to vacant houses to sleep, and that he was going to take the copper piping and sell it for money (*id.*). Harris also said that he often commits misdemeanor crimes to get items to sell for food, and that he was alone in the basement (*id.*). Harris's dialogue was not a response to any questions posed by Officer Niebuhr or any other police officer (96:10). Officer Niebuhr made no threats or promises to Harris and felt that Harris did not seem overly tired or intoxicated (96:10). Officer Niebuhr never read Harris his *Miranda* warnings (96:11).

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[2] The record is a bit murky as to what Officer Niebuhr actually said to Harris in the basement. At the motion hearing, held on the day of trial but before the trial commenced, Niebuhr testified that he probably asked Harris who he was and what he was doing (96:15). At trial, Niebuhr testified that he asked Harris what he was doing in the basement but he wasn't sure what the conversation entailed (97:120-21). Later, Niebuhr testified at trial that he asked Harris basic questions about his name, whether there were other people in the basement, his address, but did not specifically ask him what he was doing in the basement (97:123-24). Harris is not helpful in clarifying this issue as he did not testify at the motion hearing and at the trial he testified that he was too intoxicated to recall what was being said in the basement (97:195-96). In any event, there is nothing in the record showing that Harris made any self-incriminating statement in the basement.

Detective Chad Buchanan of the Kenosha Police Department was called upon to follow up the investigation involving Harris and the alleged burglary at 1121 63rd Street (96:19; 97:143). Detective Buchanan met Harris in the Kenosha County jail and asked Harris if he would like to accompany him to the detective bureau to be interviewed (96:19-20).[3] Harris responded by saying, "they caught me man, I got nothing else to say" (97:144; 96:20). Buchanan did not ask Harris any more questions and did not read Harris his *Miranda* warnings (96:20; 97:144). Harris's contact with Buchanan took place in a common area in the jail, just outside of some interview rooms (96:20-21; 97:144, 150). Buchanan did not make threats or promises to Harris. While a guard brought Harris to Buchanan, Harris was not handcuffed (96:21).

## ARGUMENT

Harris asks this Court for a remand for a new trial because he contends that the trial court erroneously admitted into evidence incriminating statements he made to Officer Niebuhr, when he admitted to entering the basement with criminal intent, and to Detective Buchanan when he said that he was caught and had nothing else to say.

[3] At trial Buchanan altered his testimony from the motion hearing slightly. Instead of asking Harris if he wanted to go to the detective bureau to be interviewed (96:20), the testimony at the motion hearing, Buchanan testified at trial that he asked Harris if he would like to give a statement (97:144).

Specifically, Harris maintains that police obtained both of these statements after a violation of his Fifth Amendment rights, since he was in custody in both instances and was never read the *Miranda* warning. Harris argues that his statements made to Officer Niebuhr in the police squad were tainted by the Fifth Amendment violations that occurred earlier in the basement, when after arresting Harris and without Mirandizing Harris, Niebuhr asked Harris what he was doing. Then Harris argues that his statement to Detective Buchanan should also be suppressed since Buchanan had not read Harris the *Miranda* warnings and his question, "Would you like to make a statement?" or words to that effect, was the functional equivalent of an interrogation. Harris also submits that the trial court's erroneous admission of his incriminating statements carried the tangential infirmity of compelling him to testify at trial to explain his comments.

The State counters that the trial court properly admitted Harris's statements at trial. First, the statements in the squad to Officer Niebuhr were voluntary, and were not the product of questioning of any kind. Also, any Fifth Amendment violation that occurred in the basement was vitiated by the fact that Harris made no comment to Niebuhr's admittedly *Miranda*-violative basement query, and that Niebuhr said nothing to Harris from the time that he escorted Harris to the squad to the time that Harris made his unprovoked confession. Second, there was nothing in

Detective Buchanan's generic question as to Harris's willingness to make a statement, which can be reasonably interpreted as either an expressed interrogation or the functional equivalent of an interrogation.

The trial court's ruling on Harris's statements was proper and consistent with the law and the facts of this case. Nevertheless, even if the trial court was in error, it was harmless error, as there was ample evidence to support the jury verdict without reference to Harris's statements or to Harris's testimony at trial. Hence, at most, Harris would be entitled to a remand for a *Harrison*/A*nson*[4] hearing to fully assess harmless error, since Harris testified at trial. *See State v. Lemoine,* 2013 WI 5, ¶ 36, 345 Wis. 2d 171, 827 N.W.2d 589.

[4] In *Harrison v. United States,* 392 U.S. 219 (1968), the Court held that when statements later to determined to be inadmissible are used at trial and the defendant takes the stand and testifies, there must be a determination of whether the defendant's testimony was compelled by the admission of the illegally obtained statements. *Id.* at 224-25. In *State v. Anson,* 2005 WI 96, 282 Wis. 2d 629, 698 N.W.2d 776, the court held that the review required by *Harrison* is a paper review where the circuit court makes historical findings of fact based on the entire record. *Id.* ¶ 13.

## I. Harris's Statement To Officer Niebuhr Was Admissible Because It Was Voluntary, Was Not Provoked By Any Police Questioning, And Was Not The Product Of Police Exploitation Of A Constitutional Violation.

### A. Applicable law.

Whether a suspect is interrogated by the government is a question of constitutional fact. The circuit court's findings of fact are subject to the clearly erroneous standard, while the determination of whether those facts satisfy the legal standard is reviewed *de novo*. *State v. Hambly*, 2008 WI 10, ¶ 49, 307 Wis. 2d 98, 745 N.W.2d. 48. The burden is on the State to establish by a preponderance of the evidence whether or not a custodial interrogation took place. *State v. Armstrong,* 223 Wis. 2d 331, 345, 588 N.W.2d 606 (1999).

Statements made by a defendant, obtained by custodial questioning without the reading of the *Miranda* warning, are subject to suppression. *State v. Clappes,* 117 Wis. 2d 277, 282, 344 N.W.2d 141 (1984). But *Miranda* does not require the suppression of all statements made in custody before *Miranda* warnings are given. Volunteered statements, which are not the product of an interrogation, are not subject to suppression. *State v. Gonzalez*, 2010 WI App 104, ¶ 66, 328 Wis. 2d 182, 789 N.W.2d 365, *rev'd on other grounds,* 2011 WI 63, 335 Wis. 2d 270, 802 N.W.2d 454. *Miranda* warnings are not required for all statements resulting from police contact, but only for those statements

resulting from a custodial interrogation. *State v. Buck,* 210 Wis. 2d 115, 123, 565 N.W.2d 168 (Ct. App. 1997).

Whenever there is a constitutional violation, evidence may still be admissible if it is sufficiently attenuated from the taint of the illegal police activity. *Wong Sun v. United States,* 371 U.S. 471, 488 (1963). There are three factors to be considered under an attenuation theory: "(1) the temporal proximity of the official misconduct and the subsequent statements by a defendant; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct." *State v. Kiekhefer,* 212 Wis. 2d 460, 481, 569 N.W.2d 316 (Ct. App. 1997). The primary concern in attenuation cases is whether the challenged evidence was obtained by exploitation of a prior police illegality. *State v. Anderson,* 165 Wis. 2d 441, 447-48, 477 N.W.2d 277 (1991). Under the attenuation doctrine, not all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. *State v. Farias-Mendoza*, 2006 WI App 134, ¶ 25, 294 Wis. 2d 726, 720 N.W.2d 489.

The attenuation doctrine is inapplicable in cases where there is no causal connection between the original violation and the activity that generated the challenged evidence. *State v. Hogan,* 2015 WI 76, ___ Wis. 2d ___, ___N.W.2d ___.

A fair summary of the applicable law is that the State has the burden of showing by a preponderance of the evidence that there was not a police custodial interrogation. Volunteered custodial statements that are not the product of custodial interrogation are not subject to a required reading of the *Miranda* warning. Evidence obtained after a constitutional violation is still admissible if it was gained in a manner sufficiently attenuated from the taint of the illegal police conduct. The attenuation doctrine is evaluated under three factors: 1) temporal proximity, 2) intervening conduct, and 3) the purpose and flagrancy of the original police misconduct. The key issue in an attenuation analysis is whether the police are seeking to exploit their earlier misconduct in getting the now-challenged evidence. The attenuation analysis is not appropriate when there is no connection between the original constitutional violation and the actions that spawned the challenged evidence.

### B. Application of facts to the law.

There is much agreement between the parties as to the salient facts. The dispute is over how the facts are interpreted. The following facts are undisputed:

- Harris was immediately placed in custody before Officer Niebuhr asked him anything.
- After placing Harris in custody, Officer Niebuhr asked Harris what he was doing in the basement. (The record is a bit murky on this score, but for purposes of this appeal the State concedes that

Niebuhr queried Harris as to his being in the basement.)

- Officer Niebuhr did not read Harris the *Miranda* warnings.
- Harris did not say anything to the police upon his apprehension in the basement.
- Harris was handcuffed and escorted to the police squad.
- In the police squad Officer Niebuhr did not ask Harris any incriminating questions but instead was attempting to contact the owner of the vacant townhouse and attending to paper work.
- Officer Niebuhr never threatened Harris or promised him anything.

Based on these facts, the State concedes that there was illegal police conduct when, after placing Harris into custody, Officer Niebuhr, without reading the *Miranda* warning, asked Harris what he was doing in the basement. But this *Miranda* violation bore no fruit as Harris did not provide an explanation for his conduct. Officer Niebuhr did not aggravate the situation by asking any more questions, and merely escorted Harris to the squad. There, without any provocation Harris engaged in an incriminating soliloquy. Harris argues that his confession is somehow connected to the question he was asked in the basement, even though it occurred minutes after Officer Niebuhr asked the question

and Harris seemingly ignored it, and after the officers transported Harris from the basement to a police squad. Harris contends that the court should have suppressed his unprovoked statements because they were the product of the original question that Niebuhr asked in the basement.[5] Harris reasons that the State cannot salvage his statements under the attenuation doctrine, since the statements were not sufficiently removed from the taint of the basement *Miranda* violation.

Harris chides the trial court for not addressing the attenuation doctrine in its ruling when he wrote, "The trial court did not undertake an analysis of whether the squad car statements were sufficiently attenuated from the basement questioning so as to purge them of their taint." Harris's brief at 9. The State shares the trial court's belief that the attenuation doctrine is not implicated by the facts in this case. The core of the attenuation analysis is whether the police exploited their original misconduct to get evidence. But what exploitation or attempted exploitation do we have when the police do not do anything? Attenuation is a doctrine of looking at the relationship between two courses of police conduct: the original misconduct and the

[5] In his brief, Harris does not argue that Niebuhr engaged in the functional equivalent of an interrogation when he was in the squad with Harris. Instead, he limits his objection to the fact that his unsolicited comments were sufficiently connected to the improper basement question to render them inadmissible in court. The State agrees with Harris that there is no functional-equivalent-of-interrogation issue as to the statements Harris made to Niebuhr.

subsequent conduct that obtained the challenged evidence. The relationship is explored in the three-pronged inquiry of temporal proximity, intervening factors, and the flagrancy of the original misconduct. This test makes no sense when there is no second police act to analyze and evaluate. A doctrine grounded in police exploitation does not compute when there is no police action to interpret.

The need for a causal relationship between the original constitutionally violative act and the activity that generated the challenged evidence was recently articulated by our supreme court in *Hogan*. The *Hogan* court instructed that an attenuation analysis is only appropriate where, as a threshold matter, a court determines that the challenged evidence was in some sense the product of illegal government activity. *See Hogan*, 2015 WI 76, ¶ 66. *Hogan* endorses the "but for" test in evaluating whether an attenuation analysis is appropriate. In other words "but for" the original illegal police act, the opportunity for the situation which created the challenged evidence would have not occurred. *Id.*

In *Hogan*, the court concluded that an illegal stop was not causally connected to a voluntary consent to search, and therefore the evidence seizure was not a proper subject for an attenuation analysis. The court reasoned that the improper stop had been terminated before the request for voluntary consent was initiated. Accordingly, the evidence

was obtained as a voluntary encounter, and not as a residual of the original illegal activity. *See id.* ¶ 69. Similarly, in this case, the illegal activity of asking an incriminating question to a custodial subject without reading the *Miranda* warning had ended and any semblance of an interrogation had been concluded by the time Harris was placed in the police squad. Much as the court in *Hogan* evaluated voluntary consent on its own terms, without regard to attenuation, this Court should evaluate the volunteered, unprovoked statements Harris made in the squad without applying the three-pronged attenuation test.

Accordingly, the trial court was correct in not looking at attenuation in reaching its decision. Rather, the court noted that Niebuhr had asked no questions in the squad, observed that Niebuhr had not threatened or promised anything to Harris, and then properly concluded that "the statements made by the defendant, based on the totality of the circumstances, were completely voluntar[y]" (96:31).

As argued above, there was no need for an attenuation analysis in deciding whether the statements Harris made to Niebuhr in the squad should be admitted into evidence. Nevertheless, even if the attenuation analysis was applied, the evidence is admissible. The temporal proximity issue weighs in the State's favor, because the one question interrogation had ended, and minutes passed before Harris decided to engage in spontaneous self-incrimination. There

were several intervening factors: the cessation of any attempt to interrogate Harris, the removal of Harris from the home and his placement in the squad, and Officer Niebuhr's engaging in activities not connected to an attempt to interrogate Harris. Finally, a question to a person caught hiding in a basement as to what he was doing is not a flagrant constitutional violation.

The State submits that Harris's statements were voluntary and were not proper subjects for an attenuation analysis. Even if the statements were to be scrutinized by an attenuation review, they were still admissible. This leaves one last argument for Harris: that he was asked an unlawful question in the basement and answered it minutes later in the police squad. In other words, Harris argues that his answer was sufficiently close in time to the question so as to be the product of the unlawful interrogation.

The State concedes that some delay between a question and answer can occur in an ongoing interrogation. Pregnant pauses are commonplace in conversation, particularly in the tension-packed arena of police inquisitor and custodial subject. But, this case does not involve a pregnant pause. Instead, Harris ignored the original question, the police transported Harris from the basement to the police squad and while in the squad, Niebuhr began to attempt to contact the vacant townhouse owner and tend to paperwork. Only then did Harris begin to talk. Whatever

Harris's motivation for bursting into confession, it was not a product of an ongoing custodial interrogation.

The trial court properly admitted Harris's unprovoked squad car comments to Officer Niebuhr into evidence.

## II. Detective Buchanan's Asking Harris If He Wished To Make A Statement Is Neither An Expressed Interrogation Or The Functional Equivalent Of An Interrogation.

### A. Applicable law.

The State must show by a preponderance of the evidence whether or not a custodial interrogation took place. *Armstrong,* 223 Wis. 2d at 345. Interrogation is defined as questioning by the police that is designed to elicit an incriminating response. *Rhode Island v. Innis,* 446 U.S. 291, 301 (1980). An interrogation includes not only expressed questioning of a suspect but also conduct or words that are the functional equivalent of an expressed interrogation. *Id.*; *State v. Cunningham,* 144 Wis. 2d 272, 277, 423 N.W.2d 862 (1988). The functional equivalent of express questioning is any words or police conduct that the police should reasonably foresee are reasonably likely to elicit an incriminating response. *Cunningham,* 144 Wis. 2d at 278. The objectively foreseeable standard properly considers the police knowledge of the particular susceptibility of the defendant to police words or actions.

The functional equivalent test hinges on whether the police words or conduct could reasonably have the force of a question designed to elicit an incriminating response. *State v. Fischer*, 2003 WI App 5, ¶ 25, 259 Wis. 2d, 799, 656 N.W.2d 503.

If a defendant makes a statement that is not a response to expressed questioning or its functional equivalent, the police are not prohibited from listening to this voluntary statement, even without the reading of the *Miranda* warning. *Edwards v. Arizona,* 451 U.S. 477, 485 (1981).

A fair summary of the law is that an interrogation is typically expressed questioning designed to elicit an incriminating response. But questioning or conduct that is not expressly confrontational has the functional equivalent of interrogation when, under the circumstances, it is objectively foreseeable that the words or conduct are reasonably likely to elicit an incriminating response. If a defendant makes a voluntary statement that is not the product of an expressed or functional equivalent of interrogation, such statements are admissible, even if the suspect was not advised of his *Miranda* warnings.

**B. Application of facts to the law.**

Again, there is little dispute as to the facts concerning Harris's statement to Detective Buchanan. There is no

dispute that Harris was in custody, that Buchanan did not read the *Miranda* warning, and that the lone question Buchanan asked was whether Harris wished to make a statement. It is also agreed that Harris replied that since he was caught, he had nothing to say. Leaving aside whether Harris's statement is actually inculpatory, the issue is whether Detective Buchanan provoked it.

There can be little argument that on its face, "Do you wish to make a statement?" is not an expressed question designed to elicit an incriminating response. Under the circumstances, the challenged question seems to be ministerial rather than probing.

Nor was the question the functional equivalent of an interrogation. The State submits that an objective observer would have concluded that Detective Buchanan's inquiry was far more likely to generate a "yes" or "no" response than it would produce an incriminating one. And there was nothing particular about Harris that made him vulnerable to such a benign question. While it is true that based on Harris's contact with Niebuhr it can be concluded that he has "loose lips," that is still not a sufficient basis to conclude that the question, "Do you wish to make a statement?" is an invitation for self-incrimination. While a defendant's susceptibility is a salient factor in a functional equivalent analysis, it is not likely to come into play in the context of

such a reasonable, routine, and non-confrontational question.

The trial court properly concluded that Harris's response to Detective Buchanan's question was not the product of a custodial interrogation but rather a voluntary unprovoked statement.

## III. If This Court Determines That Harris's Statements Should Have Been Suppressed, It Should Remand The Case To Allow The Circuit Court To Conduct A *Harrison/Anson* Analysis.

If this Court were to decide that the circuit court erred by admitting Harris's statements to the police, the error was harmless. Even without those statements, and without Harris's trial testimony, the evidence to support the jury verdict was compelling. Harris was caught "red-handed." Officer Niebuhr was dispatched to investigate an ongoing burglary (97:75). Once at the scene, Niebuhr heard a consistent loud banging noise, sounding like the clanging of metal together (97:76). The police noted that the doors of the home were locked and that entry was achieved by breaking one of the kitchen windows (97:77). Eventually, Niebuhr along with other police officers found their way into the basement areas where the noises were coming from and discovered Harris (97:81). The police found no one else other than Harris (*id.*). By Harris the police found a duffel bag containing burglarious tools, and they also observed copper piping that used to be on the ceiling now on the basement

floor (97:82, 83). Harris was found attempting to hide and he was wearing black work-styled gloves on his hands (97:80-81, 83). The owners of the vacant home testified that the last time they had checked the basement the copper was in place, that the windows were intact, and that they gave no one permission to enter the townhouse to damage the home, or to take the copper (97:48, 49, 51, 52).

That said, our supreme court has held that when a defendant testifies, as Harris did here, after a court improperly admits his statements, "[o]nly after a *Harrison*/*Anson* analysis does the court proceed to a harmless error analysis." *Lemoine*, 345 Wis. 2d 171, ¶ 36. In this case, the circuit court never had an opportunity to make the findings of fact required under a *Harrison*/*Anson* analysis. Accordingly, if this Court agrees with Harris on the suppression issue, it should remand this case to the circuit court to make appropriate factual findings and conduct a *Harrison*/*Anson* analysis. Of course, if this Court concludes, as the State argues, that Harris's statements were properly admitted there is no need to proceed to a *Harrison*/*Anson* or a harmless error analysis. *Id*.

## CONCLUSION

For all the reasons stated above, the State asks this Court to affirm the judgment of conviction.

Dated this 30th day of July, 2015.

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 4,606 words.

Dated this 30th day of July, 2015.

_____

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 30th day of July, 2015.

_____

DAVID H. PERLMAN
Assistant Attorney General