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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

ANDREW T. JODA,
Defendant-Appellant.

Appeal Nos. 2014-AP-1949 and 2014-AP-1950

Waukesha County Circuit Court
Case Nos. 13-TR-3495,
13-TR-3496, 13-TR-3497

ON NOTICE OF APPEAL TO REVIEW JUDGMENTS OF CONVICTION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE ENTERED IN THE CIRCUIT COURT FOR WAUKESHA COUNTY, THE HONORABLE JENNIFER DOROW, PRESIDING

DEFENDANT-APPELLANT'S BRIEF AND APPENDIX

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STATEMENT OF THE ISSUE PRESENTED

Whether a circuit court's finding of fact necessary to support reasonable suspicion is clearly erroneous when based wholly upon the testimony of a witness who cannot recall where he was when allegedly viewing a traffic violation, who cannot recall whether the infraction occurred in front of his vehicle or behind him, and when contradicting testimony is discounted based upon a clearly erroneous understanding of the testimony.

Circuit Court's answer: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument may be appropriate in this case under Wis. Stat. (Rule) 809.22. Appellant's arguments clearly are substantial and do not fall within that class of frivolous or near frivolous arguments concerning which oral argument may be denied under Rule 809.22(2)(a). At such time as counsel for appellant has had sufficient opportunity to review the brief of respondent, it may be that the briefs fully present and meet the issues on appeal, rendering oral argument technically unnecessary under Wis. Stat. (Rule) 809.22(2)(b).

This case is not eligible for a published decision under Wis. Stat. (Rule) 809.23(1).

STATEMENT OF FACTS

According to his testimony at the evidentiary motion hearing held in the present case, Waukesha County Sheriff's Deputy William Becker ("Becker") could not provide an independent recollection of the circumstances under which

he observed an alleged traffic violation, R.24:27[1] that formed the sole grounds for a traffic stop. R.24:36.

It is undisputed that Becker was traveling westbound on Highway 94 when he exited the highway via a ramp on the north side of the highway. R.24:6. The exit ramp crossed a single north-south road called "North Grandview Blvd" and Becker made a left turn on to Grandview Blvd after first waiting for a red light to turn green. *Id.*; R.4B:1.

Becker's testimony conflicted with his own written statement, a fact which he admitted during testimony. R.24:36. Becker admits his written report stated that he first observed Mr. Joda in the left turn lane with his left blinker on, while Mr. Joda's vehicle was facing northbound on Grandview Blvd. *Id.* Becker admitted that his statement claimed Mr. Joda was in the left turn lane to head on to the westbound I-94 on-ramp. *Id*. Becker also admitted that the only place where there was either a left turn lane or an entrance ramp to westbound I-94 was north of I-94. *Id*. at 35. Becker testified that if Mr. Joda had conducted a U-turn at the place his written report stated and described, then he was aware of nothing that would have made the U-turn illegal. *Id.* at 32.

However, Becker's testimony was significantly different than his written statement. *See. Gen.* R.24. He testified that he had exited I-94 westbound, was facing westbound off the ramp, and was stopped at a stop light north of I-94 when

[1] R.24:27 is a citation to the index for 14AP1950 where 24 is the number of the record and 27 is the page number of the document.

he observed Mr. Joda's vehicle stopped at a red light, heading north, in the far-left, northbound lane of Grandview Blvd., south of highway 94, with its left signal active. R.24:7. This red light controlled the intersection of the entrance and exit ramps for eastbound I-94. *Id.*

On cross-examination, Becker stated that he had no independent recollection of where he was when he saw the alleged U-turn, and could not recall if the turn happened in front of, or behind, his squad car. R.24:26-27. On re-direct he testified that he thought he would have slowed to keep Mr. Joda in front of him, but could not give testimony based upon an independent recollection of what he did or did not do. R.24:38.

The main ground of contention between the parties at the motion hearing was whether Mr. Joda conducted a U-turn on Grandview Blvd. at the intersection north or south of the highway. Mr. Joda admitted to making a U-turn. R.24:48. If the U-turn was committed south of the Highway it was unlawful, *Id.* at 8, but if it was committed north of the highway, it was lawful. *Id.* at 32:9.

Mr. Joda stated that he was, in fact, stopped at a red light, with his left blinker on, at the intersection south of I-94, while headed northbound on Grandview Blvd. *Id.* at 46. He testified that he had his left turn signal on to signal his intent to move in to the left turn lane once the light turned green. *Id.* Mr. Joda testified that while he was waiting at that intersection, he saw a law enforcement vehicle coming the opposite direction, southbound on Grandview Blvd. *Id*. at 47. Mr. Joda testified that, when his light turned green, he moved through the

intersection, moved left in to the far left lane, and, after observing no sign prohibiting a U-turn, made a U-turn at the intersection north of I-94, in a location that precisely matched the location described in Becker's police report. *Id*. at 48. Mr. Joda testified that upon completing his U-turn he saw Becker's vehicle ahead of him, moving south in the same direction as him on Grandview Blvd.

After initially testifying that he witnessed Mr. Joda's U-turn south of I-94 while heading south, with Mr. Joda in front of him, R.24:7-8, Becker testified that he didn't actually know where he was when Mr. Joda made his U-turn, and he didn't know if Mr. Joda turned in front of him or behind him. R.14:27. Becker said, "Actually, now that I'm thinking about that, I can't remember if I actually did pass him or if he did turn in front of me. I can't remember now." *Id*. Counsel attempted to refresh Becker's memory with his own report, but Becker said "I can't – based upon what I read, I can't recall if the person did turn in front of me or if I slowed down." (R.14:27:19-25). After these admissions, Becker never again testified that he could actually recall where he was when he saw Mr. Joda do his U-turn.

In contrast to Becker's inability to recall the circumstances in which he observed the U-turn, Mr. Joda's testimony demonstrated a clear, independent recollection as to every question put to him. *See gen. Id.*

Relying solely on his belief that an illegal U-turn had been committed, Becker executed a traffic stop of Mr. Joda's vehicle. An OWI investigation followed resulting in the charges that form the basis of this case.

Even though Deputy Becker could not recall the circumstances under which he had observed the allegedly unlawful U-turn, and even though his testimony conflicted in substantial and material ways from his own report memorialized within 24 hours of the traffic stop, *Id.* at 23, the circuit court, relying solely upon Becker's testimony, found that Mr. Joda made an illegal U-turn south of I-94. R.24:66. The lower court indicated that, based upon its understanding, "Deputy Becker was, despite the discrepancy in his report, was very clear that the vehicle, he was not at – it was not immediately to his left meaning not in those left turn lanes, that it was farther down, and that his testimony is that he believed he would have slowed down because of what caught his attention, and that means the U-turn would have had to have occurred at the southernmost intersection where the U-turn is not prohibited." *Id.* at 64-65. Counsel believes that the lower court meant to say "where the U-turn is prohibited" because that would be consistent with the record.

CASE HISTORY

On November 7, 2012, citations were filed in Waukesha County Circuit Court charging Mr. Joda with one count of Operating While Intoxicated, as a first offense, in violation of Wis. Stat. § 346.63(1)(a), R.1:1, with one count of Operating a Motor Vehicle with a Prohibited Alcohol Content, as a first offense, in violation of Wis. Stat. § 346.63(1)(b), R.2:1, and with making an illegal U-turn in

violation of Wis. Stat. § 346.33(1)(a). R2.2:1.[2] Mr. Joda's Motion to Suppress Evidence was filed on September 20, 2013, R.3:1, and denied at the conclusion of an evidentiary hearing held on December 23, 2013. R.5:1. The matters were tried to the circuit court on September 8, 2013, Mr. Joda was convicted of the violations, and he subsequently filed a Notice of Appeal on August 8, 2014. R.18:1.

ARGUMENT

When reviewing a circuit court's denial of a motion to suppress evidence, this Court upholds a circuit court's findings of fact unless they are clearly erroneous. *State v. Grady*, 317 Wis. 2d 344, 352, 766 N.W.2d 729, 733 (2009). However, because interpretation of those findings to determine whether evidence obtained from a search must be suppressed is a question of law, this Court reviews those rulings independently. *State v. Phillips*, 2009 WI App 179, ¶ 6, 322 Wis. 2d 576, 585, 778 N.W.2d 157, 161-62.

I. THE CIRCUIT COURT'S DECISION WAS NOT SUPPORTED BY TESTIMONY FROM A WITNESS WITH AN INDEPENDENT RECOLLECTION

When Becker testified that he could not remember where he was in relation to Mr. Joda, he was stating that he had no independent recollection of witnessing a traffic violation sufficient to support his conclusion that a traffic violation had occurred. Since Becker's testimony that was not supported by a sufficient

[2] R2.2:1 is a citation to the index for 14AP1949 where R2 is the index, 2 is the number of the record and 1 is the page number of the document.

independent recollection was the sole basis for the trial court's finding of a traffic violation, the trial court's finding of a traffic violation was clearly erroneous. A trial court's finding is clearly erroneous if there is not "sufficient credible evidence in the record to support the trial court's findings." *Tourtillott v. Ormson Corp*., 190 Wis. 2d 291, 297, 526 N.W.2d 515, 518 (Ct. App. 1994).

When a person views an incident from his car, he has all the information required to know where he is in relation to the incident. Between himself and the incident is a window, of some sort, whether it be the windshield, a side window, the rear window, a rearview mirror, or some combination of these. He also may be able to see portions of the interior, including the metal barriers between windows, the lower edges of the interior doors, the dashboard, the rear seats, etc., all dependent upon which way he is looking. These clues all give him a clear indication of what direction out of his car he is looking if he has any independent recollection of viewing the event.

Therefore, if the person knows what direction out of his vehicle he is looking, and he also testifies, as Becker did in this case, that his vehicle is traveling southbound on Grandview Blvd, away from I-94, he has a clear basis for knowing where the object he is looking at is in relationship to his car, if he has an actual independent recollection.

If, however, the person can't remember if he was looking out the front window, the side window, the back window, or at a rearview mirror, then he indicates that he can't actually independently recall viewing the incident. The

attendant circumstances necessary to find that he did observe the incident, in this case, a U-turn at a particular intersection on a particular side of a highway, did not exist. They did not exist because Becker testified that he could not recall where he was at the time he saw the alleged U-turn. That means he couldn't recall what direction he was looking, what window he was looking out of, or any of the obvious indicators that would be present if he were, in fact, testifying about his actual independent recollection. Testimony that a person recalls seeing something at a particular location, but cannot recall any of the things that would give him an indication of where he was in relationship to the incident, is not credible. Such testimony is insufficient to find with particularity where an incident occurred, and certainly insufficient to overcome the contradicting evidence in this case.

The same individual, if he truly has an independent recollection, can observe all of the things in between himself and the incident. He can view all of the things beyond the incident that are in view. When an individual testifies to seeing something, but has no independent recollection of any of the items between himself and the incident, or any of the items beyond the incident sufficient to inform him of where he is in relationship to the incident, then the person has insufficient recollection to inform a court of where the incident occurred.

Certainly, if Becker couldn't recall where he was looking when he saw the U-turn Mr. Joda admits to making, he can't recall any of the other objects that would be necessary for him to calculate whether Mr. Joda's vehicle was on the north side or the south side of I-94 at the time he allegedly saw it make a U-turn.

Mr. Joda's location could only have been determined in regards to the other items around him, as well as based upon Becker's understanding of where Becker was in relationship to Mr. Joda. The same items that would inform Becker of where Mr. Joda was would also inform Becker where he was when he observed Mr. Joda. One can't be known without the other.

Observing things like the highway itself, or the supports holding up the overpass, or signs on the ramps, all requires Deputy Becker himself to have an understanding of where he was is in relation to those items before he can go further and make a determination of where Mr. Joda was at the time he made his U-turn. Since Becker didn't know where he was, or what direction he was looking, and couldn't recall sufficient interior cues from the inside of the vehicle to let him know where he was in relationship to those items, then he was utterly unable to calculate where Mr. Joda was. Shuffle the parts of a diagram around, and without Becker knowing where he is, and what direction he's looking, no conclusions can be drawn about where Mr. Joda was.

The sole basis for the court determining that Mr. Joda was south of I-94 was the testimony of Becker, who could not remember where he himself was at the time. Given that Becker didn't know where he was, the court relying on Becker's assertion that Mr. Joda was south of I-94 when he made his turn was clearly erroneous, because Becker admitted that he lacked sufficient independent recollection of facts necessary for him to testify as to Mr. Joda's location. A

decision that is not based on sufficient credible evidence is clearly erroneous. *Tourtillott*, 190 Wis. 2d at 297.

The court's reliance on Becker's testimony also fails to give reasonable weight to other factors under the totality of the circumstances. *State v. Popke*, 2009 WI 37, ¶ 25, 317 Wis. 2d 118, 133, 765 N.W.2d 569, 577. Every detail about Mr. Joda's vehicle in Becker's own report, drafted within 24 hours of the traffic stop, indicates that Mr. Joda was on the north side of the highway where the U-turn would have been legal. Becker describes seeing Mr. Joda in the left "turn lane" attempting to enter I-94 "westbound," exactly where Mr. Joda testified he was when he made his U-turn. Mr. Joda's own testimony is in complete agreement with the description given in Becker's report.

> If a witness can look at a writing which refreshes his memory as to the facts and he can then testify from his independent recollection, his testimony and not the writing is admitted in evidence, as present recollection refreshed. On the other hand, if a witness looks at a writing and it does not refresh his memory to the extent that he can form an independent recollection but he can testify that he knew the facts to be accurate when he recorded them and such recording took place when the facts were fresh in his mind, then under the doctrine of past recollection recorded, the document itself is admitted into evidence as an exception to the hearsay rule.

State v. Wind, 60 Wis. 2d 267, 274-75, 208 N.W.2d 357, 362 (1973).

In the instant case, the witness, Becker, could not recall his location even after he was shown his report, which he knew to have been drafted near the time of the incident. Meanwhile, the report itself, admissible as a past recollection recorded, demonstrated facts entirely consistent with Mr. Joda's innocent account. His testimony incorporated the facts from his report that showed Mr. Joda made

the turn at the northern intersection. However, the only evidence that the court relied on was the conflicting testimony by Becker which was not supported by his own independent recollection sufficient for him to know where Mr. Joda was. The admissible evidence of the police report was in conflict with Becker's testimony that was not supported by independent recollection, yet it was the testimony not supported by independent recollection that prevailed.

Where the officer's own written statement supported the testimony of Mr. Joda, and where the officer admitted to a lack of independent recollection necessary for him to even establish his own location, let alone establish Mr. Joda's location at the time he made the U-turn, the court's determination that Mr. Joda was south of the highway when he made his U-turn was clearly erroneous.

II. THE COURT'S FINDINGS OF DISCREPENCIES JUSTIFYING ITS RULING THAT WERE NOT SUPPORTED BY EVIDENCE WERE CLEARLY ERRONEOUS, AND, THEREFORE, SO WAS THE FINDING THAT RELIED ON THOSE DISCREPENCIES

A) The Court finding that Mr. Joda would have had to have been stopped at the same ramp as Becker to have made a U-turn at the northern intersection was in clear contradiction with the testimony.

The court found that, because Becker testified that Mr. Joda's vehicle was not stopped directly to his left when he was stopped on the westbound exit ramp, that Mr. Joda must have made the U-turn at the southern intersection where the U-turn would have been illegal. R.24:65-6. This conflicts with the testimony and shows that the court fundamentally misunderstood Mr. Joda's clear testimony.

Mr. Joda testified that he was, in fact, stopped at the southern intersection

when he observed Becker's squad car driving towards him. *Id.* at 46-7. This is not a discrepancy, but is consistent with Becker's testimony that Becker made a left turn on to North Broadview Blvd., and observed Mr. Joda at the same intersection Mr. Joda testified he was at. R.24:7. Mr. Joda testified that he waited at a red light at the southern intersection with his left turn signal on, saw the oncoming squad car, the light turned green, and he then proceeding to the northern intersection where he made a lawful U-turn. *Id.* That indicates the two vehicles would not have been at the same northern intersection at the same time, but that Mr. Joda reached that northern intersection after Becker had left it.

Therefore, the court's reasoning that because Mr. Joda's vehicle "was not immediately to [Becker's] left" when Becker was stopped at the off ramp "the U-turn would have had to have occurred at the southernmost intersection," was not supported by the facts, and does not support the court's finding of a "discrepancy" that the court then interpreted against Mr. Joda's credibility. Mr. Joda's testimony is completely consistent with his not being immediately to Becker's left while Becker was stopped on the off ramp, but still supports a conclusion that the U-turn happened at the northern intersection where it was legal.

B) The court's determination that testimony of the color of the traffic lights indicated a discrepancy in Mr. Joda's account was clearly erroneous.

The lower court stated the following in explaining its ruling.

> Mr. Joda testified that he believed Deputy Becker passed him prior to making the U-turn and that he was waiting for the light to turn green. For that series of events to take place means that when Deputy Becker turned off of the off-ramp and onto northbound

> Grandview Boulevard, Mr. Joda would have already had to have been at the traffic light at that northern intersection so at – in the left turn lanes already because Mr. Joda testified that he abided by the green and red traffic signals; and the only point that makes sense for that to happen is there…

R.24:64-5.

As a preliminary matter, the court misstated the testimony. Becker testified that he turned southbound on to Grandview Blvd., off the westbound I-94 exit ramp, not northbound. *Id.* at 6.

Further, whatever analysis led the court to believe that the testimony required Mr. Joda to be at the northern intersection for Becker to pass him from the oncoming direction is not supported by any testimony. Mr. Joda did not have to be at the northern intersection to have Becker approach him from a southbound direction while he was stopped at the green light south of the highway. No evidence was offered by either party that any particular lights changed in tandem or in conjunction with any other lights. No evidence was offered to indicate that there were or weren't any turn arrows that would have potentially caused oncoming traffic to have different signals than opposing traffic. No determination about Mr. Joda's account can be drawn at all from the light colors testified to.

It is perfectly reasonable, based upon the evidence, that Mr. Joda was stopped at the southern intersection, facing northbound, when Becker turned southbound and passed him. It is perfectly reasonable under the evidence submitted that Mr. Joda's light then turned green, that he proceeded to the northern exit, signaled, and made a lawful U-turn at that point. No evidence on

the light schedules makes this unlikely, or seemingly impossible, as the court reasoned.

Certainly, no determination can be drawn establishing that "when Deputy Becker turned off of the off-ramp and onto northbound Grandview Boulevard, Mr. Joda would have already had to have been at the traffic light at the northern intersection." *Id.* at 64-5. That determination by the court is clearly erroneous based upon the evidence available to the court because no evidence supports it.

Not only is this finding not supported by the evidence, but it is in contradiction with a typical light schedule, where perpendicular lights get opposite signals. If Becker made a left turn on a green light to head southbound, and Mr. Joda was stopped at a red light on the opposite, oncoming-side of Grandview Blvd., then they easily could have both gotten simultaneous green lights, allowing the cars to pass each other, and allowing Mr. Joda to advance to the next light, wait for a green light, and make a legal U-turn.

As there is nothing to support the court's conclusion in this instance, or the court's determination that this conclusion supports an inference against Mr. Joda's credibility, the court's reliance on this reasoning was clearly erroneous, along with the decision that the U-turn occurred at the southern intersection that was based on this reasoning.

C) The court's determination that Mr. Joda was mistaken about his travel time was not supported by evidence, and was, therefore, clearly erroneous.

The court determined that there was a discrepancy between the time when

Mr. Joda testified he left and the time of the traffic stop, and found that that was indication that Mr. Joda was not reliable. R.24:66. However, no evidence was generated regarding how long he actually traveled. Mr. Joda never gave any precise time that he left his place of origin, and instead stated that he left "around Midnight." Neither party then entered any evidence as to how far his place of origin was from the place where he was stopped, or any evidence as to how long it should have taken him to travel that distance.

Given that he never gave a precise time that he left, and given that no evidence was submitted as to how long it should have normally taken him to go from his point of origin to the place where he was pulled over at roughly 12:45 a.m., the court's determination that Mr. Joda was not reliable was clearly erroneous. "It is improper for parties to comment on facts not in evidence," *State v. Mayo*, 301 Wis. 2d 642, 666, 734 N.W.2d 115, 126-27 (2007), and therefore, it is improper for a court to base its findings of fact on facts not in evidence. If the court was taking judicial notice of travel times known to it, it never said so, and never gave either party an opportunity to challenge that notice with evidence of its own.

As there was insufficient evidence before the court for the court to determine "[t]he stop did not take place for 45 minutes later and that [Mr. Joda's] discrepancy with that time difference was due to his alcohol," the court's finding of a discrepancy was clearly erroneous. There was no evidence for his testimony to be in discrepancy with, because the actual travel time was not submitted, and he

never gave a precise time when he left.

D) Absent the clearly erroneous determination that the U-turn happened at the southern intersection, there was no basis for finding reasonable suspicion.

As the court's decision that the vehicle made an illegal U-turn at the southern intersection was clearly erroneous, once that basis for the stop is removed, the stop must be found unlawful. As Becker testified, there were no other traffic violations observed that could support reasonable suspicion once the U-turn is deemed lawful. R.24:36-37.

A law enforcement officer may only stop a person in a public place "when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime," Wis. Stat. § 968.24, "or reasonably suspects that a person is violating the non-criminal traffic laws," *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541, 549 (1999) (citing *State v. Griffin*, 183 Wis. 2d 327, 333-34, 515 N.W.2d 535 (Ct. App. 1994)). Stops must be based on more than an officer's "inchoate and unparticularized suspicion or 'hunch.'" *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Investigative traffic stops are subject to the constitutional reasonableness requirement. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). "The 'reasonable suspicion' necessary to justify such a stop 'is dependent upon both the content of information possessed by police and its degree of reliability.'" *Navarette v. California*, 134 S. Ct. 1683, 1687, 188 L. Ed. 2d 680 (2014) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). It is the State's burden to establish that an investigative stop is reasonable. *State v. Taylor*, 60

Wis. 2d 506, 519, 210 N.W.2d 873 (1973).

"The Fourth Amendment's purpose is to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals." *State v. Reichl*, 114 Wis. 2d 511, 515, 339 N.W.2d 127, 128 (Ct. App. 1983) (citing *United States v. Mendenhall*, 446 U.S. 544, 553-54 (1980)). Capricious or arbitrary police action is not tolerated under the umbrella of the Fourth Amendment or Article I, Section 11, of the Wisconsin Constitution. "The basic purpose of this prohibition is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *State v. Boggess*, 115 Wis. 2d 443, 448-49, 340 N.W.2d 516, 520 (1983) (citing *Michigan v. Tyler*, 436 U.S. 499, 504 (1978)).

Absent the erroneous findings on the part of the lower court, the state cannot carry its burden of establishing reasonable suspicion to justify the stop, and this Court should overturn the finding of reasonable suspicion.

CONCLUSION

This Court should find the lower court's finding that the U-turn occurred at the southern intersection to be clearly erroneous because it was not based upon testimony by a witness with an independent recollection, the witness's testimony was not credible as it conflicted with his own written statements, the court made clearly erroneous findings based upon the testimony in order to discredit Mr. Joda's testimony, and the court relied on evidence not on the record to discount

Mr. Joda's testimony. Taken together, these facts make the ultimate decision clearly erroneous.

This court should overturn the judgments of conviction, overturn the denial of the suppression motion, overturn the court's finding of fact that the U-turn occurred at the southern intersection, overturn the court's findings of fact referenced that allegedly called in to question Mr. Joda's credibility, overturn the finding of fact based upon facts not in evidence, and remand the case to the lower court for further proceedings consistent with this ruling.

Dated this 11th day of December, 2014.

Respectfully submitted,

KUCHLER & COTTON, S.C.

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CERTIFICATION OF FORM, LENGTH, AND ELECTRONIC COPY

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4,770 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19 (12), and that the text of the electronic copy of this brief is identical to the text of the paper copy.

Dated this 11th day of December, 2014.

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CERTIFICATION OF APPENDIX

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

Dated this 11th day of December, 2014.

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