STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2014AP2273
Trial Court Case No. 2014CV000096

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

JOHN N. NAVRESTAD,

Defendant-Appellant

On Appeal From Judgment of Conviction
In the Monroe County Circuit Court,
The Honorable J. David Rice, Branch III, Presiding

PLAINTIFF - RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF THE ISSUES

1. Whether the defendant can utilize part of the holding in *County of Walworth v. Rohner* in order to violate the rest of the holding in *County of Walworth v. Rohner*, among countless other cases of binding authority.

The circuit court answered **no**.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

While the circuit court properly applied Wisconsin law, its holding contradicts unpublished cases. The State requests oral argument and publication on this matter, in order to settle any confusion as to the proper interpretation of prior decisions of the Supreme Court of Wisconsin.

STATEMENT ON THE CASE AND FACTS

In April of 2014, the Defendant-Appellant, John Navrestad, filed a motion to void and vacate his 1992 Operating While Intoxicated (OWI) conviction in the Circuit Court of Monroe County, Wisconsin. (R. 1.) He did so because, unbeknownst to the court or the prosecutor, he had been convicted of a prior OWI in California in 1989. (Id.) Because the Defendant-Appellant's first OWI conviction in Wisconsin occurred more than two decades before his motion to vacate, no records exist; accordingly, the clerk of court's office assigned the case a new case number, 14 CV 96. (R. 24 at 2.)

On May 28, 2014, the Monroe County District Attorney's Office filed a brief in opposition. (R. 12.) On August 11, 2014, the circuit court ruled against the Defendant-Appellant's motion, because the "outcome sought by the defendant here works the absurd legislative result of imposing more lenient penalties for defendant's present and future OWI convictions based upon the fact that he was treated too leniently at the time of his prior convictions," in direct violation of established case law regarding legislative intent in OWI cases. (R. 24 at 5-6.) The circuit court noted that in Village of Trempealeau v. Mikrut, 2004 WI 79, the Supreme Court of Wisconsin "undertook a review of prior case law in which the Court had ruled that circuit courts

lack 'subject matter jurisdiction' based on noncompliance with statutory requirements pertaining to invocation of the court's jurisdiction," subsequently clarifying the jurisdiction-versus-competency confusion at the heart of the Defendant-Appellant's motion. (R. 24 at 8.)

In February of 2015, the Defendant-Appellant filed a Brief and Appendix of Defendant-Appellant ("App. Brief") to this court, requesting review of his denied motion.

STANDARD OF REVIEW

Where facts are uncontested, the question of whether a circuit court has lost competency or lacks jurisdiction is a question of law to be reviewed *de novo*. Village of Trempealeau v. Mikrut, 2004 WI 79 ¶ 7.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN APPLYING PRECEDENT TO DENY THE DEFENDANT-APPELLANT'S MOTION; IN FACT, PROPER READING OF PRECEDENT REQUIRES DENYING THE MOTION

The Defendant-Appellant asked the circuit court to apply a murky, broad reading of County of Walworth v. Rohner, 108 Wis. 2d 713, 324 N.W.2d 682 (1982) in order to allow him to avoid penalty enhancers for the factually accurate number of his drunk driving

convictions. Relying on significant case law, including Rohner itself, the circuit court declined the Defendant-Appellant's request. This decision properly construes the relevant binding authority on intoxicated driving, jurisdiction, and competency, and adheres to the clear legislative intent behind the law. Therefore, the circuit court's ruling should be upheld.

A. The rules of law declared in County of Walworth v. Rohner are not as one-sided or broad as the defendant claims.

The Defendant-Appellant's request hinges upon reading Rohner too broadly and without context, in order to arrive at a conclusion that directly violates its reasoning. At its heart, Rohner holds that prosecutors do not have *discretion* as to whether a second-offense OWI can *knowingly* be charged as a first-offense OWI.[1] The Supreme Court of Wisconsin based this holding entirely upon a mandate to adhere to legislative intent in interpreting drunk driving law. The Defendant-

[1] The Defendant-Appellant's App. Brief utilizes two surreal linguistic conflations throughout: it frequently refers to "The Government" as if it were an individual entity, and it frequently refers to "The Government's Discretion" regarding the mistakenly lenient 1992 charge. The Plaintiff-Respondent notes merely that various branches of government are discrete, with different knowledge and access to information, and that "discretion" is defined as "the right to choose what should be done in a particular situation." MERRIAM-WEBSTER DICTIONARY, 2014.

While the Dept. of Motor Vehicles subsequently discovered Mr. Navrestad's prior conviction, there is no indication that either the prosecutor or the circuit court had any knowledge of it. (R. 24 at 3-4.) Further, without that knowledge, the prosecutors' *discretion* did not come into play at any point, since there was no reason to believe there was a choice between first- and second-offense OWI charges, and discretion is predicated upon choice.

Appellant's interpretation of the holding in Rohner is so far askew that, as applied here, it would contradict the case it relies upon.

In 1981, Wisconsin enacted new and greatly strengthened drinking and driving legislation, via Chapter 20 of the state budget bill. This new law announced that Wisconsin was taking drunk driving seriously: enacting the crime of homicide by intoxicated use of a vehicle, criminalizing OWI repeat offenses, and discouraging plea-bargaining to lesser charges. 1981 Wis. Laws 20, amended by 1981 Wis. Laws 184.

Limitations on prosecutorial discretion were enacted as part of the 1981-82 revisions of the impaired driving statutes. Under these new laws, a prosecutor who wished to dismiss or amend any impaired driving offense must appeal to the court, stating the reasons for any such proposal; the court's approval required a finding that such amendment or dismissal would be consistent with the public interest in deterring intoxicated driving. Wis. Stat. § 345.20(2)(c) (1981-82) (restriction applicable in OMVWI traffic forfeiture actions); id. at § 967.055 (restriction applicable to cases of criminal OMVWI, homicide by intoxicated use of vehicle, felony injury by intoxicated use of vehicle and misdemeanor injury by driving "under the influence," as well as to section 343.305 "implied consent" law violations). The legislature further stated its intent, calling for "the vigorous prosecution

of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant." Id. at § 967.055(l). These laws took effect in May of 1982.

Four months later, in September of 1982, the Supreme Court of Wisconsin received briefs in County of Walworth v. Rohner, 108 Wis. 2d 713, 324 N.W.2d 682 (1982). The defendant was charged with a first offense, although it was factually his second offense. When the case came to trial, the defendant tried to get the charge dismissed:

> The case came to trial on January 22, 1981, and the defendant moved to dismiss the charge on the grounds that he was improperly charged with a first offense violation. The defendant asserted that the court lacked subject-matter jurisdiction because he should have been charged with a second offense under state law. The district attorney then moved the court to allow filing of a criminal complaint charging the defendant with a second offense. The court told the district attorney that it would assess costs against the state for failing to file the complaint before trial. The district attorney then withdrew the motion.
>
> The trial court ruled that it had jurisdiction to proceed under the ordinance violation. The court . . . reasoned that the district attorney had the prosecutorial discretion to charge under either the ordinance violation or the state statute. Rohner, 198 Wis. 2d at 715 (internal citations omitted).

The question before the court in Rohner was, essentially, whether an OWI that was factually a second offense could be charged as a first offense forfeiture, instead of a second offense crime, as an act of prosecutorial discretion. The court held that there was no such prosecutorial discretion, because "[i]f the legislature had intended that the imposition of criminal penalties be *discretionary* it would have used

permissive rather than mandatory language," id. at 718 (emphasis added), and because of the clear legislative intent, a "policy of strict enforcement of the drunk driving laws." Id. at 721. The court declared, "the drunk driving statutes must be construed to further these legislative purposes." Id. at 721; *see also* State v. Neitzel, 95 Wis. 2d 191, 193-94, 289 N.W.2d 828 (1980); State v. Banks, 105 Wis. 2d 32, 49, 313 N.W.2d 67 (1981). After determining that Walworth County prosecutors did not have discretion to undercharge, the court instructed the county to proceed with a criminal charge, pursuant to the intent of the law. Rohner, 198 Wis. 2d at 722.

Stated most succinctly, Rohner holds that a prosecutor has no discretion to choose to violate legislative mandate, and that knowingly undercharged matters before a circuit court should be dismissed on jurisdictional grounds and re-charged correctly. Id. at 722. Our Supreme Court instructs us that this was the correct holding because "[o]ur interpretation of the drunk driving statutes which places exclusive jurisdictions over subsequent offenses of drunk driving in the state, furthers this state policy of strict enforcement of these laws." Id. at 721.

This is factually disparate from the present matter: in Rohner, the Court held that there is no prosecutorial discretion to violate legislative mandate, and the defendant should be re-charged toward that

mandate; in this case, the defendant asks that a non-discretionary (i.e., accidental) undercharging result in a violation of that legislative mandate. Why should the circuit court read Rohner as a binding rule on a matter the Court did not contemplate, in order to arrive at a conclusion that directly contradicts its language, reasoning, and result?

B. Insofar as Rohner discusses the jurisdiction or competency of a circuit court, it does so vaguely or paradoxically.

Rohner dismissed the defendant's improperly charged OWI for want of subject matter jurisdiction, directing the prosecutor to re-charge the case correctly. Yet, the Supreme Court of Wisconsin has repeatedly affirmed the state constitution, which authorizes circuit courts with original subject matter jurisdiction over all civil and criminal matters. This apparent paradox can be resolved by looking to post-Rohner decisions that clarify the once-murky fields of jurisdiction and competence. The circuit court looked to these subsequent Supreme Court cases in order to resolve the paradox, parsing the only reading that does not undermine any of the binding legal authority.

In Rohner, the Supreme Court of Wisconsin "held that the legislature intended a second- offense for drunk driving to be within the exclusive province of the state to prosecute as a crime. Walworth County had no jurisdiction over the offense and the prosecutor had no discretion to charge under the county ordinance." Rohner, 108 Wis. 2d

at 721. How, precisely, Walworth County's lack of jurisdiction is conflated with the circuit court's subject matter jurisdiction is unclear. This is in part because Rohner was decided three decades ago, and in part because -- as our Supreme Court confessed 23 years later -- "the jurisprudence concerning subject matter jurisdiction and a circuit court's competence to exercise its subject matter jurisdiction is murky at best." State v. Bush, 2005 WI 103, ¶ 16.[2]

Circuit courts in Wisconsin are constitutional courts with general original subject matter jurisdiction over "all matters civil and criminal." Wis. Const. art. VII, § 8. "Accordingly, a circuit court is never without subject matter jurisdiction." Village of Trempealeau v. Mikrut, 2004 WI 79, ¶ 1. In light of this binding precedent, how is the circuit court to interpret Rohner, where the undercharged OWI was "dismissed for want of subject-matter jurisdiction?" Rohner, 108 Wis. 2d at 722. In Mikrut, the Supreme Court of Wisconsin clarifies:

> A circuit court's ability to exercise its subject matter jurisdiction in individual cases, however, may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction. The failure to comply with these statutory conditions does not negate subject matter jurisdiction but may under certain circumstances affect the circuit court's competency to proceed to judgment in the particular case before the court. A judgment rendered under these circumstances may be erroneous or invalid because of the circuit court's loss of competency but is not void for lack of subject matter jurisdiction. Mikrut at ¶ 2.

[2] The Appellant-Defendant also cites to City of Kenosha v. Jensen, 184 Wis. 2d 91, 516 N.W.2d 4 (Ct. App. 1994) in his brief. That case discussed the jurisdiction of a municipal court, which is not constitutionally created and lacks the jurisdictional authority of a circuit court.

In the present case, the State asked the circuit court "to hold that Navrestad's challenge to his 1992 conviction is a challenge to the circuit court's competency to proceed, and not to the court's subject matter jurisdiction." (R. 24 at 10.) The circuit court did not make some arbitrary choice to do so; it was required to do so.

As explained above, Rohner was about discretion. "[T]he legislature may, if it desires, spell out the limits of the district attorney's discretion and can define the situations that will compel him to act in the performance of his legislatively prescribed duties." State ex rel. Kurkierewicz v. Cannon, 42 Wis.2d 368, 380, 166 N.W.2d 255 (1969). Without reading unnecessary breadth into Rohner, it is clear that the Supreme Court of Wisconsin held that discretion does not allow a prosecutor to proceed with an undercharged OWI in clear violation of legislative intent, and multiple binding precedents that require adherence to legislative intent in intoxicated driving cases. But in that case, the Supreme Court did not address non-discretionary (i.e., accidental) undercharging.

The Defendant-Appellant asked the circuit court, and asks this court now, to ignore the entirety of the Rohner decision (and all available understanding of context) based on the fact that the decision used the phrase "subject matter jurisdiction" during a time in which the court's definitions of jurisdiction and competency was -- by the court's

own admission -- vague, unclear, and "murky at best." Bush, 2005 WI 103 at ¶ 16. The circuit court declined to do so, in part because that murkiness has been clarified by subsequent decisions like Mikrut. The Supreme Court ultimately concluded, and the circuit court followed, that:

> Article VII, section 8 of the Wisconsin Constitution provides that: "except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state." Accordingly, we have stated that in Wisconsin, "no circuit court is without subject matter jurisdiction to entertain actions of any nature whatsoever." The "jurisdiction and the power of the circuit court is conferred not by act of the legislature, but by the Constitution itself." Thus, the subject matter jurisdiction of the circuit courts cannot be curtailed by state statute.
>
> We have recognized, however, that a circuit court's ability to exercise the subject matter jurisdiction vested in it by the constitution may be affected by noncompliance with statutory requirements pertaining to the invocation of that jurisdiction in individual cases. Because the circuit court's subject matter jurisdiction is plenary and constitutionally-based, however, noncompliance with such statutory mandates is not "jurisdictional" in that it does not negate the court's subject matter jurisdiction. Rather, a failure to comply with a statutory mandate pertaining to the exercise of subject matter jurisdiction may result in a loss of the circuit court's competency to adjudicate the particular case before the court. "A defect of competency is not jurisdictional."
>
> Whether a particular failure to comply with a statutory mandate implicates the circuit court's competency depends upon an evaluation of the effect of noncompliance on the court's power to proceed in the particular case before the court. Many errors in statutory procedure have no effect on the circuit court's competency. Only when the failure to abide by a statutory mandate is "central to the statutory scheme" of which it is a part will the circuit court's competency to proceed be implicated. Mikrut, 2004 WI 79, ¶ 8-10 (internal citations omitted).

While the Defendant-Appellant's Brief cites non-binding case law that asserts Mikrut does not modify Rohner, that conclusion is fundamentally impossible. (App. Brief at 19.) Rohner declares that since "the prosecutor had no discretion to charge under the county ordinance . . . . the complaint is to be dismissed for want of subject-matter jurisdiction." Rohner, 108 Wis.2d at 721-22. This is because such discretion would violate clear legislative intent in drunk driving statutes, which "must be construed to further these legislative purposes." Id. at 721. This is **exactly** what the Court clarified in Mikrut: "*only* when the failure to abide by a statutory mandate is 'central to the statutory scheme' of which it is a part will the circuit court's competency to proceed be implicated." Mikrut at ¶ 10 (emphasis added).

The Defendant-Appellant cites to State v. Bush, which the circuit court considered, and which clarifies the issue as follows:

> The logic behind this conclusion is entirely consistent with Article VII, Section 8 of the Wisconsin Constitution. Article VII, Section 8 states that except as otherwise provided by law, circuit courts have original jurisdiction in all matters civil and criminal....
>
> This rule is also entirely consistent with our line of cases that recognize that a criminal complaint which fails to allege any offense known at law is jurisdictionally defective and void. Once again, the premise behind the rule is simple. Circuit courts have original jurisdiction over all matters civil and criminal, except as otherwise provided by law. If a complaint fails to state an offense known at law, no matter civil or criminal is before the court, resulting in the court being without jurisdiction in the first instance. Bush, 2005 WI , at ¶¶ 17-18 (internal quotations

omitted).

Reflecting on the Defendant-Appellant's reliance on Bush, the circuit court concluded that since "first offense OWI is a traffic offense known to law," circuit courts have subject matter jurisdiction to hear first offense OWI cases. (R. 24 at 13.) Considering the murky language in Rohner in light of subsequent binding authority like Bush and Mikrut, the circuit court held that:

> In 1992, Navrestad was charged with first offense OWI as a civil traffic forfeiture. He now asserts that this court did not have subject matter jurisdiction because he had previously been convicted of first offense OWI in California. The circuit court has subject matter jurisdiction over first offense OWI ordinance violations charges. Navrestad does not claim otherwise. He simply argues that the facts of his 1992 case do not support the charge, and the case should have been dismissed. Such a challenge goes to the competency of the circuit court to convict him on the 1992 offense, not to the court's subject matter jurisdiction. (R. 24 at 14.)

Put simply, the circuit court was confronted with the following question: how could Rohner's OWI be dismissed for want of subject-matter jurisdiction (and subsequently re-charged correctly) when our Supreme Court has clearly held that "a circuit court is never without subject matter jurisdiction?" Mikrut, 2004 WI 79, ¶ 1. The notion that the two cases are unrelated is unsubstantiated, and would require the circuit court to hold that the Supreme Court of Wisconsin's rulings on jurisdiction and competence are somehow not binding on questions of jurisdiction and competence.

C. The Defendant-Appellant's Motion asks the court to apply Rohner in a way that would violate controlling law, including Rohner itself.

The circuit court's holding not only respected jurisdictional precedent, it also respected decades of intoxicated driving precedent. Virtually every published case of binding authority demands that intoxicated driving law be interpreted by the clear legislative mandate to reduce drunk driving by punishing drunk drivers and removing them from the roads. The cases Defendant-Appellant relies upon most heavily were determined through this prism, and resulted in harsher penalties for drunk drivers. The narrow interpretation of Rohner the Defendant-Appellant asks this court to apply would directly contradict binding authority on drunk driving law, including Rohner itself.

In Rohner, our Supreme Court appealed to or relied upon legislative intent throughout the entire opinion, referencing it nearly a dozen times. Rohner, 108 Wis. 2d 713, *passim*. The court utilized legislative intent as the primary basis for supporting its ruling, id. at 717-720, and as the litmus test that validates its ruling. Id. at 721. The importance of legislative intent in intoxicated driving case law cannot be understated. In State v. Neitzel, 95 Wis. 2d 191, 289 N.W.2d 828 (1980), our Supreme Court declared, "Because the clear policy of the statute is to facilitate the identification of drunken drivers and their removal from the highways, the statute must be construed to further the

legislative purpose." Id., 95 Wis. 2d at 193. This quote has been cited in countless rulings of binding precedential value. *See, e.g.,* State v. Banks, 105 Wis. 2d 32, 49, 313 N.W.2d 67 (Wis. 1981) (relying on legislative intent in upholding OWI repeater statutes); State v. Reitter, 227 Wis.2d 213, 595 N.W.2d 646 (Wis. 1999) ("the law was not created to enhance the rights of alleged drunk drivers." Id. at ¶ 13.); State v. List, 2004 WI App 230 (relying on legislative intent in upholding out-of-state convictions for OWI repeater charges); State v. Puchacz, 2010 WI App 30, (utilizing legislative intent to uphold out-of-state convictions where there was no truly analogous Wisconsin law); State v. Hirsch, 2014 WI App 39 (relying on legislative intent to allow counting two previous out-of-state OWI convictions toward the defendant's repeater count, even though previous Wisconsin circuit courts had not counted said convictions).

It is against this sea of binding authority requiring adherence to legislative intent that the circuit court considered Mr. Navrestad's motion. The court ruled:

> The legislative objective of drunken driving laws is to identify impaired drivers and remove them from our highways. Avoidance of the consequences of a prior OWI conviction, especially in cases like the present one where the conviction was based on a guilty or no contest plea, is clearly contrary to the legislative purpose. It is also contrary to the statutory scheme of progressive punishment for multiple offenders who fail to learn to respect the law after suffering the initial penalties and embarrassment of conviction. The outcome sought by the defendant here works the absurd legislative result of imposing more lenient penalties for defendant's present and future OWI

> convictions based upon the fact that he was treated too leniently at the time of his prior convictions. (R. 24 at 6.)

This ruling was, above all else, in direct compliance with the mandates of courts of appeal and the Supreme Court of Wisconsin, including Rohner itself, which states that "drunk driving statutes *must* be construed to further these legislative purposes." Rohner, 108 Wis. 2d at 721 (emphasis added). In considering its ruling, the circuit court had no choice but to weigh the legislative purposes of intoxicated driving statutes.

The Defendant-Appellant proffers few cases of legitimate authority against this binding precedent. While Rohner holds that a prosecutor has no discretion to choose to violate legislative mandate, and that knowingly undercharged matters before a circuit court should be dismissed on jurisdictional grounds and re-charged correctly, id. at 722, Rohner does not require a conviction to be vacated when it would be contrary to legislative mandate. In fact, the cases the Defendant-Appellant cites most frequently, Rohner and City of Kenosha v. Jensen, 184 Wis.2d 91, 516 N.W.2d 4 (Ct. App. 1994), both resulted in harsher penalties for the Defendant-Appellant. The only precedent Mr. Navrestad cites supports the legislative intent of stronger sanctions for convicted drunk drivers; his argument hinges entirely upon using law that supports legislative intent in order to circumvent legislative intent.

Without reading Rohner so broadly that it contradicts itself, there is *no binding precedent whatsoever* that required the circuit court to void the Defendant-Appellant's 22-year-old conviction. There is only binding precedent that requires construing any statutory vagueness to further "the statutory scheme of progressive punishment for multiple offenders who fail to learn to respect the law after suffering the initial penalties and embarrassment of conviction." (R. 24 at 6, citing Banks, 105 Wis. 2d. at 49.)

CONCLUSION

In short, the Hon. J. David Rice interpreted Wisconsin's intoxicated driving law as follows:

1. Rohner utilizes subject matter jurisdiction to further clarify legislative intent, and mandates that "the drunk driving statutes must be construed to further these legislative purposes." Rohner, 198 Wis. 2d at 721.

2. Voiding and vacating an undercharged drunk driving conviction that is so many decades old that it could never be retried would be contrary to legislative intent, which would violate Rohner and other controlling law.

3. This paradox can be resolved by Mikrut, which reiterated that "no circuit court is without subject matter jurisdiction to entertain actions of any nature whatsoever," Mikrut, 273 Wis. 2d

at 83 fn. 1, and 86-88, and clarified the murky distinction between competency and subject matter jurisdiction. Id. at 86; *see also* Bush, 2005 WI 103. It is not the circuit court's subject matter jurisdiction that is void, but rather its competency to proceed to a judgment that violates legislative intent.

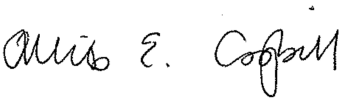
4. Where the court's judgment violates Rohner's mandate to further legislative intent, the court's competency to proceed to judgment is so impaired that the matter is void for lack of subject matter jurisdiction, because there is another, statutorily proscribed judgment available. However, where there is no better judgment available, voiding and vacating the conviction would directly offend legislative intent, which is prohibited by Rohner.

5. Therefore, if Mr. Navrestad had been undercharged in 2014, Rohner would require the matter be void, so prosecutors could pursue their mandate to strictly enforce drunk driving laws. However, Rohner prohibits voiding Mr. Navrestad's accidental undercharge 23 years ago, as it would be an absurd outcome in direct defiance of the mandatory adherence to legislative intent required by statute and controlling precedent.

The circuit court's understanding of all relevant case law is a correct interpretation of the law, and it is the only interpretation that does not directly affront the mandated deference to legislative intent or ignore our Supreme Court's binding rulings on jurisdiction and competence. Therefore, the Respondent respectfully requests that the circuit court's ruling be upheld, and the Defendant-Appellant's appeal be denied.

Dated this 11th day of March, 2015 in Sparta, WI.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes or footnotes, leading of minimum of 2 points, maximum of 60 characters per full line of body text. The length of this brief is 23 pages, 4,756 words.

Dated this 11th day of March, 2015.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

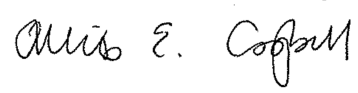
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

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 11th day of March, 2015.

Respectfully submitted,



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