STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2014AP2521-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SHIRONSKI A. HUNTER,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE REBECCA F. DALLET, PRESIDING

PLAINTIFF-RESPONDENT'S BRIEF

BRAD D. SCHIMEL
Attorney General

ANNE C. MURPHY
Assistant Attorney General
State Bar #1031600

Attorneys for Plaintiff-Respondent
the State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9224 (Phone), (608) 266-9594 (Fax)
murphyac@doj.state.wi.us

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C O U R T O F A P P E A L S

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State agrees with defendant-appellant Hunter and does not believe that oral argument or publication of this court's opinion is warranted. The briefs fully present and meet the issues on appeal and fully develop the theories and legal

authorities on each side, and the issues involve no more than the application of well-settled rules of law.

SUPPLEMENTAL STATEMENT OF THE CASE

Hunter was charged with Possession of a Firearm by a Felon, Repeater; Possession of a Short-Barreled Shotgun, Domestic Abuse, Repeater; Endangering Safety by Use of a Dangerous Weapon (Pointing), Domestic Abuse, Repeater; Miscellaneous Battery, Use of a Dangerous Weapon, Domestic Abuse, Repeater, and Disorderly Conduct, Use of a Dangerous Weapon, Domestic Abuse, Repeater (2; 5). The complaint alleged that the victim was holding her and Hunter's two-month old child when Hunter began to strike the victim in the face with a closed fist. The victim's sister took the baby away and then Hunter left and returned a few seconds later armed with a shotgun, which he pointed at the victim and stated, "I'm gonna kill you bitch." After placing the shotgun in a crawl space in the home, Hunter got a screwdriver and struck the victim with it in the leg, causing a puncture wound (2:3). The police report filed by Officer Martin Saavedra stated that he found a shotgun in a crawl space in the home where the victim stated Hunter had placed it and that the police found Hunter hiding in the garage (2:3).

Objection to testimony of 911 operator. Two days before the start of trial, Hunter objected to the testimony of the 911 operator related to the calls from the victim and her sister during and shortly after the incident because the 911 operator was not on the State's witness list (33:5-6). After hearing arguments from counsel, the circuit court refused to preclude the testimony because it found "a lack of prejudice" and because the defendant "had the 911 call itself," but gave Hunter two options: (1) the State would make the witness available for an interview before testifying or (2) the trial could be put over for a period of time (33:10-11; Appellant's Appendix ("A-Ap.")

at 1-114-15). Without waiving his objection, Hunter chose the first option of being provided the opportunity to interview the witness before the testimony (33:11; A-Ap. 1-115).

Before the start of the first day of trial, the circuit court addressed the issue of the authentication of the 911 recording, and the State informed the court that it had learned that there were actually three 911 operators involved in the series of calls and that it could not locate the first one who took the initial call (34:4-5). Thus, rather than call the other two operators as witnesses, the State indicated that it planned to call two witnesses to lay the foundation for admission of the calls into evidence: Lydia Vasquez and Officer Derrick Vance (34:5-9). Hunter objected because these authentication witnesses were not on the original witness list, but were added in an amended witness list filed that morning, which was not a reasonable time before trial and he had not had an opportunity to interview them. He also argued that these witnesses were not appropriate to authenticate the calls because they were not actually on the 911 calls (34:9-14).

The circuit court offered Hunter an adjournment, which he declined (34:15-16). The circuit court overruled Hunter's objection to the authentication witnesses, finding that the State could authenticate the 911 call as a business record under Wis. Stat. § 919.015(6), which allows admission of a telephone call to a business where the conversation is related to the business reasonably transacted over the telephone (34:18). The circuit court found that "there is ample authentication evidence" for the 911 call to be admitted (34:18-19).

The circuit court noted that it had offered Hunter an adjournment for time to interview the 911 operators or now, the authentication witnesses, which he declined, and further found that these witnesses would likely not have much information or memory of the specific call, that Hunter had the

actual 911 call and that he "could have done a public records request, . . . could have found these people if [he] wanted to challenge how they took a call, and if they had any information before or after I don't think the State has been trying to ambush or hide anything" (34:20-21; A-Ap. 1-116-17).

Finally, the circuit court found that there was no prejudice in allowing the witnesses to testify to authenticate the recordings as a business record – "the C.D. is the same C.D. that [the State] had turned over, it is the matter of how they are intending to then put it in" (34:21; A-Ap. 1-117). And, even if the State had listed the 911 operator as a witness, it would not have helped "given that that person was not able to be found to be here as a seasonal employee" – and therefore, the circuit court determined that the State could call Lydia Vasquez and Derrick Vance to authenticate the 911 recording (34:21; A-Ap. 1-117).

At trial, the State called Lydia Vasquez, the lead police telecommunicator for the Milwaukee Police Department, who testified regarding the method of receiving, recording and downloading 911 calls in the regular course of business as a computer aided dispatch ("CAD") report and specifically about the CAD report generated by the 911 calls placed by the victim and victim's sister in this case (36:75-86). Ms. Vasquez testified that the CAD report cannot be erased or modified and that it was "a fair and accurate representation of the records of Milwaukee Police Department for these series of phone calls," and the court received the CAD report into evidence as Exhibit 1 without objection from Hunter (36:86-87).

The State also called Officer Derrick Vance, who was the liaison officer for the District Attorney's domestic violence unit (37:21). Officer Vance testified regarding the procedures for downloading 911 calls from the system in domestic violence cases and specifically about the CD of the 911 call in this case,

which he made by downloading the CAD report for Hunter (37:22-24). The State offered the CD of the CAD report of the 911 calls into evidence as Exhibit 14, which was accepted without objection from Hunter and played for the jury in its entirety (37:25-27).

Objection to victim and witness statements in 911 calls. Before the start of trial, Hunter agreed that the initial portion of the 911 recording containing the victim's first call was admissible; however, Hunter objected to the admission of the 911 recording after the initial call from the victim, five minutes and twenty seconds into the recording, when the victim's sister called and both the victim and the sister spoke, because Hunter asserted that at this point the statements by the victim's sister and the victim were not "an excited utterance" or "present sense impression" (33:17). Hunter further asserted that the victim and witness were describing past events and because the incident was in the past, the statements of the victim and witness were testimonial (33:17-19).

The State argued that the entire content of the recording of the 911 calls fell under the "excited utterance" or "present-sense impression" exception to the rule against hearsay. Further, it argued that the statements were made "with an imminent threat such as the defendant with a sawed-off shotgun" and were not "testimonial" because the purpose of the statements in the 911 calls was to seek police assistance (33:13).

In support of admitting the entirety of Exhibit 14, the CD of the 911 calls, the State pointed to the fact that the victim's sister was speaking in "hushed, quick tones" while "describing things that either just happened or are still happening" and that she "cuts off the 911 operator" after saying "Please, oh God, please, oh God, send someone" (33:19-20). Similarly, after the initial call, the victim is "still worked up," as she is "cursing at

the 911 operator" and clearly "still under the stress of the exciting event which just happened" (33:20). Therefore, because throughout the entire recording of the 911 calls, the statements of both the victim and her sister are "still excited utterances" and "because the defendant hasn't been caught at that point, [they are] still calling out for help," the content was not hearsay and was not testimonial (33:20-21).

In its initial ruling, the circuit court found that before the five minute, twenty second mark, the first call from the victim was "not testimonial" and that "it is very clear that this was a call for help. It is made during an emergency and it was not for the purpose of prosecution." It explained that it was "clearly excited utterance" made "under the stress or excitement of the event" (33:22; A-Ap. 1-106). With respect to the remainder of the 911 recording, the circuit court stated that it would go back and listen to the rest of the calls "in light of the case law and the argument" to determine if the remainder of the statements of the victim and her sister were non-testimonial and fell under a hearsay exception, and thus were admissible without their trial testimony (33:22-23; A-Ap. 1-106-07).

After reviewing the entirety of the recording of the 911 calls, the circuit court ruled on the remaining calls on the CD:

> The issue was whether they were still exceptions to the hearsay rules and whether there was any confrontation clause or Crawford issue with them.
>
> I do believe they are still exceptions to the hearsay rules, both under excited utterance and present-sense impression.
>
> The emergency was still ongoing. They keep calling back and it is evidenced by the calls.
>
> I don't think a person has to be screaming, hysterically crying for it to fall under excited utterance and I also think present-sense impression comes into play.

> As far as the Crawford issues, I don't believe that these remain for any other purpose other than emergency assistance.
>
> They are not made for purpose of testimony or even just 'cause you say something just happened and it is not currently happening at that exact moment doesn't mean it is testimonial, it is what the call is intended for and it is a cry for help by both of the people making the calls.
>
> So I am going to allow the entirety of the calls into evidence that is on the C.D.

(34:3-4; A-Ap. 1-108-09).

Objection to victim statements to police officer. Before the start of trial, the State sought admission of the victim's out-of-court statements to Officer Saavedra after he responded to the 911 call. In support of its position that the victim's statements should be admitted without her testimony, the State called Officer Saavedra to testify about the statements and the surrounding circumstances (33:24). Officer Saavedra testified that he responded to the 911 call "within minutes" and saw a female who was "upset, very angry, very emotional, had visible signs on her face and she had claimed to be battered" who flagged him down "screaming in the middle of the street" (33:26-27). When he first spoke to her she was "crying," "very upset" appeared to be "frightened," was "breathing heavily" and "speaking fast," and had visible, fresh bruises, scratches and minor bleeding on her face (33:28-29). Officer Saavedra obtained the following statement:

> She stated that there was a subject inside her residence she identified by name, Shironski Hunter.
>
> She stated that was her child's father and that he was inside with a gun.

Q When you say you obtained the statement, can you explain exactly how that conversation began?

A I had approached her, asked her what was going on since she was very excited, very emotional in the middle of the street waving, I was trying to assess the situation of what we were about to investigate and then she made those comments.

Q And besides telling you that her child's father, Shironski Hunter, was inside the location with the gun, did she tell you anything else at that time?

A Yeah, she identified it as a shotgun.

She also claimed that he had battered her and also stabbed her in her leg with a screwdriver.

(33:30). Officer Saavedra further testified that after police conducted an initial sweep of the residence and did not locate Hunter, they noticed the back door was open and, after searching the detached garage located behind the residence, the police found Hunter hiding inside (33:32). When the victim saw Hunter being led to squad car, she started yelling "that's him, that's him" (33:33).

After hearing argument, the circuit court ruled on the admissibility of Officer Saavedra's testimony about the victim's statements in light of the hearsay and Confrontation Clause issues:

So here is what I believe that the initial, based on her testimony, you have got a woman flagging down Officers in the street yelling and screaming. The defendant hasn't been arrested yet.

She is upset, according to the officer, and crying and frightened. Breathing heavily, fast-paced speech, has visible injury and the Officer asks a general question like, what is going on?

> And the response to that is, that the defendant is inside with a gun, a shotgun, and that he had battered her and stabbed her in the leg with a screwdriver.
>
> I think that is all in response to an ongoing emergency. He has not been arrested, this is not over…. [S]he is not being interrogated, and the purpose of her statement is to get the [o]fficers to go get him and get him out of the house. I mean, that is the idea.
>
> It is not for purposes of court later. And her mindset, I believe, is one of emergency and I don't think it is testimonial, so I am going to allow those statements in.
>
> It is an initial statement, it is in response really just a general question and it is in the context of trying to resolve the emergency that is still happening.
>
> I do not consider that the emergency is over when you're in the street yelling for help.
>
> Now the later statements, though, about the identification I am not going to allow. I think at that point he is being arrested … [and] a confrontation issue is more of a problem there because he is being arrested.

(33:52-53; A-Ap. 1-110-11).

In addition to allowing the initial statements of the victim to Officer Saavedra into evidence as non-testimonial under "the Davis exception to the Crawford" rule, the circuit court concluded that "they are excited utterances" and therefore not inadmissible hearsay:

> You do not have to be under an immediate threat for an excited utterance.
>
> It has to be under the excitement of the events, which I believe that she still was, even the testimony about her demeanor and the position that she was in and what she was doing at the time and that how emotional and upset

> that she was described to be by the Officer, so those statements can come in under hearsay exception and … [are] not being testimonial so not covered by Crawford.

(33:54; A-Ap. 1-112). In accordance with the circuit court's ruling, at trial, Officer Saavedra testified to the statements of the victim before Hunter's arrest, but not to her identification of Hunter after police found him in the garage (35:102-126; 36:10-42).

The jury entered guilty verdicts against Hunter on all five counts (13; 14; 15; 16; 17). The circuit court entered the judgment of conviction sentencing Hunter to five years of initial confinement and five years of extended supervision on count one, three years of initial confinement and three years of extended supervision on count two, and nine months in the House of Correction on each of counts three, four and five, all to be served concurrently, for a total sentence of five years initial confinement and five years of extended supervision (23; A-Ap. 1-101-04). Hunter appeals from the judgment of conviction (27).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION TO ADMIT THE OUT OF COURT STATEMENTS OF THE VICTIM AND HER SISTER IN THE 911 CALL AND OF THE VICTIM TO THE POLICE AS EXCITED UTTERANCES.

A. Relevant law and standard of review

Even without witness testimony, out-of-court, hearsay statements are admissible under the excited utterance exception

contained in Wis. Stat. § 908.03(2).[1] To be admissible as an excited utterance under Wis. Stat. § 908.03(2), a hearsay statement must meet three conditions: (1) there must be a startling event or condition; (2) the statement must relate to the startling event or condition; and (3) the statement must be made while the declarant is still under the stress or excitement caused by the event or condition. *State v. Huntington*, 216 Wis. 2d 671, 681-82, 575 N.W.2d 268 (1998).

The excited utterance exception is based on the spontaneity of the statements and the stress of the incident as a means of "endow[ing] the statements with the requisite trustworthiness necessary to overcome the general rule against admitting hearsay evidence." *State v. Moats*, 156 Wis. 2d 74, 97, 457 N.W.2d 299 (1990). "For the purpose of determining the admissibility of hearsay statements under the excited utterance exception, the interval between the incident and the declaration is not measured by the mere lapse of time but by the duration of the excitement the event caused." *State v. Boshcka*, 178 Wis. 2d 628, 640, 496 N.W.2d 627 (Ct. App. 1992) (citation omitted).

The decision on the admissibility of a hearsay statement as an excited utterance is within the trial court's discretion and will not be reversed unless the record reveals it to be manifestly wrong. *Muller v. State*, 94 Wis. 2d 450, 465-66, 289 N.W.2d 570 (1980). Whether statements are admissible pursuant to a hearsay exception is a determination made within the sound

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[1] **908.03 Hearsay exceptions; availability of declarant immaterial**. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

. . . .

(2) EXCITED UTTERANCE. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

discretion of the trial court because the trial court is better able to evaluate the circumstances regarding the statement. *Huntington,* 216 Wis. 2d at 680-81. The trial court's determination will not be overturned if the record contains facts that support the finding. *State v. Gerald L.C.,* 194 Wis. 2d 548, 560, 535 N.W.2d 777 (1995). A reviewing court does not determine whether it agrees with the lower court's decision, but only if the court exercised its discretion according to the factual record. "If we can discern a reasonable basis for its evidentiary decision, then the circuit court has not committed an erroneous exercise of discretion." *Huntington,* 216 Wis. 2d at 681.

B. The statements of the victim and witness on the 911 recording and of the victim to the Officer Saavedra were excited utterances and therefore admissible as an exception to the hearsay rule.

The circuit court properly admitted the entire 911 recording of the calls made during and immediately after the domestic abuse incident involving Hunter, which contained hearsay statements by both the victim and her sister, under the excited utterance exception to the hearsay rule. The circuit court determined that the 911 statements were all excited utterances because during the entirety of the recording, "[t]he emergency was still ongoing" and the person does not have "to be screaming, hysterically crying for it to fall under excited utterance" (34:4; A-Ap. 1-109). Similarly, the victim's statements to the Officer Saavedra when he responded within minutes to the 911 calls were also excited utterances, because, as Officer Saavedra testified, at the time she made the statements the victim was "upset, very angry, very emotional, had visible signs on her face and she had claimed to be battered," was "crying," and appeared to be "frightened," was "breathing heavily" and "speaking fast," and had visible, fresh bruises and scratches and minor bleeding on her face (33:27-29). The circuit court found that in this case, the statements were made by the victim while she was still "under the excitement of

the events," based on her "demeanor and the position that she was in and what she was doing at the time and that how emotional and upset that she was described to be by the Officer" (33:54).

On appeal, Hunter argues that because "the stress of the event was over" and "[g]iven the time lapse between the triggering event and the subsequent 911 calls" when the victim spoke to Officer Saavedra, the 911 statements and victim statements when the officer arrived were not excited utterances (Hunter's brief at 14). This is simply inaccurate. In determining the admissibility of hearsay under the excited utterance exception, the interval between the event and the declaration "is not measured by the mere lapse of time but by the duration of the excitement the event caused." *Boschka*, 178 Wis. 2d at 640. As this court has recognized, "three to four hours is not an overlong time" for applying the excited utterance exception to statements made by adult victims of sexual assault. *Id.* at 641 n.3.

In this case, the circuit court was well within its discretion to admit the statements in the 911 call and to the responding officer under the excited utterance exception to the hearsay rule. The passage of time between the domestic abuse/battery incident and the 911 call and response by police was a matter of minutes, not hours. Further, the surrounding circumstances show that the victim and her sister were in fact excited and under the immediate influence of the violent event when they made the 911 calls and when the victim first spoke to Officer Saavedra. The question on appeal is not whether this court would have admitted the statements as excited utterances, but whether the trial court erroneously exercised its discretion and was "manifestly wrong" in so doing. *See Muller v. State*, 94 Wis. 2d at 468.

In light of the circumstances, such as the victim's distressed and emotional demeanor observed by Officer Saavedra, the victim's sister's witnessing of the incident, which involved not only her sister but also her sister's two-month old baby, and the victim's recently sustained, visible injuries when the police arrived, the trial court was not "manifestly wrong" in admitting the statements of the victim and her sister in the 911 call and to Officer Saavedra under the hearsay exception for excited utterances. For all these reasons, the trial court correctly exercised its discretion in admitting the statements of the victim and witness on the 911 calls and of the victim to Officer Saavedra as excited utterances.

II. THE ADMISSION OF THE STATEMENTS OF THE VICTIM AND HER SISTER TO THE POLICE BEFORE THE POLICE LOCATED HUNTER DID NOT VIOLATE THE CONFRONTATION CLAUSE.

If this court agrees that the 911 recordings and the victim's statements to Officer Saavedra were properly admitted as excited utterances, the next question is whether admission of these statements violated Hunter's right to confrontation under the Sixth Amendment to the United States Constitution and article 1, § 7 of the Wisconsin Constitution. *See State v. Manuel*, 2005 WI 75, ¶ 25, 281 Wis. 2d 554, 697 N.W.2d 811.

A. Relevant law and standard of review.

In a criminal trial, a defendant has the right to confront the witnesses against him or her. *See* U.S. Const. amend. VI; Wis. Const. art. I, § 7. The Confrontation Clause prohibits the admission of out-of-court testimonial statements from a witness absent the accused's prior opportunity to confront the witness. *Crawford v. Washington*, 541 U.S. 36, 68 (2004); *State v. Rodriguez*, 2006 WI App 163, ¶ 13, 295 Wis. 2d 801, 722 N.W. 2d 136.

The Confrontation Clause, however, is not absolute. *State v. Nelson*, 138 Wis. 2d 418, 436-37, 406 N.W.2d 385 (1987). "The hearsay rule and the confrontation clause protect similar values and stem from the same roots." *State v. Weed*, 2003 WI 85, ¶ 70, 263 Wis. 2d 434, 666 N.W.2d 485 (Bradley, J., concurring). The rule and the right "serve a similar purpose: to ensure that the trier of fact has a satisfactory basis for evaluating the truthfulness of the evidence admitted in a criminal case." *State v. Tomlinson*, 2002 WI 91, ¶ 40, 254 Wis. 2d 502, 648 N.W.2d 367.

> However, compliance with the hearsay rule does not absolutely insure compliance with the constitutional right to confrontation. . . . Conversely, the confrontation right is not absolute, as a literal reading of that right would essentially require the exclusion of any statement made by a declarant who was not available at trial, and would necessarily exclude all hearsay evidence.

Id. (citations omitted).

In assessing the admissibility of an out-of-court statement, the first question is whether the evidence is admissible under an exception to the hearsay rule. *Id.* ¶ 41. If it is not, there is no need to reach the constitutional question and the evidence must be excluded. *Id.* If there is an exception to the hearsay rule under which the statement falls, though, then the court must address the Confrontation Clause issue. *Id.* Out-of-court nontestimonial statements may be admitted against a defendant when the statements were made by a witness who is unavailable at trial and "bear[] adequate indicia of reliability[, which] . . . may be inferred without more where the evidence falls within a firmly rooted hearsay exception or upon a showing of 'particularized guarantees of trustworthiness.'" *State v. Savanh*, 2005 WI App 245, ¶ 29, 287 Wis. 2d 876, 707 N.W.2d 549 (citing and quoting *State v. Manuel*, 2005 WI 75, ¶ 61, 281 Wis. 2d 554, 697 N.W.2d 811 and *Ohio v. Roberts*, 448 U.S. 56, 65-66 (1980), *abrogated as applicable to testimonial*

statements, but not as to nontestimonial statements, by Crawford, 541 U.S. 36.).

In *Davis v. Washington*, 547 U.S. 813 (2006), the United States Supreme Court addressed the issue of admission of statements in 911 calls in light of a Confrontation Clause challenge. The Court was presented with the following facts: a victim made a 911 call to law enforcement personnel in which she stated that her ex-boyfriend was beating her. *Id.* at 817-18. The dispatcher asked the caller the name of her assailant, which the caller gave. *Id.* at 818. At trial, the victim did not appear and the State sought to introduce the 911 call as evidence of the defendant's guilt. *Id.* at 819. The state courts permitted it, but the question before the Supreme Court was whether doing so violated the defendant's rights under the Confrontation Clause. *Id.* at 817, 819.

First, the Court determined that only testimonial statements – as opposed to nontestimonial – raise Confrontation Clause concerns. *Id.* at 821, 823-25. "It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause." *Id.* at 821. The Court defined nontestimonial statements as statements made "under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Id.* at 822. On the other hand, statements are testimonial "when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.*

In *Davis*, the Court found the victim's statements to the 911 dispatcher were nontestimonial and, therefore, admissible. 547 U.S. at 827-28, 831. The Court based its finding on the

following: the victim made the statements while she faced an ongoing emergency; she was describing the events as they were happening; the "call was plainly a call for help against bona fide physical threat"; her statements were necessary to resolve the ongoing emergency; and she was making a cry for help. *Id.* at 827, 831. Finding that "[n]o 'witness' goes into court to proclaim an emergency and seek help," the Court found that statements in the 911 call were nontestimonial within the meaning of the Confrontation Clause. *Id.* at 828.

In *Rodriguez*, 295 Wis. 2d 801, this court applied *Davis* to the same scenario as the other out-of-court statements at issue in this case – the statements of the victim to a responding police officer. This court found that "[v]ictims' excited utterances to law-enforcement officers responding to either an on-going or recently completed crime, serve, as with the 911-call, a dual role – the dichotomy between finding out what *is* happening as opposed to what *had* happened" and, "[i]nsofar as a victim's excited utterances to a responding law-enforcement officer encompass injuries for which treatment may be necessary, or reveal who inflicted those injuries, which may facilitate apprehension of the offender, they serve societal goals other than adducing evidence for later use at trial." *Id.* ¶ 23. "[T]he out-of-court declaration must be evaluated to determine whether it is, on one hand, overtly or covertly intended by the speaker to implicate an accused at a later judicial proceeding, or, on the other hand, is a burst of stress-generated words whose main function is to get help and succor, or to secure safety, and are thus devoid of" possible fabrication. *Id.* at ¶ 26.

"[T]he constitutional issue of whether admission of an out-of-court assertion violates a defendant's right to confrontation is a matter" this court reviews *de novo*. *Id.* ¶ 13. For purposes of that review, the appellate court must adopt the circuit court's findings of fact, unless they are clearly erroneous. *State v. Jackson*, 216 Wis. 2d 646, 655, 575 N.W.2d 475 (1998).

B. The statements of the victim and the victim's sister in the 911 recordings and of the victim to the responding officer are non-testimonial because they were made to enable police assistance to an ongoing emergency.

Hunter attempts to distinguish *Davis* and *Rodriguez* from this case by arguing that the statements of the victim and her sister in the 911 calls and the statements of the victim to Officer Saavedra were testimonial because during the later part of the 911 call, "the emergency was over;" because Hunter "had fled[,] . . . rendering her statements discussing a past event testimonial" and because the purpose of Officer Saavedra's questions to the victim "was to establish facts of a past event and not to address an ongoing emergency" (Hunter's brief at 16). The State wholly disagrees.

Although Hunter is technically correct that some of the statements in the 911 calls may have referred to the incident that had already taken place, albeit merely minutes before, this timing has no bearing on whether the statements were testimonial. Hunter appears to contend that only if the statements in the 911 call were made while Hunter was in the process of beating and pointing a shotgun at the victim, then would they qualify as nontestimonial. This is, of course, absurd.

Similarly, Officer Saavedra's questions to the victim and her responses were all made in the course of an ongoing emergency. Officer Saavedra testified that the victim appeared very hysterical, emotional, waving her hands and gesturing "trying to get our attention … waving her hands in the air, hurry, hurry," was visibly frightened and had injuries on her face (35:108-109). After Officer Saavedra asked her what was going on, she told him that Hunter, "who she identified as the father of her two-month old, . . . had battered her and caused

her injuries" (35:109). The victim immediately also told him that "during this struggle he had armed himself with a sawed-off shotgun, had pointed it at her and had threatened to kill her. In addition, she indicated that he had grabbed a screwdriver, black and red handle and had stabbed her to her right leg" (35:110). After speaking to the victim, the police officers set up a containment around the home and then entered it, searching for the suspect using a "methodical tactical room-by-room" (35:113-114). After the initial sweep, the officers did not locate anyone in the home, but finding the rear door open, they searched the rear, detached garage and found Hunter inside (35:117-119).

Every statement made during the 911 call, and every statement made by the victim to Officer Saavedra before locating Hunter, was made during an ongoing emergency, was not an interrogation, and the purpose of the statements was to address an ongoing emergency involving bodily injury to the victim and to apprehend the victim's assailant. As in *Davis*, the victim and her sister's statements on the 911 recording were not testimonial because they were responding to questions in an effort to get police assistance to resolve an ongoing emergency. *See Davis*, 547 U.S. at 827. "That is true even of the operator's effort to establish the identity of the assailant, so that the dispatched officers might know whether they would be encountering a violent felon." *Id*. Further, as in *Rodriguez*, the victim's statements to Officer Saavedra while he observed her fearful demeanor and her facial injuries, were statements that were a "burst of stress-generated words whose main function [was] to get help and succor, or to secure safety." 295 Wis. 2d 801, ¶ 26.

In sum, the State contends that the statements in the entire 911 recording and by the victim to Officer Saavedra before arresting Hunter were properly admitted both because they fall squarely within the excited utterance exception to the

hearsay rule, Wis. Stat. § 908.03(2), and bear significant indication of their reliability as they were made at a time of heightened urgency and danger. *Id.*; *Savanh*, 287 Wis. 2d 876, ¶ 29, and because they were nontestimonial, made during an ongoing emergency, and therefore do not implicate Hunter's Confrontation Clause rights. *Davis*, 547 U.S. at 821.

C. Even if this court finds that the circuit court erroneously exercised its discretion in admitting the victim and her sister's out of court statements as nontestimonial, excited utterances, any error is harmless.

If this court agrees with Hunter and finds that the circuit court erroneously exercised its discretion in admitting any of the statements made by the victim or her sister in the 911 calls after the initial call from the victim, or by the victim to Officer Saavedra, then the State submits that the error in admitting the statements was harmless beyond a reasonable doubt because a rational jury would have found Hunter guilty absent the error. *See State v. Harvey*, 2002 WI 93, ¶ 49, 254 Wis. 2d 442, 647 N.W.2d 189.

The main reason any error in admitting the entirety of the statements is harmless is that it is undisputed that the first five minutes and twenty seconds of the 911 call from the victim was properly admitted. As Hunter admits in his brief, he "agreed that the initial statements by [the victim] on the call were admissible as both an excited utterance and a present sense impression, as well as non-testimonial under *Crawford v. Washington*, 541 U.S. 36 (2004), because it was a call for help" (Hunter's brief at 5); thus, according to Hunter, "[t]he sole issue on appeal regarding the 911 call refers to the statements made roughly five minutes and twenty seconds into the 911 recording wherein [the victim's sister and the victim] address the Incident in terms of a past event (R. 33, p. 17:4-23). There is

no objection to the statements prior to this time" (Hunter's brief at 5, n.1)

Because Hunter did not object the statements by the victim in the first five minutes of the 911 call, they were clearly admissible under the exception to the hearsay rule for excited utterances. Mere minutes later, after responding to the 911 call, Officer Saavedra himself observed the victim's frightened demeanor and facial injuries and upon their investigation the police located Hunter hiding in the garage of the home: all admissible evidence from Officer Saavedra's direct testimony that is indicative of Hunter's guilt. Because the victim's statements in the first five minutes of the 911 call were admissible, and were made to report the domestic violent incident to police and thus were cumulative to the later statements that Hunter objects to, a reasonable jury could have convicted Hunter based on the initial 911 call, on the Officer's testimony of his own observations, and on the fact that he was found hiding in the garage of the victim's residence. Officer Saavedra observed and testified that the victim was screaming in the street, visibly frightened and injured, including facial injuries. Therefore, even without the entirety of the statements during the 911 calls or the victim's statements to police, the jury would have been aware of the victim's fear and of her injuries. Further, the fact that police found shotgun casings in the home, a shotgun hidden in the crawlspace near the bedroom, and Hunter hiding in the garage of the residence is further circumstantial evidence sufficient to convict Hunter.

For all these reasons, if this court finds that any of the statements after the first five minutes of the 911 recording and the victim's statement to Officer Saavedra to police at the scene were not properly admitted as non-testimonial excited utterances, the error in admitting the later statements was harmless beyond a reasonable doubt.

III. THE EVIDENCE WAS SUFFICIENT TO CONVICT HUNTER OF POSSESSION OF A SHOTGUN.

A. Standard of review regarding sufficiency of the evidence to support the conviction.

In reviewing the sufficiency of the evidence, this court defers to the findings of the jury and a conviction may not be reversed "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990); *see also Jackson v. Virginia*, 443 U.S. 307, 324 (1979). As the Wisconsin Supreme Court found in *Poellinger*:

> Under that standard, commonly referred to as the reasonable doubt standard of review:
>
> > "The burden of proof is upon the state to prove every essential element of the crime charged beyond reasonable doubt. The test is not whether this court or any of the members thereof are convinced [of the defendant's guilt] beyond reasonable doubt, but whether this court can conclude the trier of facts could, acting reasonably, be so convinced by evidence it had a right to believe and accept as true. . . . *The credibility of the witnesses and the weight of the evidence is for the trier of fact.* In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding. Reasonable inferences drawn from the evidence can support a finding of fact and, if more than one reasonable inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted. . . ."

Poellinger, 153 Wis. 2d at 503-04 (emphasis added).

This court may not reverse a conviction because there is evidence in the record that suggests innocence. Rather:

> [t]he rule that the evidence must exclude every reasonable hypothesis of innocence does not mean that if any of the evidence brought forth at trial suggests innocence, the jury cannot find the defendant guilty**.** *The function of the jury is to decide which evidence is credible and which is not and how conflicts in the evidence are to be resolved.* The jury can thus, within the bounds of reason, reject evidence and testimony suggestive of innocence. Accordingly, the rule that the evidence must exclude every reasonable hypothesis of innocence refers to the evidence which the jury believes and relies upon to support its verdict. *Peters v. State*, 70 Wis. 2d 22, 34, 233 N.W.2d 420 (1975).
>
> Although the trier of fact must be convinced that the evidence presented at trial is sufficiently strong to exclude every reasonable hypothesis of the defendant's innocence in order to find guilt beyond a reasonable doubt, this court has stated that that rule is not the test on appeal.

Poellinger, 153 Wis. 2d at 503.

The appellate court does not apply the hypothesis of innocence rule *de novo* to determine whether, in its view, a hypothesis of innocence exists that is sufficiently reasonable to warrant conviction because that is not the role of the appellate court. *Id.* at 505-06. The Wisconsin Supreme Court has made it absolutely clear that the hypothesis-of-innocence rule is not in any way applicable to reviewing the sufficiency of the evidence to support a conviction. *Id.* at 506.

> When an appellate court independently reviews the evidence presented at trial to determine whether, in its view, there are reasonable theories consistent with the defendant's innocence, it replaces the trier of fact's overall evaluation of the evidence with its own. A theory of innocence which appears to be reasonable to an appellate court on review of the record may have been rejected as unreasonable by the trier of fact in view of the evidence and

> testimony presented at trial. It is the function of the trier of fact, and not of an appellate court, to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.
>
> In viewing evidence which could support contrary inferences, the trier of fact is free to choose among conflicting inferences of the evidence and may, *within the bounds of reason*, reject that inference which is consistent with the innocence of the accused. Thus, when faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law.
>
> Accordingly, we hold that, in reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it.

Poellinger, 153 Wis. 2d at 506-07 (citations omitted).

B. Sufficient evidence supports the jury's finding that Hunter had actual possession of the firearm based on its reasonable credibility determinations of the witnesses.

Hunter was convicted of violating Wis. Stat. § 941.29(2)(a) for possessing a firearm after having been convicted of a felony; Wis. Stat. § 941.28(2) for possessing a short-barreled shotgun; and Wis. Stat. § 968.0751(a) for intentionally point[ing] a firearm at a person (23; A-Ap. 1-101-104). Hunter does not dispute that he was previously convicted

of a felony and in fact, the parties stipulated to that fact (36:3-6). However, Hunter contends that the evidence failed to show that he was in possession of the shotgun because no shotgun was found on his person, he did not live at the property where the shotgun was located, and his fingerprints were not found on the shotgun (Hunter's brief at 20-21).

In *State v. Peete*, 185 Wis. 2d 4, 517 N.W.2d 149 (1994), the Wisconsin Supreme Court found that the standard definition for "'possession'" includes both "actual physical control," as well as constructive possession, where an item "is in an area over which the person has control and the person intends to exercise control over the item." *Id.* at 15-16. Further, "[p]ossession may be shared with another person. If a person exercises control over an item, that item is in his possession, even though another person may also have similar control." *Id.*

In his brief, Hunter argues that under *Schmidt v. State*, 77 Wis. 2d 370, 379, 253 N.W.2d 204 (1977), constructive possession requires not only "control" but also "knowledge" of the item and here, "there is no evidence that Mr. Hunter knew of the presence of the gun, the gun was hidden inside a cloth bag in a speaker compartment in the crawl space leading to [the victim's] bedroom and any of [the victim's] visitors could have accessed or stored it there"(Hunter's brief at 21). However, the definition of constructive possession in *Schmidt* is inapplicable to this case because here, the trial judge instructed the jury only on actual possession, meaning that Hunter "had actual physical control of a firearm" (37:37-39). Therefore, the jury determined, after weighing the conflicting testimony at trial, that there was sufficient evidence that Hunter, a convicted felon, had actual physical control of the shotgun. This finding is not unreasonable and the jury was entitled to weigh any conflicting testimony and decide that the more credible testimony was that Hunter was in actual possession of a firearm.

Hunter argues that because the gun was found inside the victim's residence and during his interrogation he denied that he was inside the residence on the night of the incident, this "evidence shows that Mr. Hunter [never had] possession [of] the firearm in question on the night of the Incident" (Hunter's brief at 20). However, the jury heard and found credible the testimony of Officer Saavedra regarding the victim's statement that Hunter was in her bedroom and pointed the shotgun at her and threatened to kill her (35:110). Further, the jury also heard the evidence that police found loose shotgun rounds in the hallway leading to the victim's bedroom (35:115-117) and found the shotgun hidden in the crawlspace in the hallway leading to the victim's bedroom, where the victim told police that Hunter placed it (35:122-23; 2:3).

Based on the guilty verdict, clearly the jury believed the testimony of Officer Saavedra that the victim told him that Hunter threatened her with the shotgun and told him that Hunter had hidden the gun in the crawlspace. The jury properly weighed the testimony of Officer Saavedra against Hunter's statements made during his interrogation by Officer Elm, who testified that Hunter stated that he was not in the residence that night (although he was hiding in the garage) and that he did not possess a shotgun (37:16). The jury was entitled to believe the victim's statements as testified to by Officer Saavedra and to not believe Hunter's statements as testified to by Officer Elm.

On appeal, Hunter argues that the fact that his fingerprints were not found on the shotgun makes it "a remote possibility that he possessed the gun" (Hunter's brief at 21) and further argues that the 911 calls that were used as evidence to convict him did not confirm his presence at the scene or that he possessed a shotgun (Hunter's brief at 21-22). However, direct evidence is not necessary to sustain a conviction; a finding of guilt may rest entirely on evidence that is circumstantial. *See Poellinger*, 153 Wis. 2d at 501. And in this case, a reasonable

jury "could have drawn the appropriate inferences from the evidence adduced at trial," *id*. at 507, in particular, Officer Saavedra's testimony that the victim told him that Hunter possessed the shotgun and used it to threaten the victim. The evidence in support of Hunter's conviction for possession of a firearm by a felon, possession of a short barreled shotgun, and intentionally pointing a firearm at a person is not so lacking in probative value and force that it can be said as a matter of law that no reasonable trier of fact could have drawn the inference that Hunter possessed the firearm.

Hunter's argument that there was a "lack of evidence and testimony linking [Hunter] to the gun," Hunter's brief at 22, is simply not true. Saying it is so does not make it so, and mere hypothesis of innocence is insufficient to overturn the jury verdict. Hunter has failed to show that the evidence presented at trial was so lacking in probative value that a reasonable jury could not find that it supported the guilty verdict.

For all of these reasons, applying the correct, deferential standard of review, this court must conclude that the evidence that was presented in this case was sufficient for the jury to find beyond a reasonable doubt that Hunter was guilty of the crimes of felon in possession of a firearm, possession of a short-barreled shotgun and intentionally pointing a firearm at a person. Hunter has failed to show that there is insufficient evidence to support his convictions. Thus, this court should affirm.

IV. THE CIRCUIT COURT PROPERLY ALLOWED THE TESTIMONY OF WITNESSES TO AUTHENTICATE THE 911 RECORDINGS.

Curiously, although the 911 operator did not testify at trial, Hunter argues on appeal that "the trial court erred in allowing the 911 operator to testify because the state's failure to disclose this witness ahead of trial prejudiced the defense"

(Hunter's brief at 22-25) (capitalization omitted). However, as set forth in the State's supplemental statement of the case, after the 911 operator who took the first call from the victim and who was a temporary employee could not be located, the State decided not to call any of the 911 operators to testify regarding the calls (34:4-5). Instead, the State amended its witness list to list two additional witnesses – Lydia Vasquez and Officer Derrick Vance, both employees of the Milwaukee Police Department, who are responsible for recording and downloading the 911 calls in the regular course of business – to call at trial to authenticate the 911 recordings as business records (34:5-9). Although Hunter objected to these witnesses because they were not on the State's original witness list (34:9), the circuit court overruled the objection, finding that the State could call Ms. Vasquez and Officer Vance as witnesses to authenticate the 911 recordings under Wis. Stat. § 909.015(6), which allows admission of a telephone call to a business where the conversation is related to the business reasonably transacted over the telephone (34:17-21).

Under Wis. Stat. § 909.01, "the requirements of authentication or identification as a condition precedent to admissibility are satisified by evidence sufficient to support a finding that the matter in question is what its proponent claims." Wis. Stat. § 909.015 provides for methods of authentication of evidence, but "expressly states that it is not an exhaustive or exclusive list [and] … [i]ndeed, telephone calls can be authenticated by circumstantial evidence." *State v. Baldwin*, 330 Wis. 2d 500, 526, 794 N.W. 2d 769 (Wis. App. 2010). One means of authenticating evidence is by "[t]he testimony of a witness 'with knowledge that a matter is what it claims to be.'" *Dow Family LLC v PHH Mortg. Corp.*, 350 Wis. 2d 411, 424, 838 N.W. 2d 119 (Ct. App. 2013). In this case, the trial court determined that the recording of the 911 calls was properly authenticated by Ms. Vasquez and Officer Vance under Wis. Stat. § 909.015(6), which allows admission of a

telephone call to a business where the conversation is related to the business reasonably transacted over the telephone, by their testimony regarding their knowledge of receiving and recording 911 calls. Further, as set forth in Parts I and II of this brief, the 911 recording was admissible in its entirety under the excited utterance exception to the hearsay rule and because the statements of the victim and her sister were made during an ongoing emergency and thus were non-testimonial.

On appeal, Hunter argues that the State violated a discovery statute, Wis. Stat. § 971.23(1)(d), by not providing Hunter the names and addresses of all the witnesses they planned to call at trial (Hunter's brief at 23). Before trial, the circuit court overruled Hunter's objection and allowed the State to call Ms. Vasquez and Officer Vance. It determined that Hunter was not prejudiced because he was offered an adjournment, the State had turned over the CD of the 911 recordings, these witnesses were merely called to authenticate the CD, not to testify about its content, and that listing the name of the 911 operator would not have helped the defense because no one could locate her (34:21). At trial, the State called Ms. Vasquez to authenticate Exhibit 1, the CAD report of the 911 calls, and Officer Vance to authenticate Exhibit 14, the downloaded recording of the 911 calls, and both exhibits were admitted without objection from Hunter (36:75-87; 37:21-27).

Hunter's argument that the State violated the discovery statute by not listing the 911 operator on the witness list must fail both because the 911 operator was not even called as a witness at trial and because Hunter was not prejudiced by the circuit court's ruling allowing Ms. Vasquez and Officer Vance to testify. Wis. Stat. § 971.23(1)(d) provides that the State must disclose to the defendant "[a] list of all witnesses and their addresses whom the district attorney *intends* to call at trial" (emphasis added). Wis. Stat. § 971.23(7m)(a) provides that the circuit court "shall exclude any witness not listed . . . required

by this section, unless good cause is shown for failure to comply."

Thus, under this statute, the State was not required to list a witness that either it did not intend to call or did not call at trial. The State did not call the 911 operator to testify at trial because no one could locate her. Correspondingly, when it submitted the original witness list, the State did not intend to call Ms. Vasquez and Officer Vance at trial. Rather, the State amended the witness list after it realized that the 911 operator was unavailable and that their testimony could serve the limited purpose of authenticating the 911 recordings, which were properly admitted as telephonic business records.[2] Therefore, Hunter's argument that the State violated Wis. Stat. § 971.23(1)(d) fails.

Further, the circuit court correctly concluded that Hunter was not prejudiced by the admission of the 911 recording into evidence, as properly authenticated by Ms. Vasquez and Officer Vance as a telephone business record. The circuit court offered Hunter an adjournment to interview Ms. Vasquez and Officer Vance and the State provided Hunter with the entire CD of the 911 recording that Ms. Vasquez and Officer Vance were called to authenticate. As the circuit court observed, the State was not trying to ambush or hide anything, because Ms. Vasquez and Officer Vance merely testified to the fact that the recording of the 911 calls was made in the regular course of business regularly transacted over the telephone. Because Hunter had the actual 911 recording, his interviewing the 911 operator or the authentication witnesses would not have

[2] Hunter makes no objection, either at trial or on appeal, to the 911 recording being authenticated and admitted as business record under Wis. Stat. § 909.015(6)(b), which provides for authentication of a telephone conversation made to a number assigned to a business if made to the place of business and "the conversation related to business reasonably transacted over the telephone."

provided him any further information about the recording prior to the trial.

Hunter misplaces reliance on *State v. DeLao*, 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480. *DeLao* involved an interpretation of Wis. Stat. § 971.23(1)(b), which requires the State, upon demand, to provide a summary of all oral statements of the defendant that the prosecutor "plans to use in the course of the trial." In *DeLao*, the Wisconsin Supreme Court held that this phrase does not refer to the actual prosecutor's wholly subjective plan. Rather, the court interpreted the phrase "to necessarily embody an objective standard: what a reasonable prosecutor should have known and would have done under the circumstances of the case." *DeLao*, 252 Wis. 2d 289, ¶ 30.

DeLao does not support Hunter's position. *DeLao* did not involve a circuit court's ruling to allow a late-disclosed witness to testify to authenticate a 911 recording. In fact, in *DeLao,* the supreme court held that the State has no obligation to provide materials requested by the defendant if those materials fall outside the scope of statutory or constitutional discovery requirements. *DeLao*, 252 Wis. 2d 289, ¶ 50. Further, in *DeLao*, the supreme court also held that, "[w]hen evidence that should have been excluded under § 971.23 is not excluded, the defendant is not automatically entitled to a new trial. . . . If the defendant is to receive a new trial, the improper admission of the evidence must be prejudicial." *Id.* ¶ 60 (citations omitted).

Here, the State had no prior obligation to disclose Ms. Vasquez and Officer Vance in its original witness list, because the State did not intend to call them at trial until it determined they were needed to authenticate the 911 recording. A reasonable prosecutor could not be expected to list witnesses that it did not intend to call at trial. As the circuit court concluded, Hunter was not prejudiced by the State's late

disclosure of Ms. Vasquez and Officer Vance because Hunter was offered an adjournment to interview the witnesses and he had already had been provided the recording of the 911 call that they were authenticating. The State was not trying to "ambush" Hunter by calling authentication witnesses for a 911 recording that Hunter had in his possession and understood would be introduced at trial. Therefore, its admission into evidence caused no prejudice to his defense.

Because the State did not call the 911 operator, because the State did not intend to call Ms. Vasquez and Officer Vance as witnesses and thus did not disclose them until it amended the witness list when it determined they were needed to authenticate the 911 recording, and because Hunter was offered an adjournment for time to interview the witnesses and was aware that the 911 recording would be offered into evidence, Hunter was not prejudiced by the their testimony. Hunter has utterly failed to show that he is entitled to a new trial.

CONCLUSION

The circuit court properly exercised its discretion to admit the statements of the victim and her sister in the 911 calls and to the responding officer as excited utterances. Because the statements were non-testimonial and made during an ongoing emergency, the statements did not violate Hunter's rights under the Confrontation Clause. Additionally, there is sufficient evidence the Hunter possessed the shotgun and used it to threaten the victim and further, the circuit court properly allowed the testimony of Ms. Vasquez and Officer Vance, despite the fact they were not on the State's original witness list, because the State did not know it intended to call them until it needed their testimony to authenticate the 911 recordings, and there was no prejudice to Hunter because he was previously provided with the 911 recording. Hunter is not

entitled to a new trial, and the judgment of conviction in this case should be affirmed.

Dated this 19th day of March, 2015

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General

ANNE C. MURPHY
Assistant Attorney General
State Bar #1031600

Attorneys for Plaintiff-Respondent
the State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9224
(608) 266-9594 (Fax)
murphyac@doj.state.wi.us

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 9764 words.

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Anne C. Murphy
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 19th day of March, 2015.

_____

Anne C. Murphy
Assistant Attorney General