STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 2014AP002603-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GLENN T. ZAMZOW,

Defendant-Appellant.

On Appeal from the Judgment of Conviction and the Order Denying Postconviction Relief Entered in Fond du Lac County Circuit Court, the Honorable Gary R. Sharpe, Presiding

Circuit Court Case No. 2011CT000145

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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CONSTITUTIONAL PROVISIONS CITED

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ISSUES PRESENTED

I. Did the Trial Court err in denying the Motion to Suppress the traffic stop of Zamzow's vehicle?

The trial court answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Mr. Zamzow does not requests publication of the opinion in this case, as this is an appeal within §752.31(2), Stats., and is thus not eligible for publication.

Further, the evidence is documentary in nature, and there is no dispute about what evidence was submitted. The briefs can adequately address the argument, and therefore, oral argument is not necessary nor requested.

STATEMENT OF THE CASE AND FACTS

The Defendant-Appellant, Glenn T. Zamzow,(hereinafter, Zamzow) was charged with Operating a Motor Vehicle while Intoxicated, third offense, (OWI-3rd), pursuant to §346.63(1)(a), Stats., and Operating a Motor Vehicle with a Prohibited Alcohol Concentration, third offense, (PAC-3rd),

pursuant to §346.63(1)(b), Stats., in a complaint filed on March 16, 2011 [1:1-4; App. 103-106).

The defense filed a Motion to Suppress, For Lack of Reasonable Suspicion for Stop, on April 19, 2011. [11:1] A motion hearing was held on June 2, 2011, [77:1-9], but the State was not prepared to present evidence, as a necessary witness, Officer Weed, was not present, so the matter was rescheduled. [Id.] At this hearing, it was noted by the State that, "this is a case where we have Officer Birkholz, a deceased officer, who actually made some observations and made the traffic stop..." [Id., at 3] The court noted at this early stage of the case that "there are some issues raised by the absence of the testimony of Officer Birkholz. Those issues may or may not be insurmountable, I don't know." [Id., at 7]

On July 8, 2011, the motion hearing proceeded. [78:1-53] It was made clear that the only issue being pursued by the defense was the stop of the vehicle by the now deceased officer Birkholz. [Id., at 4] The State then proceeded and presented evidence to lay a foundation for the squad car camera recording made by Officer Birkholz. The DVD of the squad car camera recording [19] was admitted into evidence, over the objection of the defense, as Exhibit 1. [78:33] The

DVD was then played in court, and the trial court took the matter under advisement. [78:51]

On October 5, 2011, a hearing was held for the Oral Ruling by the trial court. [79:1-14] The trial court advised the parties that his recollection was that at the motion hearing, when Exhibit 1, the DVD of the squad car camera [19] was played, "it only played the video, and I don't recall any audio." [79:3] The trial court further advised the parties that in reviewing Exhibit 1 in chambers, that audio was heard. [Id.] This presented audio recordings of the now deceased arresting officer. The defense stated that they were unaware that there was any audio on the DVD. [Id., at 10] The matter was rescheduled to allow the full audio and video portions of Exhibit 1 to be played in court, and for the audio portion to be taken down by the Court Reporter. [79:8-12]

On December 1, 2011, the evidentiary portion of the motion to suppress was reopened. [80:1-28] Over the objection of the defense on both hearsay and confrontation grounds, Exhibit 1, the DVD of the squad car camera, [19] was played with both the audio and the video portions. [80:12-15; App. 8-11] The voice of deceased officer Birkolz was heard on the audio portion of the recording, when he

approached Zamzow's vehicle immediately after the stop, saying: "Officer Birkholz, city police. The reason I stopped you is you were crossing the center line there coming at me and then again when I turned around and got behind you." [80:12; App. 8] Additional recordings of Officer's Birkholz's voice were played where he was discussing the stop with another officer who responded to the scene after the stop. [80:14-15; App. 110-111]

After argument, the trial court made findings and rulings. [80:19-26; App. 112-119] The trial court found that "The Court has observed the video, and what the Court saw was an oncoming vehicle approaching the officer, and the Court could not determine from the video whether or not the defendant was crossing the center line as he was approaching the officer." [80:19; App. 112] The trial court continued and based upon the first conversation between Officer Birkholz and Zamzow found:

> Thereafter, we saw the officer turn around, speed up, and come behind the defendant. At that point, while the defendant was on the bridge, it looks like his tires were on the center line. But the Court could not discern to the extent that there was an actual cross of the center line as the defendant approached the intersection...
>
> [80:19-20; App. 112-113]

The second conversation between Officer Birkholz and

the responding officer was found to be testimonial and therefore not admissible as a violation of the right to confrontation. [80:20-21; App.113-114]

However, the first conversation between Officer Birkholz and Zamzow was ruled to be not testimonial because, "It was made for the purpose of establishing the basis for the stop and provide information to the defendant." [80:21; App. 114] The trial court further clarified its ruling that this first conversation was admissible and stated:

> The Court's finding is that the statement made by Officer Birkholz to the defendant is not nontestimonial[1] and is therefore admissible notwithstanding the confrontation clause and can be considered by the Court for purposes of deterining whether or not there was reasonable grounds with reasonable suspicion or probable cause to stop the vehicle.

[80:23; App.116] The trial court went on to further find that:

> Clearly there is nothing else in the record to support the stop. So we don't have any other evidence of weaving. We don't have any evidence of speed. We don't have any evidence of any other violation. Clearly, the only evidence to be considered by the Court is a statement by the officer that he observed the defendant cross the

[1] The phrase "not nontestimonial" appears to either be a mis-type by the court reporter, or mis-spoken by the trial court. The trial courts intention to find that the statement was nontestimonial was clear throughout the case and is not in dispute.

center line...

[80:23-24; App. 116-117]

Based upon those findings, the trial court ruled:

> But the decision of this Court is that based upon Officer Birkholz's belief that the – - and testimony that the vehicle did, in fact, cross the center line twice in that short amount of time, I believe that there is sufficient basis for the officer to have made a stop for further inquiry. A cross of the center line is a violation of traffic law.

[80:24-25; App.117-118] The trial court further clarified that "So I am relying upon the officer's testimony as to the cross of the center line that he observed more so than the specifics that I observed on the video. [80:26; App.119]

On December 8, 2011, the defense file a Motion to Reconsider Denial of Suppress of Evidence. [25:1-4] That motion was heard on March 27, 2012. [81:1-27] In summary, the defense argued that the one recorded statement of Officer Birkholz that the trial court relied upon was indeed testimonial. [81:9-15] The prosecutor argued that at these "preliminary" type hearings, that the Confrontation Clause does not even apply. [81:15-16] The trial court ruled that:

> The Court's determination today is that under Frambs, confrontation clause is not applicable to a pre-trial motion such as this stop motion. But even if the Court is wrong and the confrontation clause is applicable, I believe that the nature of the statement made by the officer directly to the

> defendant as an explanation for the stop in the very inception of the investigation is clearly not testimonial because it is not a summation, it is not a wrap-up, it is not an interview by another officer of Officer Birkholz as to what he saw and/or observed some time before.

[81:19-20] The trial court entered a written order on October 15, 2012, denying the motion to suppress for lack of reasonable suspicion for stop. [36:1; App. 7]

The case proceeded to a jury trial, on January 23, 2014, [84:1-198] and Zamzow was found guilty by the jury, on both counts. [52:1-2 and 57:1-2] Zamzow was sentenced immediately after the trial and a Judgment of Conviction was entered. [59:1-2; App.101-102]

Zamzow timely filed on January 24, 2014, a Notice of Intent to Seek Post-Conviction Relief [60:1-4]. Appellate counsel was subsequently appointed and a Post-Conviction Motion was filed on August 21, 2014, with the sole issue challenging the denial of the motion to suppress. [63:1-5]. A hearing was held on the post-conviction motion on October 7, 2014. [85:1-16].

The trial court made an oral ruling that it was not going to change its mind. [85:13; App. 120] The trial court reiterated that it was relying on the audio recording of Officer Birkholz's statement. [85:14; App. 121] The trial

court found the audio statement reliable, when viewed with the video and that reliance on it was not a violation of due process. [85:13-15; App. 120-122]

The trial court denied the motion in a written order dated October 20, 2014. [66:1] This appeal followed with a timely Notice of Appeal, filed on November 5, 2014. [67:1-3]

Further reference to the record and facts will be provided as needed in the argument.

ARGUMENT

I. THE TRIAL COURT ERRED BY DENYING THE MOTION TO SUPPRESS FOR LACK OF REASONABLE SUSPICION FOR STOP

The trial court ruled at the several motion hearings that it was satisfied that the State had met its burden of proof that the arresting officer had reasonable suspicion to stop Zamzow's vehicle for crossing the center line. It based this ruling on the recorded audio portion of Officer Birkholz's squad car camera that was admitted into evidence.

Zamzow argues that the admission of the audio recording was in error as it was hearsay, and violated his right to confront the witness against him, as Officer Birkholz was deceased, he was not available to be cross-examined.

Zamzow further argues that even if hearsay is

admissible and the confrontation clause doesn't apply at the motion hearing, that the inability to cross examine the witness against him violates the Due Process clause, as the reliability of the statement is unable to be tested and thus should not be used to find the State met its burden of proof.

A. Standard of Review

The sole issue is whether the trial court properly denied the motion to suppress for lack of reasonable suspicion.

The standard for a traffic stop is well settled. The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure of 'persons' within the meaning of the Fourth Amendment." State v. Gaulrapp, 207 Wis.2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996) (citing Whren v. United States, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

The constitutional standard of the 4th Amendment of the U.S. Constitution and Article I, §11 of the Wisconsin Constitution requires that before an officer makes an investigative traffic stop, he must have reasonable suspicion. State v. Rutzinski, 2001 WI 22, ¶¶12-14, 241

Wis.2d 729, 623 N.W.2d 516. To satisfy constitutional requirements for a traffic stop, an officer's suspicion must be based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. Terry v. Ohio, 392 U.S. 1, 27 (1968).

Whether reasonable suspicion exists is a question of constitutional fact. State v. Williams, 2001 WI 21, ¶18, 241 Wis.2d 631, 623 N.W.2d 106. The court applies a two step standard of review when determining questions of constitutional fact. Id. First, a trial court's finding of historical fact will be upheld unless they are clearly erroneous. Id. Second, determining whether reasonable suspicion exists, based upon those historical facts, is de novo. Id.

At a motion hearing to suppress evidence the burden of proof is on the State.[2] State v. Jiles, 2003 WI 66, ¶26, 262 Wis.2d 457, 663 N.W.2d 798. The reviewing court is bound to accept the trial court's findings of historical or evidentiary fact unless they are contrary to the great

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[2] The Jiles case involved a *Miranda* violation. No case could be found that definitively ruled on the Burden of Proof in a traffic stop suppression hearing.

weight and clear preponderance of the evidence. State v. Popke, 2009 WI 37, ¶20, 317 Wis.2d 118, 765 N.W.2d 569.

Finally, the determination of historical fact by the trial court, when it is based upon both an officer's testimony and a video recording is under the clearly erroneous standard. State v. Walli, 2011 WI App 86, ¶17, 334 Wis.2d 402, 799 N.W.2d 898. However, the standard when there is no officer testimony, and just a video of the alleged traffic violation is still unsettled. Id., at ¶15,n.5. In *dicta*, it was discussed that other jurisdictions apply a de novo standard of review in those situations. Id.

B. The State Failed to Meet its Burden of Proof

In this case, the trial court stated that the video showed no traffic violations, and the only evidence of a traffic violation was the audio recording of Officer Birkholz, saying that he saw the vehicle cross the center line. [80:23-24; App. 116-117]

1. The Audio Recording Should Not Have Been Admitted

If the audio recording of Officer Birkholz is deemed inadmissible, then there is no evidence to support reasonable suspicion, since the only evidence of a traffic violation is that recording. Therefore, the motion to

suppress must be granted in that scenario.

The defense objected to the admission of the DVD of the squad car camera recordings (Exhibit 1 [19]) on both hearsay [78:4] and confrontation grounds. [80:5-8] The court overruled the objection to hearsay, finding that at a motion hearing hearsay is admissible. [79:2-3]

The trial court also ruled on the issue of whether the Confrontation Clause applies to pre-trial hearings at the Motion Hearing on December 1, 2011. It determined that it needed to hear the audio recording to determine whether the statement was testimonial or non-testimonial, as that would determine whether the Confrontation Clause would be violated or not. [80:10] After the DVD was played, the trial court ruled that the first statement directly to Zamzow as nontestimonial, and thus admissible, [80:23; App. 116] and that the second statement to a responding officer was testimonial and thus not admissible. [80:20; App. 113]

At the Reconsideration hearing, the trial court clarified the reason that it found the first statement to be admissible as non-testimonial stating that "it is not a summation, it is not a wrap-up, it is not an interview by another officer of Officer Birkholz as to what he saw and/or observed some time before." [81:19-20; App.] The problem

with this reasoning is that the statement is a summation of the reason the officer would put in his police report for why he stopped the vehicle. It is essentially the same information that he conveyed to the responding officer [80:14-14; App. 110-111] that the trial court found to be testimonial. [80:20; App. 113] The only difference is who the audience was.

The bottom line was Officer Birkholz had just made a traffic stop, and he knew he had to have a reason for it. He gave the reason to Zamzow, and he gave the reason to the responding officer. The intent of making the statement to both was the same, i.e., to justify the stop in the anticipation of litigation. When a officer stops a vehicle, and informs a citizen of the reason for the stop, he should fully expect that reason to be remembered by the citizen, and used in litigation.

This standard is found in State v. Manuel, 2005 WI 75, ¶42, 281 Wis.2d 554, 697 N.W.2d 811. "For a statement to be testimonial...it must be as 'statement[] that [was] made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" In this case, Zamzow was the witness to that statement, and as the basis for the stop, it

should be clear that the statement was going to be used at a later trial. Therefore, that statement is testimonial, and should be inadmissible as a violation of the confrontation clause.

In the alternative, the trial court also found that under State v. Frambs, 157 Wis.2d 700, 460 N.W.2d 811 (Ct. App. 1990), that the "confrontation clause is not applicable to a pre-trial motion such as this stop motion." [81:19] As argued further below, Zamzow argues that Frambs, having been decided long before Crawford v. Washington, 541 U.S. 36 (2004), is no longer good law, and that at an adversarial evidentiary hearing, where constitutional facts need to be determined, that some right to confrontation does apply. As explained below, Zamzow also argues that the Confrontation Clause is the only way to test the reliability of the evidence, and thus is necessary to reliably determine the evidentiary facts.

2. The Audio Recording is Too Unreliable to Form the Basis for a Constitutional Fact

Even if the audio recording is deemed admissible, the suppression motion should still be granted since the sole evidence to support a reasonable suspicion is the statement of Officer Birkholz, and that statement is too unreliable to

form the basis for a constitutional fact because it was not subject to cross-examination.

Without cross-examination, that statement can not be tested. The reliability of testimony is assessed by testing in the "crucible of cross-examination". State v. Rhodes, 2011 WI 73, ¶29, 336 Wis.2d 64, 799 N.W.2d 850. Unreliable evidence should not be relied upon for such an important finding as a constitutional fact.

The trial courts findings were either clearly erroneous, as it relied upon unreliable evidence, or was based upon inadmissable evidence. Either way, there was insufficient credible evidence to support the finding of reasonable suspicion.

C. Statements Made Out of Court, by an Unavailable Witness are Not Reliable

The defense objected to admitting the DVD containing the audio and video from the squad car camera based upon it being hearsay, and also violating the rights to confront witnesses. The historical basis for these limits on evidence is that they are not reliable. As a general principle, taught in law school evidence classes, "The assumption underlying the hearsay rule is that cross-examination reveals these infirmities; accordingly, the lack

of opportunity for cross-examination is the fundamental reason for excluding hearsay evidence." Graham C. Lilly, An Introduction to the Law of Evidence, 182 (2d ed. 1992) The first "infirmity" of hearsay is a "defect in perception", that is, the statement may be unreliable because the declarant did not observe or hear accurately. Id. In this case, the unsworn statement of Officer Birkholz was admitted, over objection, and ultimately, was the basis for the finding that reasonable suspicion existed, even though there was no way to test it for any defects in perception.

Since the statement was not tested for defects in perception by cross-examination, it was unreliable. Therefore, considering the contents of the video as sufficient evidence to meet the State's burden of proof violates the defendants Due Process Rights under both the Wisconsin and the U.S. Constitution because unreliable evidence should not be the sole basis for the trial court' ruling.

The Due Process Clause of the Fourteenth Amendment provides an independent limit on the procedural actions of State governments in criminal cases based on the idea of "fundamental fairness." This is sometimes referred to as "procedural due process."

The Due Process Clause of the Fourteenth Amendment provides an independent limit on the procedural actions of state governments in criminal cases based upon the idea of "fundamental fairness." *See* Dowling v. U.S., 493 U.S.342, 352 (1990). Zamzow argues it would be fundamentally unfair to allow the trial court to make a finding of constitutional fact solely on a statement that can not be tested for defects in perception.

Zamzow acknowledges that this approach appears to be novel in Wisconsin. Zamzow also acknowledges that case law was cited in the prior proceedings in this case that supports the argument that hearsay can be admitted at pre-trial proceedings and that the Confrontation Clause does not apply at pre-trial proceedings. However, Zamzow argues that Due Process still requires that a court consider the importance of cross-examination in determining the reliability of the evidence and the critical nature of the proceedings, rather than rely upon a blanket assumption that the Confrontation Clause does not apply.

The case cited by the State [80:9 and 81:5] to support the argument that the Confrontation Clause does not apply to pre-trial proceedings is State v. Frambs, 157 Wis.2d 700, 460 N.W.2d 811 (Ct. App. 1990). This case was decided long

before the landmark case of Crawford v. Washington, 541 U.S. 36 (2004), which drastically changed how the Confrontation Clause was interpreted. While the Crawford case did not deal with the issue of pre-trial hearings, it did emphasize that cross-examination is the procedural way to determine reliability. Id., at p.61.

In this case, the officers statements on the squad video formed the basis of the evidence to support reasonable suspicion. However, there was no way for the defense to cross-examine the officer on what those statements meant, or what he was actually thinking when he made those statements. There was also no way for the defense to cross-examine the officer on whether there were any defects in his perception. There was no way to ask Officer Birkholz where on the video the violation occurred, and if not on the video, why not.

Without having to wade through the constitutional limits of the Confrontation Clause, and whether it automatically applies to pre-trial adversarial evidentiary motion hearings, the issue can be determined on Due Process grounds because of the importance of cross-examination at getting to the truth.

"The right to cross-examine is often implicated in the context of an accused attempt to test the credibility of an

adversary witness." State v. Rhodes, 2011 WI 73, ¶29, 336 Wis.2d 64, 799 N.W.2d 850. "At the most fundamental level ... cross-examination allows the accused to test the 'believability of a witness and the truth of his testimony'." Id. The reliability of the testimony is assessed by testing in the "crucible of cross-examination". Id. (internal citations omitted).

The suppression hearing in this case was an adversarial evidentiary hearing. The trial court had to make a finding of fact, based upon the evidence presented, that the State met the burden of proof. Since the officer who was the sole witness to the critical event was not available, there was no way for the defense to cross-examine him on any infirmities of his perception in what he thought he saw, and what was the basis for the stop. The believability of the witness and the truth of his testimony could not be tested. While the full scope of the Confrontation Clause might not apply to pre-trial proceedings, Due Process should require that the defense be allowed to test the evidence against the accused in the crucible of cross-examination before the evidence can be found reliable and trustworthy enough to be a constitutional fact.

Another way to think about this issue, and why cross-

examination is necessary at an adversarial evidentiary hearing is that without cross-examination, it is just a trial by affidavit. Why bother having an evidentiary hearing, if all the State has to do is submit a police report, as hearsay. The process would lose the entire nature of being "adversarial" and "evidentiary". The defense can not cross-examine a report. If the witness to the incident is not present at the evidentiary hearing, but only a different police officer, who reads a report, the whole concept of an adversarial evidentiary hearing becomes a farce. Without the ability to cross-examine the sole witness to the critical event in this case, the defendant is denied the due process right to a fair determination of the evidence that is the basis for the finding of reasonable suspicion as a constitutional fact.

As an example, how would this case be any different if there was no audio on the squad car recording, but rather, the statement by Officer Birkohlz was in a written police report. Then, at the suppression hearing in this example, the prosecutor submits the written police report, that says the same thing, "Officer Birkholz, city police. The reason I stopped you is you were crossing the center line there coming at me and then again when I turned around and got

behind you." [80:12; App. 8] There is no evidentiary difference between the audio recording and the written form. In both cases, there is no dispute that the officer made the statement. But, in both examples, there is no way to test the truth of the statement, nor the basis for the statement, or to explore any defects in perception, and thus, such statements have been historically deemed unreliable.

It is rare, if not non-existent, that a case would get to an adversarial evidentiary hearing, if the written police report doesn't contain, on its face, the necessary details to show reasonable suspicion or probable cause. However, occasionally, the defense prevails at such a hearing, notwithstanding the details in the written report. Generally, through cross-examination, details emerge that cast doubt on the narrative in the police report. If statements of the arresting officer, either audio recorded or written, can be used at these hearings, without the ability to cross-examine the officer, then the adversarial evidentiary nature of the hearing is eliminated. The sole purpose of such a hearing would be to determine if the officer properly drafted his report.

Most importantly, in this case, the video recording does not corroborate the audio statement, but rather

contradicts it. One has to assume that the cross of the center line occurred outside the view of the video. But that is exactly why cross-examination of the officer is necessary. An assumption should not be the basis for a constitutional fact. The clearly erroneous standard of review should not be applied in this case, but rather a de novo one. *Confer* State v. Walli, 2011 WI App 86, ¶15,n.5. , 334 Wis.2d 402, 799 N.W.2d 898. Since the video shows no traffic violation, the trial court should be reversed.

The trial court found that the officer's unsworn statement, admitted into evidence without the ability of the defense to cross-examine him, was the sole evidence and was sufficient to meet the burden of proof that there was a traffic violation which provided reasonable suspicion for the traffic stop. Zamzow argues that the recorded statement should not have been admitted since it was hearsay, and it was impossible to cross-examine the declarant, and thus is unreliable and violates his due process rights to have the trial court determine the motion to suppress on reliable evidence. Since there was no reliable evidence that the officer observed a traffic violation, the motion to suppress should have been granted.

CONCLUSION

For all of the reasons stated above, the defendant, Glenn T. Zamzow, hereby asserts that the trial court's finding of a traffic violation was clearly erroneous and the trial court erred in denying the motion to suppress. Zamzow requests that this Court should vacate the Judgment of Conviction and reverse the trial court's order.

Dated this 12th day of January, 2015.

By:_____
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CERTIFICATION ON FORMAT

I hereby that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a Brief produced using the following font:

Mono spaced font: **Courier New** at 12 point font, which is 10 characters per inch; double spaced; 1.5 inch margins on left side and 1.0 inch margins on other 3 sides.

The length of the brief is 23 pages.

Dated this 12th day of January, 2015.

WILLIAM J. DONARSKI
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CERTIFICATION OF MAILING

I, William J. Donarski, hereby certify that pursuant to §809.80(3), Stats., that I deposited in the United States mail for delivery to the Clerk, by first class mail, postage prepaid the **Brief and Appendix of Defendant-Appellant**, addressed to:

Clerk of the Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

I have enclosed ten (10) copies of this document to the Court of Appeals. I have also served by U.S. mail three (3) copies of the said document upon the Wisconsin Attorney General at the following address:

ADA Eric Toney
Fond du Lac County
District Attorney's Office
160 South Macy Street
Fond du Lac, WI 54935

I certify that the packages containing the said documents postage prepaid were deposited in the U.S. postal receptacle on this 12th day of January, 2015.

_____
William J. Donarski

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 s. 809.19 (2) (a) and that contains:

(1) a table of contents;

(2) relevant trial court record entries;

(3) the findings or opinion of the trial court; and

(4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial courts 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 **12th** day of **January**, **2015**.

_____

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that I have submitted an electronic copy of this BRIEF OF APPELLANT-DEFENDANT, excluding the appendix, if any, which complies with the requirements of §809.19(12).

I further certify that this electronic petition is identical in content and format to the printed form of the petition for review filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 12th day of January, 2015.

By:_____
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