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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case No. 2014 AP 2965-CR

TIRON JUSTIN GRANT,

Defendant-Appellant.

---

ON NOTICE OF APPEAL TO REVIEW A JUDGMENT OF  
CONVICTION AND A DENIAL OF A  
POSTCONVICTION MOTION ENTERED IN CIRCUIT  
COURT FOR MILWAUKEE COUNTY, THE  
HONORABLE J.D. WATTS, AND HONORABLE DANIEL  
L. KONKOL, PRESIDING, RESPECTIVELY

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REPLY BRIEF OF DEFENDANT-APPELLANT

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**Argument**

**The circuit court did not properly deny  
Grant's ineffective assistance of counsel  
claim without an evidentiary hearing**

Mr. Grant relies on his arguments for issues (1) and (2) and (4) in his original brief. As to issue (3), whether he presented sufficient facts in his postconviction motion to allege that his attorney provided ineffective assistance when she failed to challenge an expert witness' testimony, Mr.

Grant argues that he did present sufficient facts, and that it's the State's response that is conclusory.

Grant argued that the prosecution had not established Det. Henner's special expertise to testify as an expert on intent to deliver, or that Det. Henner was using reliable principles and methodology. (Defense Brief at 18-19). The defense brought a specific argument based on the specifics of Det. Henner's testimony in court. (Defense Brief at 20). Det. Henner testified as to his knowledge of search warrant executions and other factors, not specifically knowledge of drug packaging or distribution. *Id.* The State does not address these arguments or the specifics of Det. Henner's qualifications or testimony. The State contends that:

If Grant's attorney had objected to the testimony, the circuit court would have exercised its discretion to determine whether the testimony met the Wis. Stat. § 907.02 standard. The circuit court would have allowed the testimony based on the foundation of Detective Henner's testimony. That conclusion would not have been erroneous.

(Response Brief at 11).

The State's argument fails to address the specifics of Detective Henner's qualifications. The State lists a series of federal circuit cases to try to establish that "other courts have concluded that a police officer's training and experience meets the *Daubert* standard in the field of drugs and drug trafficking," but the State takes no opportunity in its response to explain what the foundation of Detective Henner's testimony was that would led to his testimony being allowed or what portions of his background qualified his testimony as expert. The State does not compare Detective Henner's training and experience to officers in those cases. Additionally, some of the cases listed do not relate to specifically expertise on intent to deliver versus personal use.

The defense did enough in its postconviction motion to allege that the prosecution did not establish Det. Henner's

qualifications and methodology as an expert at trial. It is not clear that the trial court would have had to rule that Det. Henner was qualified upon *Daubert* motion, and that there was no prejudice by not bringing a *Daubert* motion.

### **Conclusion**

Based on this argument and Grant's original brief, the Court should therefore reverse the circuit court's order denying postconviction relief and reverse Grant's judgment of conviction.

Dated at Milwaukee, Wisconsin, this 2<sup>nd</sup> of June, 2015.

Respectfully submitted,

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## CERTIFICATION

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and(c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The length of the brief is 442 words.

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Attorney for Defendant-Appellant

## 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, excluding the appendix, 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, excluding the appendix, filed with the court and served on all opposing parties.

Dated this 2<sup>nd</sup> day of June, 2015.

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