RECEIVED
01-08-2016
CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN
SUPREME COURT

CITY OF EAU CLAIRE,
Plaintiff-Appellant-Petitioner,

v.

Appeal No. 2015AP000869

MELISSA BOOTH,
n/k/a/ MELISSA M. BOOTH BRITTON
Defendant-Respondent.

SUPPEMENTAL BRIEF OF DEFENDANT-RESPONDENT

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF EAU CLAIRE COUNTY CASE NO 2014GF804 THE HONORABLE WILLIAM M. GABLER PRESIDING

Diane C. Lowe
State Bar No. 1017781
Lowe Law, L.L.C.
Attorney for Defendant - Respondent
PO BOX 999
EAU CLAIRE, WI 54702
Telephone: (715)514-7680
Facsimile: (715)598-6159
DianeLowe@LoweLawLLC.com
www.LoweLawLLC.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Unpublished Cases

Statutes

Wisconsin Constitution

Other Cited Materials

Introduction

In her 2014 motion to the Eau Claire County Circuit Court to vacate her 1992 civil OWI default judgment, Booth Britton argued that the judgment was void under constitutional and statutory principles. She had a prior countable MN OWI that was disregarded in the charging decision. Under Wisconsin mandatory law it should have been counted and she should have been charged criminally with an OWI second. Thus, the court did not have subject matter jurisdiction under Article VII § 8 to hear the case. Judgments obtained in courts without subject matter jurisdiction can be voided at any time. R-9 at 2-6. Judge Gabler in siding with her was quite broad in the reasoning for his 2015 Opinion stating he was ruling in her favor as he thought she had a better argument. R-16 and R-App. 102. This supplemental brief is submitted to elaborate on the important constitutional and statutory principles illuminated by legislative history, caselaw and briefs which mandate that the *Booth Britton* trial court ruling be upheld.

Argument

I. *BOOTH BRITTON* INVOLVES IMPORTANT CONSTITUTIONAL ISSUES UNDER ARTICLE VII ¶8 AND ARTICLE I §7 OF THE WISCONSIN CONSTITUTION.

The Wisconsin Constitution was the pivotal argument for vacating the judgment in *Booth Britton*. Article VII § 8 of the Wisconsin Constitution reads:

> Circuit court: jurisdiction. Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit court as the legislators may prescribe by law.

Booth Britton was charged civilly and argued that she should have been charged criminally and since she was not the ruling should be vacated as void for lack of subject matter jurisdiction. R-9 at 3, 5; R-14 at 2. The ruling was a violation of her rights. Facial challenges generally address the constitutionality of a statute. In this instance what is at issue is the appropriateness of combining mandatory conflicting statutes. A facial challenge and review given the constitutional implications should still be appropriate, at the very least by analogy, as to the actions though it is not a review of a statute per se. Neither is it an as-applied situation - as the facts and charging go beyond a particularized application

of a constitutional statute made invalid by appliance to a unique set of facts.

Article I § 7 of the Wisconsin Constitution[1] outlines the rights of the criminally accused.

> Rights of accused. SECTION 7. In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment, or information, to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed; which county or district shall have been previously ascertained by law.

The constitutional rights of a criminal defendant are greater than the rights of a civil defendant because of what is at stake. A de facto criminal defendant incorrectly charged with a civil offense is deprived of her guaranteed constitutional rights under Article I § 7 of the Wisconsin Constitution. These guaranteed rights are wrongly withheld from the time the civil charge is made to the time it is corrected. Said errors are under the facial

---

[1]See R-9 at 3: If a circuit court tries a defendant as a first offender under Wis. Stat. §§ 346.63(1) and 346.65(2)(a) when in fact it is a second offense, where criminal penalties are required, the trial court lacks subject matter jurisdiction to try the defendant as a first-time offender. *Rohner* at 713. See R-9 at 4-15.

constitutional doctrine and should be void under § 806.07(1)(d) and Article VII § 8, and Article I § 7.

Booth was affected because she was never advised that she was really a criminal defendant. She did not show up for the civil infraction hearing but had she known it was a criminal matter she might have acted differently. R-14 at 22 and R-13 at 4: an overriding public policy interest is not allowing the City to mischarge unknowing citizens and have a conviction based on that mischarging stand. Though Booth was actually charged with a lessor [charge] then she should have been in the long term it has been much worse for her as it has caused her great time, monies and distress having to try to correct an error that should have been resolved correctly with the initial charging years ago.

[See *State v. Pocian*, 2012 WI App 58, P1, 341 Wis. 2d 380, 382, 814 N.W.2d 894, 895 (Wis. Ct. App. 2012) for an informative discussion on the distinction between facial and as-applied constitutional challenges:

> A facial challenge to a statute alleges that a statute is unconstitutional on its face and thus is unconstitutional under all circumstances. An as-applied challenge, conversely, is a claim that a statute is unconstitutional as it relates to the facts of a particular case or to a particular party. A challenge to the constitutionality of a statute is

> a question of law that a reviewing court reviews de novo. As reviewing courts presume statutes are constitutional, a party attempting to argue a statute is unconstitutional carries a heavy burden. In a facial challenge, the challenger must establish, beyond a reasonable doubt, that there are no possible applications or interpretations of the statute which would be constitutional. In an as-applied challenge, the challenger must prove that the statute as-applied to him or her is unconstitutional beyond a reasonable doubt.]

A facial challenge can only be successful if it can established that under no circumstances would the charge be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987). And that is the case in *Booth Britton*.

II. IRONICALLY THE CITY ATTORNEY'S PRIMARY PUBLIC POLICY ARGUMENT PURPORTEDLY FAVORING A GET TOUGH POLICY ON DRUNK DRIVERS IS THAT THEY SHOULD BE ALLOWED TO UNDERCHARGE OWIS WITH LESSOR CONSEQUENCES

1.Overall Enforcement Concerns should override anecdotal and rare instances where it is too late for the state to recharge an OWI that was initially undercharged.

While it is true it is too late to recharge Booth Britton for this alleged crime appropriately - the balance should tip in her favor as an exception much like improper vehicular stops or searches of houses where evidence of drugs are found but suppressed - only more so as the case against her was not proven. Legislative history reveals that the OWI revisions were drafted specifically to "remove from local governments the power to regulate conduct which

is criminal under state traffic law." R-App. 135. Strengthening attacks against drunk driving by insisting that charging is done correctly overrides anecdotal desire for enforcing bad law to reach the right result. "…unquestionably it was the drafter's intent to exclude local governments from the regulation of offenses which are criminal under state statutes." R-App. 136.

The district attorney's office does not have the right to say we are going to disregard the mandatory minimums or the imposed and stayed sentence and argue sentencing. Allowing such would be turning over the constitutional and legislative reigns to the wrong people and that is an untenable proposition. It shows a disrespect for mandatory laws and surreptitiously shifts and removes constitutional powers transferring them to those with criminal and civil charging powers. But those powers do not include making new laws. A mandatory second offense OWI charged as a first offense is an unknown law. ["…a criminal complaint that fails to alleged any offense known at law is jurisdictionally defective and void." *In re the Commitment of Thomas H. Bush: State of Wisconsin v. Thomas H. Bush*, 283 Wis. 2d 90, 104 ¶ 18, 699 N.W.2d 80 (2005)(citing *Champlain v. State*, 53 Wis. 2d 751, 754, 193 N.W.2d 868

(1972); *State v. Lampe*, 26 Wis. 2d 646, 648, 133 N.W.2d 349 (1965) R-14 at 9.]

III. *MIKRUT* AND *BOOTH BRITTON* ARE DECISIVELY DISTINGUISHABLE. FACTORS LISTED IN THE *MIKRUT* PUBLISHED OPINION GIVE AN INACCURATE IMPRESSION OF SIMILARITY TO THE *BOOTH BRITTON* DECISION WHICH IS DISPELLED BY REVIEWING THE PARTIES' BRIEFS FOR FACTS OF THE CASE.

The Wisconsin Supreme Court in *Mikrut* held that Mikrut waived his right to challenge the circuit court's competency to hear argument on his citations because it was untimely. The Opinion merely cites the 3 points put forth by Mikrut as to why he thought the citations were not valid; then states they were not going to reach the merits as any possible competency challenges had been waived as untimely: "Mikrut waived his challenge to the circuit court's competency. He failed to raise the alleged defects in the issuance of the citations in the circuit court before or at trial or after judgment….Accordingly, we conclude that Mikrut cannot now bring his challenge to the circuit court's competency, having waived it…" *Mikrut* at 98. The three Mikrut points were:

1.The Village did not adopt a bond schedule for the particular ordinances Mikrut was charged with violating;

2.The citations had a statutory counterpart thus the citations violated Village Ordinance 1-2-1. The Village issued uniform Traffic Citations it did not have authority for.

3. The Village lacked authority under Wis. Stat. § 345.11 to issue uniform traffic citations for ordinance violations of the type charged against Mikrut. *Mikrut*, 273 Wis. 2d at 85.

Some argue the Wisconsin Supreme Court holding addressed whether Mikrut's 3 arguments presented a definite loss of competency by the trial court and that other challenges were inapplicable. But closer review gives indications they meant their holding to be more limited: "Mikrut did not pursue relief under Wis. Stat. § 806.07 (1)(h) and therefore did not make any attempt to bring his case within the legal standards that govern the use of this statutory vehicle…Accordingly, we do not address whether such relief would be timely or legally appropriate under the circumstances of this case." *Mikrut* at 101. It is not wholly clear that they felt the facts established the

judgment would have been, if timely raised, "invalid because of the circuit court's loss of competency but not void for lack of subject matter jurisdiction." *Mikrut* at 82.

This is important as the Eau Claire City Attorney's office argues that this is precisely what *Mikrut* holds. In his trial court brief Eau Claire Assistant City Attorney Douglas Hoffer states: "Booth raises an argument similar to the argument the defendant unsuccessfully raised in *Mikrut*: That a judgment resulting from a municipality (allegedly) issuing a citation without statutory authority is void for lack of subject matter jurisdiction. In *Mikrut* the Wisconsin Supreme Court concluded that the Village's (alleged) issuance of citations without statutory authority resulted in a loss of court competency, not a loss of subject matter jurisdiction." R-11 at 2. He then goes on to state "…in *Mikrut* the Wisconsin Supreme Court held that the defendant waived the right to challenge the alleged defects in the issuance of the citations by failing to assert the challenge in the original circuit court action." R-11 at 3. This conflicts with the Supreme Court's statement quoted above: …"we do not address whether [other] such relief would be timely or legally appropriate under the circumstances of this case." *Mikrut* at 101. A more

accurate reflection of the Opinion would be that Mikrut had waived the right to challenge the competency of the court to hear the case because it was untimely.

Booth Britton does not believe that *Mikrut's* holding is controlling in her case but since it is the crux of the City Attorney's case and cited in *Wisconsin v Navrestad* (Booth Britton Respondent brief at 16; R-App. 110-116) as controlling we feel it is important to point out why - even if the court agrees to a broad interpretation of their ruling - it still does not control the *Booth Britton* outcome. *State of Wisconsin v. John N. Navrestad*, No. 2014 AP 2273, unpublished slip op. (WI App July 2, 2015). To do so we feel a closer analysis and comparison of each case's primary argument for voiding is imperative. Very important facts are omitted from the published opinion and are cited here from the briefs for the facts of the case. [See Appendix Part 2: R-App. 151 - R-App. 206.] Close review shows the *Mikrut* and *Booth Britton* similarities are superficial:

…Mikrut claimed that the citations were illegal because

1) The village did not adopt a bond schedule for the particular ordinances Mikrut was charged with violating.

The Petitoner Mikrut[2] argued that the City was required to adopt a bond schedule which was not done in his case and the City[3] responded that the bond schedule was only required if Mikrut needed to post one and he did not - so he was not prejudiced by the lack of action on the bond matter. *Mikrut*, 273 Wis. 2d at 85.

The City Attorney in *Booth Britton* did not include the mandatory MN OWI conviction when charging her with a first OWI offense but had he - the civil infraction would no

---

[2]Briefs for *Village of Trempealeau v. Mike R. Mikrut*, Defendant-Appellant-Petitioner at 5, R-App. 161, 273 Wis. 2d 76, 681 N.W.2d 190 (2004)[hereinafter *Mikrut* Brief]: "Issuance of statutorily authorized citations is a prerequisite to the exercise of jurisdiction." But they stated, the Village ignored the statutory restrictions placed upon it as well as its own ordinances….It went on to state there were three reasons why the citations were invalid: the Village did not adopt a schedule of cash deposits or bond schedule for the ordinances Mikrut was charged with as required by Wis. Stat. § 66.0113(1)(c).

[3]*Mikrut* Brief at 2, R-App. 183: the statutory requirement to have a cash deposit schedule only implicates the circuit courts subject matter over receiving cash deposits - *Mikrut* Brief at 3, R-App.184: the Village substantially complied with Wis. Stat. § 66.0113 and its own ordinances …*Mikrut* Brief at 4, R-App. 185: "a closer reading of Wis. Stat. § 66.0113(2)(b) shows that the circuit court would only lose subject matter jurisdiction for the purpose of receiving cash deposits if Mikrut were directed to do so. He was not." Wis. Stat. § 66.0113(2)(b): The issuance of a citation by a person authorized to do so under par (a) shall be deemed adequate process to give the appropriate court jurisdiction over the subject matter of the offense for the purpose of receiving cash deposits, if directed to do so.

longer have been a civil offense but a criminal matter. This is distinguishable from the *Mikrut* bond analysis as had the bond schedule been fulfilled both sides agree the citation would be valid from that standpoint - though the City argued that Mikrut was not prejudiced by lack of a bond schedule as no bond was required in his case under the law. In *Booth Britton* as noted above - she was prejudiced as she was deprived of her constitutional rights as a criminal defendant.

2) The citations had a statutory counterpart thus the citations violated Village Ordinance 1-2-1. The Village issued uniform Traffic Citations it did not have authority for.

Mikrut and the City disagreed[4] on whether there was a statutory counterpart that he should have been charged under. The City claimed the statute was different in aspects that distinguished it from what he was charged under and therefore made the charging decisions

---

[4]The citations were for ordinance violations that had a direct statutory counterpart contrary to Village Ordinance 1-2-1; and *Mikrut* Brief at 9, R-App. 190: The citations issued Mikrut were not of the nature that would allow the Village to issue citations pursuant to a statutory counterpart for issuance of citations. Therefore no statutory counterpart exists and the citations were authorized.

appropriate. Neither party argue that the charge per se was inaccurate. Mikrut just thought the identical charge should have been made via statute.

In *Booth Britton* there were clear differences between charging her civilly and charging her as a criminal defendant. The requirement that her prior OWI be factored into the charging decision is distinguishable from the requirement (since rescinded) that if there is a statutory counterpart which is identical the case must be charged under it instead of the ordinance.

3) The Village lacked authority under Wis. Stat. § 345.11 to issue uniform traffic citations for ordinance violations of the type charged against Mikrut.

Mikrut claimed[5] that the City used § 345.11 as a basis to issue citations and said authority was not granted but the City claimed their authority stemmed from § 66.0113(1)(a).

The Eau Claire City Attorney argues this final Mikrut point and the subsequent Supreme Court opinion is what binds Booth Britton to a limited and waived competency inquiry. Mikrut claims there was no authority to charge

---

[5] *Mikrut* Brief at 11, R-App. 167 nowhere does § 345.11 authorize the use of a uniform traffic citation for violations of Wis. Stat. § 175.25 and Ordinance 9-1-1.

the claim under the statute used. Likewise Booth Britton claims there was no authority to charge her violation under the statute used.

But there was debate between the City and Mikrut as the City believed they had substantially complied with the statutory requirements to make their charging decision correct.[6] None dispute the facts of the charge. No one argues that the authority under one statute would have created a different result or that the rights under one statute over another would have been different. He is just trying to have the charges dropped on a technicality.

The distinguishing factor for number 3 between *Mikrut* and *Booth Britton* is the doctrine of 'substantial compliance.' Citing *Midwest Mutual v. West Bend Mutual Insurance Company*, 138 Wis. 2d 192, 200, 405 N.W.2d 732 (Ct. App. 1987) the *Mikrut* Plaintiff-Respondent brief stated substantial compliance with a mandatory statute may be legally sufficient. Further it "contemplates actual compliance in respect to the substance essential to every reasonable objective of the statute."[7] But in *Booth Britton* both the City and Booth Britton agree that under the law she should have been charged with a 2nd offense but was not.

---

[6] *Mikrut* Brief at 6, R-App. 187.
[7] *Mikrut* Brief at 8, R-App. 189.

Legislative history reveals that the OWI revisions were drafted specifically to "remove from local governments the power to regulate conduct which is criminal under state traffic law." R-App 135. See also R-9 at 2; R-13 at 1 footnote 1: "4. The language used in Wis. Stat. § 346.65 (2)(a) demonstrates that the legislature intended that a second offense for drunk driving be exclusively within the province of the [state]. The section uses the mandatory word "shall" in providing the escalating penalties for drunk driving. The use of the word "shall" in the statute has been construed by this Court as requiring that criminal penalties be imposed for a second offense." Further "The statute § 346.65(2)(a) is based on a referral from the caselaw cited and serves to provide a legislative history of the intention of the legislature…. The intent and substance of the statute is what is at issue."[8] R-13 at 2.

Thus a primary objective of the statute is defeated if the City retains oversight.

---

[8] "The numbering changed slightly in 2005 whereby (2)(a) became (2)(am). For the purposes of the original motion and argument both are being referred to when § 365.65(2)(a) is cited. The following is a brief comparison of this statutory provision in 2003, 1991-92 (when Booth was charged), 1981-82 (the decision date for *Rohner* and *Hine*), 2005 (when the renumbering occurred) and 2014." R-13 at 2.

Contrary to *Mikrut* the charge in *Booth Britton* is a wrong charge in the wrong tribunal with rights differing between a civil and criminal defendant. And that is why *Mikrut* should be analyzed under the time limited competency doctrine and *Booth Britton* under the broader subject matter jurisdiction doctrine with no time limits to vacate.

IV. *WALWORTH V. ROHNER* REMAINS CONTROLLING CASE LAW OVER *BOOTH BRITTON*.

On the other hand, the City Attorney's attempt to distinguish *Booth Britton* from *Walworth Cnty. v. Rohner*, 108 Wis. 2d 713, 324 N.W.2d 682 (1982) must fail. They assert: "First, Rohner did not consider whether charging a 2nd OWI offense as an OWI 1st implicates subject matter jurisdiction rather than court competency." Brief of Plaintiff-Appellant City of Eau Claire at 14. Booth Britton addressed this on pages 4-7 of her initial appellate brief. See also R-9 at 3-5; R-11 at 4-5; R-14 at 10-12.

Petitioner Eau Claire's second claimed distinction is that "Rohner did not involve an unknown out-of-state prior OWI offense, nor did it involve an offense that could not be retried." Petitioner Eau Claire Brief at 16. Booth Britton refutes these concerns as well on page 7 of her

initial appellate brief. See also R-9 at 6; R-14 at 12-16, 22-23.

V. BOOTH BRITTON HAS MADE A TIMELY ASSERTION OF HER ARGUMENTS.

All of the above arguments fit squarely under *Booth Britton's* initial trial court pleading which asserts that under § 806.07(1)(d) the 1992 judgment is void. The arguments herein all serve to elaborate on why the judgment is void in one respect or another.

§ 806.07 Relief from judgment or order.

> (1) On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> (b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);
>
> (c) Fraud, misrepresentation, or other misconduct of an adverse party;
>
> **(d) The judgment is void;**
>
> (e) The judgment has been satisfied, released or discharged;
>
> (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
>
> (g) It is no longer equitable that the judgment should have prospective application; or
>
> **(h) Any other reasons justifying relief from the operation of the judgment.**
>
> (2) The motion shall be made within a reasonable time, and, if based on sub. (1) (a) or (c), not more than one year after the judgment was entered or the

> order or stipulation was made. A motion based on sub. (1) (b) shall be made within the time provided in s. 805.16. A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court. …

The City states in its brief that it is too late to raise any arguments to rescind the decision under anything other than § 806.07(1)(d) which was the statutory basis used in Booth Britton's initial pleadings as justification for its Motion to Vacate. The judgment is void per statutes and the Wisconsin Constitution. Booth Britton believes § 806.07(1)(d) is the appropriate vehicle to void the Eau Claire judgment.

The City concedes that a retroactive competency application argument fits under § 806.07(1)(d). The City attorney admits this in his brief to the court of appeals on page 2 footnote 1 "Booth Britton raised a "retroactive application" argument in a supplemental brief. Because this argument, should it be raised on appeal is also premised on the 1992 Eau Claire Judgment being "void", the City believes it involves the application of § 806.07 (1)(d).

Booth Britton had raised the issue of unfairness of possible waiver to the trial court due to a retroactive application of a newly developed competency analysis: "If the competency analysis and waiver rule has only recently expanded by the decision in *Mikrut* in 2004 to cover scenarios found in *Booth* in 1992 it would be unfair to apply it retroactively. But this brief will show it is not. Their analysis is flawed and wrong. Footnote 2 The City states no argument was made by Booth to relief under [other provisions] of § 806.07 and thus implies the Court should retroactively apply an incorrect competency analysis to which Booth would have no recourse. City of Eau Claire's Reply Brief at 2. But this is incorrect. If the court disagrees with the applicability of § 806.07 (1)(d) to void the judgment it should apply an equitable tolling to a competency waiver via § 806.07(1)(h).

Thus the issue was raised but regardless as noted in *Mikrut*: "a reviewing court has the inherent authority to disregard a waiver and address the merits of an unpreserved argument. …. *Mikrut* at 83. Equitable Tolling should be applied if the court determines a 2004 doctrine should be applied to a 1992 case. § 806.07(h): Any other reasons justifying relief from the operation of the judgment.

CONCLUSION

The Circuit Court properly vacated the Booth Britton 1st OWI as void.

Respectfully Submitted,

Diane C Lowe Attorney 1017781
Attorney for Melissa Booth Britton
Lowe Law LLC
PO Box 999
Eau Claire, WI 54702
T: (715)514-7680
F: (715)598-6159
DianeLowe@LoweLawLLC.com

CERTIFICATION OF FORM AND LENGTH PURSUANT TO WIS. STAT. § 809.19(8)

I certify that this supplemental brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b)and (c) for a brief produced using the following font:

Monospaced font: 10 characters per inch; double-spaced; a 1.5 inch margin on the left side and a one-inch margin on all other sides. The length of this brief is 20 pages.

Dated this 2nd day of January 2016.

BY: _____

Diane C. Lowe
State Bar No. 1017781
Attorney for Melissa Booth Britton
Lowe Law, L.L.C.
PO Box 999
Eau Claire, WI 54702
Telephone: (715)514-7680
Facsimile: (715)598-6159
DianeLowe@LoweLawLLC.com

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of §. 809.19(12). I further certify that: This electronic brief is identical in content and format to the printed form of the brief mailed on January 2, 2016.

A copy of this certificate is being filed with the court and served on all opposing parties as of this date.

Dated this 2nd day of January 2016.

BY: _____

Diane C. Lowe
State Bar No. 1017781
Attorney for Melissa Booth Britton
Lowe Law, L.L.C.
PO Box 999
Eau Claire, WI 54702
Telephone: (715)514-7680
Facsimile: (715)598-6159
DianeLowe@LoweLawLLC.com

CERTIFICATION OF MAILING

I certify that this brief was deposited in the United States mail for delivery to the Clerk of the Wisconsin Supreme Court and to the Eau Claire City Attorney's office by priority mail on January 2, 2016.

BY: _____

Diane C. Lowe
State Bar No. 1017781
Attorney for Melissa Booth Britton
Lowe Law, L.L.C.
PO Box 999
Eau Claire, WI 54702
Telephone: (715)514-7680
Facsimile: (715)598-6159
DianeLowe@LoweLawLLC.com

DEFENDANT-RESPONDENT APPENDIX PART II TABLE OF CONTENTS

CERTIFICATION OF APPENDIX

I certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and contains: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) copies of any unpublished opinions cited under 809.23; and (4) any portions of the record essential to an understanding of the issues raised.

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 person, 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.

BY: _____

Diane C. Lowe
State Bar No. 1017781
Attorney for Melissa Booth Britton
Lowe Law, L.L.C.
PO Box 999
Eau Claire, WI 54702
Telephone: (715)514-7680
Facsimile: (715)598-6159
DianeLowe@LoweLawLLC.com