STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

Plaintiff – Respondent,

v.

Appeal Case No. 2015AP000994-CR
Trial Case No. 2013CM000228

TRISTA J. ZIEHR,

Defendant – Appellant.

STATE'S RESPONSE ON DEFENDANT'S APPEAL FROM OZAUKEE COUNTY CASE NO. 2013000228 HONORABLE JOSEPH VOILAND CIRCUIT COURT JUDGE PRESIDING OZAUKEE COUNTY, WISCONSIN

Respectfully submitted,

Adam Y. Gerol
Ozaukee County District Attorney
State Bar No. 1012502
1201 South Spring Street
Port Washington, WI 53074
(262) 284-8380

Attorney for Plaintiff - Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITY

Statutes Cited

Cases Cited

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Appellant neither requests oral argument nor publication.

CERTIFICATION AS TO FORM

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix. The margins of the brief correspond with Wis. Stats. § 809.19(8)(b)3c. The page margins are 1.5 inches on the left, with 1 inch on the remaining margins. The body of this brief is printed in Times Roman proportional 13 point font, block quotes are in 11 point Times Roman font. The applicable portions of Appellant's brief have a total of 4881 words and the whole brief consists of 16 pages. An appendix is attached.

Dated this 8th Day of September, 2015

_____

Adam Y. Gerol
Ozaukee County District Attorney
State Bar No. 1012502

CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I 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:

The electronic brief is identical in content and format to the printed form of the brief that I am filing today; and

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

Dated this 8th Day of September, 2015

_____

Adam Y. Gerol
Ozaukee County District Attorney
State Bar No. 1012502

Argument

1. Discretionary reversal.

Ziehr asks the Court of Appeals to exercise its discretionary authority to reverse her conviction. However, Ziehr fails to establish the necessity for a discretionary reversal or to even articulate a specific necessity for it.

> A new trial may be ordered in either of two ways: (1) whenever the real controversy has not been fully tried; or (2) whenever it is probable that justice has for any reason miscarried. Separate criteria exists for determining each of these two distinct situations. *State v. Wyss*, *124 Wis.2d 681, 735, 370 N.W.2d 745* (1985).
>
> This court may exercise its power of discretionary reversal under the first part of Wis. Stat. § 751.06, without finding the probability of a different result on retrial when it concludes that the real controversy has not been fully tried. *See, e.g., State v. Cuyler*, 110 Wis.2d 133, 142-43, 327 N.W.2d 662 (1983); *Garcia v. State*, 73 Wis.2d 651, 245 N.W.2d 654 (1976); *Lorenz v. Wolff*, 45 Wis.2d 407, 173 N.W.2d 129 (1970); *Logan v. State*, 43 Wis.2d 128, 137, 168 N.W.2d 171 (1969). The case law reveals that situations in which the controversy may not have been fully tried have arisen in two factually distinct ways: (1) when the jury was erroneously not given the opportunity to hear important testimony that bore on an important issue of the case; and (2) when the jury had before it evidence not properly admitted which so clouded a crucial issue that it may be fairly said that the real controversy was not fully tried. *Wyss*, 124 Wis.2d at 735. …
>
> State v. Hicks, 202 Wis.2d 150, 159-160, 549 N.W.2d 435 (1996).

> The grounds for ordering a new trial under the second part of sec. **752.35**, Stats., when it is probable that justice has miscarried, have not changed since they first appeared in sec. *2405m*, Stats. 1913 created by ch. 214, Laws of 1913. From the time of the statutes' inception until *Lock*, no bright line rule was articulated for determining when justice had miscarried in an individual case. However, prior to *Lock*, cases involving a reversal because of a miscarriage of justice had implicitly complied with the standard that the probability of a different result had to be established before a new trial would be ordered. *See Paladino v. State*, 187 Wis. 605, 606, 205 N.W. 320 (1925); *State v. Hintz*, 200 Wis. 636, 642, 229 N.W. 54 (1930). *Lock* unequivocally established the rule to be followed for determining when a miscarriage of justice, under the second part of sec. **752.35**, Stats., has occurred. We stated: "In order for this court to exercise its discretion and for such a probability to exist we would at least have to be convinced that *the defendant should not have been found guilty* and that justice demands the defendant be given another trial." *Id*. at 118. (Emphasis added.)

> This requirement has been reiterated repeatedly and has become a firm fixture in Wisconsin criminal law. For the most recent cases restating the *Lock* rule *see State v. Ruiz*, 118 Wis.2d 177, 200, 347 N.W.2d 352 (1984); *Cuyler*, at 142; *Roe v. State*, 95 Wis.2d 226, 242-43, 290 N.W.2d 291 (1980); *Frankovis* at 152; *Rogers v. State*, 93 Wis.2d 682, 694, 287 N.W.2d 774, (1980). Consistent with this requirement, this court has denied a defendant a reversal in the interest of justice on numerous occasions because it could not conclude that a new trial would produce a different result. *See, e.g., Haskins v. State*, 97 Wis.2d 408, 425,
>
> State v. Wyss, 124 Wis.2d 681, 736, 370 N.W.2d 745 (1985).

Ziehr does not elect a specific basis for the Court of Appeal to exercise discretionary reversal. Ziehr's arguments for discretionary reversal essentially mirror claims of error that are made elsewhere in her brief. Her chief complaint appears to be that the trial court failed to rule on her motions in Limine until the morning of trial and that this damaged her right to a fair trial. However, Ziehr does not point to any specific injury she might have sustained as a consequence. While marshalling the discovery in this case was particularly difficult, several adjournments were granted to give the parties adequate time to prepare. Ziehr does not allege that she was surprised by any new evidence, that she was unable to prepare aspects of her defense, or that she failed to anticipate testimony or secure witnesses. Further, the conduct of the trial itself was entirely professional and unlikely to have infected the jury with any sense of chaos or irregularity.

2. Vagueness or duplicity in charging.

This case grows out of reports made to Ziehr that her son had been molesting children at a daycare that she had recently purchase from Kim Behrens. The criminal complaint charged Ziehr with being aware of the suspected abuse and failing to report it in late March, 2013.

The State contends that Ziehr committed a single continuous crime, failing to report over a time frame where several people might have reported their allegations of abuse to her. From these reports, Ziehr had reasonable cause to suspect that one person – her son -- was abusing children, in the same manner, and in the same specific location. The fact that the basis for her 'reasonable cause to suspect' might have been multiple reports doesn't mean that she committed multiple crimes.

> … when an offense is composed of continuous acts, it may be charged as a single count without rendering the charge duplicitous. *Id.* In other words, the State has discretion to charge a defendant with one continuing offense based on multiple criminal acts when "the separately chargeable offenses are committed by the same person at substantially the same time and relating to one continued transaction[.]" *State v. Miller*, 2002 WI App 197, ¶ 23, 257 Wis. 2d 124, 650

> N.W.2d 850. In that situation, "[t]he nature of the charge is a matter of election on the part of the state." *Copening*, 103 Wis. 2d at 572.

State v. Jacobsen, 2014 WI App 13,¶18, 352 Wis.2d 409, 842 N.W.2d 365. The State is free, subject only to constitutional and legislative restrictions, to bring criminal charges in the manner deemed to be correct. State v. Annala, 168 Wis.2d 453, 484 N.W.2d 138 (1992); State v. Edwardsen, 146 Wis.2d 198, 430 N.W.2d 604 (Ct.App.1988). This includes the discretion to elect to join continuous act crimes, or to elect to focus on a single incident when multiple possible charges were presented.

> ¶ 22. "Duplicity is the joining in a single count of two or more separate offenses." State v. Lomagro, 113 Wis.2d 582, 335 N.W.2d 583 (1983) Id. at 586. The purposes of the prohibition against duplicity are: (1) to provide the defendant with sufficient notice of the charge, (2) to protect the defendant against double jeopardy, (3) to avoid prejudice and confusion arising from evidentiary rulings during trial, (4) to assure that the defendant is appropriately sentenced for the crime charged, and (5) to guarantee jury unanimity. Id. at 586-87.

State v. Miller, 2002 WI App 197, ¶22, 257 Wis.2d 124, 139, 650 N.W.2d 850 (Ct. App. 2002).

3. Other acts evidence.

The jury learned that another family had also reported their allegations of abuse to Ziehr in early April, 2015. The trial court allowed this testimony to be presented as other acts evidence. The defendant was not confused about the issues and the jury was not confronted with two crimes in one charge, something Ziehr was careful to point out in her closing argument. R122: 371.

As discussed in her attack on the alleged duplicity of the criminal complaint, Ziehr breaks the different reports by concerned parents apart and discusses them on appeal as the "PZ-AM" or "PZ-JV" incidents. Brief of Appellant, 21-24. In each of these reports by different parents Ziehr failed to follow her requirements as a mandated reporter. The trial court properly allowed the evidence of both reports to be admitted, with the second allegation as other acts evidence. Because this was a continuing crime, the State contends that the second allegation of abuse was simply additional evidence of the Defendant's knowledge or reasons to suspect that her child was abusing children at the daycare.

The trial court, after conducting a Sullivan analysis, found that the second allegation was relevant 'other acts' evidence. In admitting the evidence, the trial court followed the three-step analytical framework of State v. Sullivan, 216 Wis. 2d 768, 576 N.W.2d 30 (1998) and made a discretionary determination. Ziehr was

clearly on notice that the State intended to submit such proof as the allegation was recited in the Second Amended Criminal Complaint.

Ziehr disagrees with this decision and asks the Court of Appeals to disagree as well. However, on appeal the test is not whether the Court of Appeals agrees with the trial court's ruling, but whether appropriate discretion was in fact exercised. State v. Pharr, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983). The trial court exercised its discretion by applying the correct legal standards to the facts it was presented with. State v. Davidson, 2000 WI 91, 236 Wis. 2d 537, 613 N.W.2d 606.

a. Little likelihood of unfair prejudice.

Additionally, the potential for unfair prejudice was relatively low. The legal concept of 'unfair prejudice' " … is the potential harm in a jury's concluding that because an actor committed one bad act, he necessarily committed the crime with which he is now charged." State v. Fishnick, 127 Wis.2d 247, 261-2, 378 N.W.2d 272 (1985). Sullivan explains that evidence which is unfairly prejudicial is evidence which "has a tendency to influence the outcome by improper means or appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish or otherwise causes a jury to base its decision on something other than the established propositions in the case. " Sullivan, 216 Wis. 2d at 789-90.

Here, the jury was told of a second incident where Ziehr had reason to suspect that PZ had abused others at the daycare. This evidence is not the type to twist the jury's sympathies, arouse its sense of horror, or distract them to the degree that their verdict might not be based on the instructions that were given. Further, the trial court provided a cautionary instruction.

4. Application of Phillips v. Behnke

Phillips v. Behnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995) is not relevant to this case. If anything, Behnke stands for the strong policy considerations behind the mandated reporter provisions which demand the immediate reporting of suspected child abuse. Behnke grows out of a tort claim, where the reported party sued a mandated reporter for making the report about him. Behnke held that the mandated reporters didn't lose their immunity from lawsuit simply because they failed to follow the specific demands of the mandated reporter statute. Behnke, 561-563. Behnke should not be read to provide judicially crafted exceptions to the obligations of Wis. Stats. § 48.981.

Summarizing it's holding, the Court of Appeals wrote:

> In sum, the Phillips do not dispute that the respondents were mandatory reporters under § 48.981(2), STATS. We conclude that respondents' decision to conduct a preliminary investigation prior to reporting the allegations was consistent with the statute's requirement that the information be reported immediately. Finally, we conclude that there was no evidence that the respondents made the report in bad faith. Therefore, the trial court properly concluded that the respondents were immune from liability under § 48.981(4) and granted summary judgment to the respondents.

Behnke at 565. Ziehr contends that this language creates a safe harbor where a mandated reporter is privileged to take time to investigate or 'vet' a claim before deciding whether to report it. This would be contrary to the statutory scheme. Clearly, the purpose of Wis. Stats. § 48.981 is to ensure that claims are quickly and promptly put into the hands of specific authorities to conduct the investigation. This conclusion is further buttressed by the level of immediacy imposed on those authorities to investigate the report. Wis. Stats. § 48.981(3)(c)1.

a. Can a mandated reporter satisfy their obligation by having another person make the report?

Behnke has not been widely discussed, but those courts that have addressed it in their rulings have either applied it in a different context or have specifically discounted the reasoning that Ziehr suggests. See generally, Drake v. Huber, 218 Wis.2d 672, 677, 582 N.W.2d 74 (Ct. App. 1998); Smith v. State, 8 N.E.3d 668, 689-690 (Indiana, 2014).

Ziehr contends that Behnke authorizes a mandated reporter to satisfy their statutory obligations by giving the information to another person who they believe will then contact the appropriate authorities. Appellant's Brief, 13. Again, Behnke must be read in the context of a civil claim made against the reporting party. Behnke held that the victim's family was entitled to the immunity provisions of Wis. Stats. § 48.981(2) and (4) even though they had not followed the mandated statutory reporting obligations. Rather than report the abuse to law enforcement or social services, they had reported their suspicions to other school authorities. While Behnke might hold that all the parties are still entitled to immunity, this doesn't mean that they had all complied with their obligations under Wis. Stats. § 48.981. While noncompliance with the reporting statute doesn't void a person's immunity from suit by the person they have accused, that doesn't mean the person isn't subject to prosecution for failure to follow through with their reporting obligations correctly. Ziehr, at most, argues that she reasonably expected Kim Behrens -- with whom she shared substantial business interests in the continuation of the daycare business -- to make the report. Such behavior does not comply with the mandated reporter statutes.

Regardless of whether another person might be able to satisfy a specific person's reporting obligations, it simply was never done here. A mandated reporter must comply with Wis. Stats. § 48.981(3):

> **(3)** REPORTS; INVESTIGATION.
> (a) *Referral of report.*
> 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

Ziehr contends that Kim Behrens reported the matter on her behalf. Appellant's Brief, 15, 17, 24. However, Behrens never reported the matter as required by Wis. Stats. § 48.981(3). Instead, the matter was reported to a state licensing entity, not to either the Department of Social Services or to law enforcement. R122:215, 213, 223, (Behrens testimony); R122: 170 (DSS Kruckeberg); R122:181 (Detective Vahsholtz). In the end, there was never statutory compliance by Behrens or Ziehr.

b. Ambiguity and the rule of lenity.

Ziehr argues that, at a minimum, Behnke might establish aspects of ambiguity surrounding Wis. Stats. § 48.981. Ziehr points to the term "immediately " as used in the statute, suggesting that if a reporter isn't given a chance to research and allegation they may face civil liability for false reporting. Appellant's brief, 14. Behnke itself points out the error in this argument by demonstrating the breadth of the reporter immunity provisions of Wis. Stats. 48.981(4).

There is no ambiguity about the term 'immediately' as used in Wis. Stats. 48.981.

> ¶ 47. The test for ambiguity generally keeps the focus on the statutory language: a statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more senses. *Bruno*, 260 Wis. 2d 633, ¶ 19; *Martin*,162 Wis. 2d at 894. It is not enough that there is a disagreement about the statutory meaning; the test for ambiguity examines the language of the statute "to determine whether `well-informed persons *should have* become confused,' that is, whether the statutory . . . language *reasonably* gives rise to different meanings." *Bruno*, 260 Wis. 2d 633, ¶ 21 (second emphasis added). Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity." *Id.*, ¶ 25.

State ex rel. Kalal, 2004 WI 58, ¶47, 271 Wis.2d 633, 681 N.W.2d 110.

'Immediately' is not a technical term and does not require a specific definition. It is not specifically defined or qualified within Wis. Stats. § 48.981. All words used in the statutes should be construed according to common and approved usage. Wis. Stats. § 990.01(1). Ziehr argues that Behnke qualifies the term to provide for an opportunity to research or verify an incident before a mandated reporter must report. It does not. The purpose of the mandated reporter law is to get the allegations into the hands of law enforcement or social services to conduct the investigation. The statute itself is not ambiguous. The only ambiguity is a misreading or misapplication of Behnke.

The rule of lenity was recently discussed in State v. Guarnero, 2015 WI 72, __ Wis.2d __, __ N.W.2d __ (2015)

> ¶ 26 Guarnero further asserts that the meaning of the phrase, "relating to controlled substances," in Wis. Stat. § 961.41(3g)(c) is ambiguous; and accordingly, the rule of lenity requires that the ambiguity be resolved in his favor. The rule of lenity provides that when doubt exists as to the meaning of a criminal statute, "a court should apply the rule of lenity and interpret the statute in favor of the accused." State v. Cole, 2003 WI 59, ¶13, 262 Wis.2d 167, 663 N.W.2d 700. Stated otherwise, the rule of lenity is a canon of strict construction, ensuring fair warning by applying criminal statutes to "conduct clearly covered." United States v. Lanier, 520 U.S. 259, 266 (1997); see also United States v. Castleman, __ U.S. __, 134 S.Ct. 1405, 1416 (2014) addressing the need for fair warning implicit in the rule of lenity).
>
> ¶ 27 However, the rule of lenity applies if a "grievous ambiguity" remains after a court has determined the statute's meaning by considering statutory language, context, structure and purpose, such that the court must "simply guess" at the meaning of the statute. Castleman, 134 S.Ct. at 1416; see Kalal, 271 Wis.2d 633, ¶¶ 45-46. Here, applying the rule of lenity is unnecessary. There is no "grievous ambiguity" or uncertainty in Wis. Stat. § 961.41(3g)(c) that would cause a court to "simply guess" as to the meaning of the statute. Castleman, 134 S.Ct. at 1416. There is no grievous ambiguity in § 961.41(3g)(c), in 18 U.S.C. § 1961(1)(A)&(D), or in 18 U.S.C. § 1962(d). Accordingly, we do not apply the rule of lenity.

State v. Guarnero, ¶26-27. While Wis. Stats. § 48.981 is a complicated statute, it's not a confusing one. There certainly is no ambiguity within the plain language of the reporting requirement, let alone a 'grievous ambiguity' that would force an average person to guess at the meaning of the statute. As such, the rule of lenity is not relevant to this claim.

5. Sufficiency of the evidence to convict.

When the sufficiency of the evidence to support a conviction is challenged, the Court of Appeals will sustain the verdict "unless the evidence, viewed most favorably to the State and the conviction, is so lacking 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. Zimmerman, 2003 WI App 196, ¶ 24, 266 Wis.2d 1003, 669 N.W.2d 762.

Witnesses testified that they had informed Zeihr that PZ had sexually abused their child. The State presented testimony from law enforcement and social workers that Ziehr had never reported the allegations of abuse. This testimony alone would have been sufficient to support this conviction. However, Ziehr' s testimony at trial, standing alone, would also be sufficient in and of itself.

R. 122:330:

Q: On the 25th or so did you personally contact somebody from state licensing?

A: No.

Q: Who did?

A: I am not aware of who contacted the State.

Q: Okay. Soon the 25th of March you knew that the State had been contacted, but you didn't contact them?

A: I did not know they were contacted.

Q: All right. And after Ms. Vite, Mrs. Vite had contacted you Kim was the one that was going to contact the State, correct?

A: Yes.

Q: You personally never contacted the State, correct?

A: Correct.

Q: You personally never called the police, correct?

A: Correct.

Q: And you personally never called the Department of Social Service, did you?

A: Correct.

…

R122:334:

Q: And that says, child abuse, Wisconsin State Law and Licensing states that childcare facilities are required to report immediately to the police and child protective services if any reason to suspect child abuse, neglect or exploitation, exclamation point. We are not obligated to inform parents, slash, guardians of this report, correct?

A: Correct.

Q: You were aware of this requirement, correct?

A: Correct.

Q: And you were aware of this for some time because you'd been a licensed childcare worker, correct?

A: Correct.

Q: And you reporting obligations are the same, correct?

A: Correct.

Q: And your obligations are to report this to police or child protective services, correct?

A: Correct.

6. Does actual knowledge of the incident by police relieve a mandated reporter of their duty to report?

The legislative intent of Wis. Stats. § 48.981 is readily apparent from the language of the statute itself – to prevent child abuse by identifying wrongdoers, and to ensure the safety, security and treatment of those who might be abused. To secure these goals the Legislature has provided a carrot and a stick -- immunity against retaliation for those who might be hesitant about making reports, and penalties for those who might neglect their duty to do so.

It would be contrary to the legislative intent to relieve those who may have neglected their duties to argue that authorities were already aware of the matter. By definition, mandated reporters are individuals who have a unique position with regard to the victim. For law enforcement or social services to conduct an investigation there must be complete information. Child protective services must be given the benefit of as much information as possible to safeguard the victims. For the safety and welfare of children there should be no delay. Law enforcement

needs as much information as possible to identify wrongdoers and hold them accountable.

7. Prosecutorial error during closing arguments.

The State did not engage in misconduct in its closing argument. Appellant's Brief, 23-24.

> ¶ 43. … When a defendant alleges that a prosecutor's statements and arguments constituted misconduct, the test applied is whether the statements "`so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Davidson*, 236 Wis. 2d 537, ¶ 88 (citation omitted). It is improper for parties to comment on facts not in evidence. *Albright*, 98 Wis. 2d at 676. However, a prosecutor may comment on the evidence, argue to a conclusion from the evidence, and may state that the evidence convinces him or her and should convince the jury. *Adams*, 221 Wis. 2d at 19. There is a fine distinction between what is and is not permitted concerning the lawyer's personal opinion. Even if there are improper statements by a prosecutor, the statements alone will not be cause to overturn a conviction. Rather, the statements must be looked at in context of the entire trial. *Wolff*, 171 Wis. 2d at 168.

State v. Mayo, 2007 WI 78,¶43, 301 Wis.2d 642,734 N.W.2d 115. As Ziehr acknowledges, the trial court instructed the jury that the other acts evidence was only relevant to the issues of intent and absence of mistake. Appellant's Brief at 23; R122: 356-357. The portions of the closing argument that Ziehr points to emphasize only these points.

Ziehr contends that the State argued propensity. 'Propensity' is commonly thought of as an inclination or natural tendency to behave in a particular way. In State v. Fishnick , 127 Wis.2d 247, 255, 378 N.W.2d 272 (1985) the Supreme Court stated:

> The general rule is to exclude evidence of other bad acts to prove a person's character in order to show that the person acted according to his character in committing the present act. Whitty, 34 Wis.2d at 291-92. The purpose of the other-acts rule "is to exclude evidence which is relevant only for showing a disposition to commit a crime." State v. Spraggin, 77 Wis.2d 89, 100, 252 N.W.2d 94 (1977). The rationale for the general rule was set forth in Whitty v. State:
>
> "The character rule excluding prior-crimes evidence as it relates to the guilt issue rests on four bases: (1) The over strong tendency to believe the defendant guilty of the charge merely because he is a person likely to do such acts; (2) the tendency to condemn not because he is believed guilty of the present charge but because he has escaped punishment from other offenses; (3) the injustice of attacking one who is not prepared to demonstrate the attacking evidence is

fabricated; and (4) the confusion of issues which might result from bringing in evidence of other crimes." *Whitty*, 34 Wis.2d at 292.

The portions of the State's closing that Ziehr attacks are not an argument about propensity. Rather, the State emphasized aspects of the proof that demonstrated that Ziehr was aware of her obligations, that her actions where not the result of a mistake, and that she simply didn't follow the law.

Conclusion

For these reasons the County of Ozaukee prays that the Court of Appeals denies the defendant's appeal.

Dated this 8th Day of September, 2015

_____

Adam Y. Gerol

Ozaukee County District Attorney

State Bar No. 1012502

APPENDIX

The State has not submitted an appendix.

Index to Appendix.