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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

CASE NO. 2015AP1540-CR

KENOSHA COUNTY,

Plaintiff-Respondent,

v.

ARTURO LUIZ-LORENZO,

Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR KENOSHA COUNTY, THE HONORABLE MARY WAGNER, PRESIDING
CIRCUIT COURT CASE NO. 2011CM001410

BRIEF OF PLAINTIFF-RESPONDENT

SUBMITTED BY:

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

WISCONSIN CASES CITED

STATUTES CITED

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
CASE NO. 2015AP540-CR

KENOSHA COUNTY,

Petitioner-Respondent,

v.

Arturo Luiz-Lorenzo,

Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR KENOSHA COUNTY, THE HONORABLE MARY WAGNER, PRESIDING
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BRIEF OF PLAINTIFF-RESPONDENT

ISSUE

Is the presence in a poorly-lit area, known for illegal activity, at 3 A.M. and walking away from an officer’s squad car into bushes, sufficient to create reasonable suspicion to justify a stop?

Trial Court Answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Kenosha County District Attorney’s Office is not requesting oral argument or publication as the issue before the court can be resolved through the application of existing law to the facts of this case.

STATEMENT OF THE FACTS

On September 25, 2011 Officer Hancock was on duty at approximately 3 a.m. when he was dispatched to the vicinity of La Frontera bar in Kenosha to investigate a group of people causing a disturbance. ***See Defendant's Brief at Appendix*** 17-18;App. 101-102. Officer Hancock had no description of the individuals causing the disturbance, and did not see anyone in the immediate location where the caller reported the disturbance. ***Id***. at 17-18;App. 101-102, 108. When Officer Hancock did not see anyone, he went around the next block and into an alley, where he observed Mr. Luiz-Lorenzo "standing against the wall of one of the businesses." ***Id***. at 18-19;App. 102-103.

Officer Hancock described the lighting conditions as poor and indicated that police have received calls regarding that area in the past; specifically, he himself has had prior contacts with people who have been "back there doing illegal activity,". ***Id***. at 19;App. 103, 114. Officer Hancock testified that in his experience, "people behind closed businesses or poorly lit areas like that are potentially up to something whether they're either trying to break into the business or they're engaging in some type of illegal activity." ***Id***. at 26:3-8;App. 110. Officer

Hancock clarified that he had not had any prior contact with the defendant and that he was just standing there. ***Id.*** at 26:12-13.

Officer Hancock approached the defendant in his marked squad car without the emergency lights activated. ***Id.*** at 26:18-22. As Officer Hancock exited the vehicle, the defendant began walking away into some bushes. ***Id.*** at 19:20-24;App. 103. Officer Hancock testified that this action, in addition to the fact that "[H]e was standing behind a closed business in a poorly lit area by himself[,]" indicated to him in his experience that the defendant had committed, or was about to commit a crime. ***Id.*** at 25-26;App. 109-110.

Officer Hancock ordered the defendant to stop and come over to him. ***Id.*** at 20:5;App. 104. The defendant complied and walked out of the bushes towards Officer Hancock with his left hand in his left pants front pocket. ***Id.*** 20:10. Officer Hancock told the defendant to take his hand out of his pocket, which the defendant did and apologized. ***Id.*** at 20:10-13. Officer Hancock then proceeded with his investigation asking the defendant questions. ***Id.*** at 20:15-17. Officer Hancock testified in regards to speaking with the defendant "as I documented in my report, he would speak English when he wanted to, and whenever it got to a point

where I was asking him something important or relevant to my investigation he would tell me that he didn't speak any English." ***Id.*** at 27:18-22;App. 111.

While speaking with the defendant, the defendant put his hand back into his pants pocket. ***Id.*** at 20:18-22;App. 104. Officer Hancock again asked the defendant to remove his hand. ***Id.*** at 20:18-20. The defendant refused. ***Id***. Officer Hancock then placed the defendant into an "escort hold" and asked the defendant again to remove his hand from his pocket. ***Id.*** at 20:22-25. The defendant refused. ***Id***. Officer Hancock testified that as he placed the defendant into an "escort hold" the defendant pulled away. ***Id***. The defendant was then directed to the squad, placed in handcuffs and was placed under arrest. ***Id.*** at 23,29;App. 107, 113.

The defendant testified that he had come from the La Frontera bar on 22nd and went to the alley because he did not want to be on 22nd Avenue. ***Id.*** 46-47:15-1; App.130-131. The defendant stated he was standing waiting for a ride and that he did not live anywhere near the bar. ***Id.*** 47,55; App. 131,139-140. When the defendant saw Officer Hancock he walked away because the squad car lights were bright and "blinding [him]." ***Id.*** at 53:14-16;App.137. The defendant also testified that he did not understand what Officer

Hancock was telling him more than the basic words in English. ***Id***. The defendant explained putting his hands in his pockets as a "tic that he always put[s] [his] hand in [his] pocket." ***Id.*** at 53:21-22.

After the arrest, Officer Hancock searched the defendant and located the defendant's wallet. ***Id.*** at 22:1-12;App. 106. In the wallet was photo identification as well as a folded dollar bill. Officer Zurcher unfolded the dollar bill, which contained a substance, that the officer Hancock believed based on training and experience to be cocaine. ***Id***.

ARGUMENT

I. The Defendant's Presence in a Poorly Lit Area, Known For Illegal Activity at 3 AM, and Act of Walking Away from a Squad Car Into Bushes Did Create Reasonable Suspicion to Justify a Terry Stop.

A. Standard of Review.

In reviewing a denial of a motion to suppress, the Court of Appeals upholds the circuit court's findings of fact unless they are clearly erroneous or contrary to the great weight and clear preponderance of the evidence. ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997; ***State v. Allen***, 226 Wis. 2d 66, 70, 593 N.W. 2d 504 (Ct. App. 1999). Whether the facts satisfy the

constitutional requirement of reasonableness is a question of law and should be reviewed de novo. ***Id***. The appellate court values a trial court's decision on the question. ***Scheunemann v. City of West Bend***, 179 Wis. 2d 469, 475, 507 N.W.2d 163 (Ct. App. 1993).

B. <u>The Defendant Was Not Seized Under the Fourth Amendment Until Officer Hancock Placed The Defendant In An Escort Hold For Safety</u>.

The Supreme Court stated "[w]e adhere to the view that a person is 'seized' only when, by means of physical force or show of authority, his freedom of movement is restrained," ***United States v. Mendenhall***, 446 U.S. 544, 553, (1980). A person has been seized under the meaning of the Fourth Amendment, when under the totality of the circumstances, a reasonable person would believe that he was not free to leave. ***Id*** at 254. The court further reasons, giving examples of circumstances that might indicate a seizure, even where a person does not attempt to leave would be a threatening presence of several officers, an officer displaying a weapon, physical touching of a person, or the use of tone or language indicating compliance with the officer's request might be compelled. ***Id.*** As a matter of law, absent of such factors, inoffensive contact between a person and the police cannot amount to a seizure of that person. ***Id.***

A trial court is in the best position to decide the weight and relevancy of testimony and an appellate court must give substantial deference to the trial court's better ability to assess the evidence. ***In re Deannia D.***, 288 Wis. 2d 485, 494, 709 N.W.2d 879 (Ct. App. 2005). (citations omitted). Here, on the issue of suppression, Officer Hancock and the defendant testified at the evidentiary hearing. The trial court did not explicitly state that it found Officer Hancock credible, but the trial court's ruling accepts Officer Hancock's observations of the defendant as fact.

At the evidentiary hearing Officer Hancock's testimony clearly showed that he was the only officer present at the time of the stop. ***See Defendant's Brief at Appendix*** (17-23; App. 101-106). Officer Hancock was the only officer present until other officers arrived on scene to assist after the stop was already initiated. ***Id.*** There was not a threatening presence by Officer Hancock. Officer Hancock testified that his squad emergency lights were not activated when he got out of the vehicle. ***Id***. at 19-20:25-2; App. 104. There was no testimony at any point during the evidentiary hearing that any officer displayed a weapon of any kind to the defendant during the stop. ***See Defendant's Brief at Appendix***. Officer Hancock did not make physical

contact with the defendant until after beginning his initial investigation by speaking with the defendant, the defendant put his hands in his pockets, and refused to remove them. ***Id***. at 20:15-20; App. 104. Officer Hancock then placed the defendant into an "escort hold", after the defendant refused and pulled away from Officer Hancock, the defendant was placed under arrest. ***Id***. at 20:22-25; App. 104. It is well-established that "a police officer is free to approach a person in public and ask a few questions; such conduct, without more, does not constitute a seizure." ***United States v. Madison***, 936 F.2d 90, 92 (1991); (citing ***United States v. Lee,*** 916 F.2d 814, 819 (2d Cir.1990)) (citations omitted).

C. Officer Hancock had Reasonable Suspicion to Justify the Stop Despite the Defendant's Right to Walk Away.

Where a police officer "without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business." ***Illinois v Wardlow,*** 528 U.S. 119, 125, 120 S.Ct. 673 (2000). Under these circumstances, "any refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a [stop] or [arrest]" ***Id***. In our present case, the defendant did exactly that. When Officer Hancock arrived in his fully

marked squad car and began to exit the vehicle, the defendant initially choose to walk away. ***See Defendant's Brief at Appendix***. 19-20; App. 103-104. Officer Hancock testified that he told the defendant to stop and come over to him. ***Id.*** at 20:5 App.104. It was at that point the defendant opted to speak with Officer Hancock and walk over to him.

> "Courts have found a wide range of police-citizen encounters to be consensual encounters. Consensual encounters include: 1) passing the time of day; 2) Boy Scout/Girl Scout situations; 3) a voluntary interview of a victim of a crime; 4) a voluntary interview of a witness to a crime; 5) a voluntary interview of a person who may have information sought by the police; 6) a voluntary interview of a person suspected of committing a crime." ***Stelloh v Liban,*** 21 Wis.2s 119, 124 N.W.2d 101 (1963).

The court further asserted that it is the duty of every citizen to aid in the enforcement of the law. ***Id***. at 125. As Officer Hancock testified when he began speaking with the defendant "Then I proceeded to go on with my investigation. I asked him his name, what was he doing back there." ***See Defendant's Brief at Appendix***. 20:15-17; App. 104. Courts have commented on the practice of a police-citizen encounters in regards to police seeking voluntary information from citizens and the voluntary giving of information by citizens.

> "Further, the law ordinarily permits police to seek the voluntary cooperation of members of the public in the investigation of a crime. [L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen." ***Florida v Royer***, 460 U.S. 491, 497 (1983).

That being said, the test to be used for determining whether an investigatory stop was reasonable is a common sense test. ***State v. Waldner***, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). (citations omitted). The Court must balance individual privacy and "the societal interest in allowing the police a reasonable scope of action in discharging their responsibility." ***Id.*** The "societal interest" includes crime prevention and detection. ***Id.***

The law allows a police officer to make an investigatory stop based on observations of lawful conduct when the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot. ***Id.*** at 56. In determining reasonableness, courts are to look to the totality of the circumstances. ***Id.*** at 58.

Police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop. ***Id***. at 59. (citations omitted) The Fourth Amendment does not require a police officer who lacks

probable cause for an arrest to simply “shrug his or her shoulders” and “possibly allow a crime to occur or a criminal to escape.” ***Id.***

As in ***Waldner***, an innocent explanation could be hypothesized for the defendant’s actions, but a “reasonable police officer charged with enforcing the law cannot ignore the reasonable inference” that these actions might stem from unlawful behavior. ***Id.*** at 61.

An officer must be able to point to specific and articulable facts which, when taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop. ***State v. Popke***, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569 (citations omitted). The determination of reasonableness is a common sense test. ***State v. Post***, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. The crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime. ***Id.***

Whether an officer had reasonable suspicion is an objective test and the suspicion must be "grounded in specific, articulable facts and reasonable inferences from those facts....". ***See State v. Waldner,*** 206 Wis.2d 51, 56,

556 N.W.2d 681, 684 (1996) (citation omitted). The focus is on the totality of the circumstances, not individual facts standing alone. ***See Id.*** at 58, 556 N.W.2d at 685.

Under the totality of the circumstances test, Officer Hancock had reasonable suspicion for a number of reasons such as the time of night at 3:00 AM, the knowledge in the past that police have received calls regarding the area, specifically an area that Officer Hancock has had prior contacts with people who have been "back there doing illegal activity," the area being poorly lit, the defendant standing against the wall of a closed business, after seeing the squad the defendant walking away into bushes, and keeping his hands in his pockets. ***See Defendant's Brief at Appendix*** 17-19, 30;App. 101-103, 114. These specific articulable facts demonstrate that the defendant could likely be violating a law. Considering the totality of the circumstances, an objective officer would have reasonable suspicion to detain the defendant.

> "[S]suspicious conduct by its very nature is ambiguous, and the [principal] function of the investigative stop is to quickly resolve that ambiguity. Therefore, if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry." ***State v. Anderson,*** 155 Wis.2d 77, 84, 454 N.W.2d 763 (1990).

This was the totality of the information available to Officer Hancock at the time. Officers are allowed to arrest individuals based on probable cause to believe that they committed a crime. ***Wis. Stat. 968.07(1)(d***). Officer Hancock responded to the area of 63rd Street and 22nd Avenue originally in reference to a call of subjects being loud and disorderly. ***See Defendant's Brief at Appendix*** 18:7-9; App. 102. There had been no information provided as to physical descriptions of the subjects. ***Id.*** at 18:12-17. Officer Hancock did not observe any subjects in the immediate area, so he went around the corner into the alley in the 6200 Block of 22nd Avenue where he first observed the defendant. ***Id.*** at 12-19:21-4;102-103. There is nothing to indicate that a group of subjects would remain together throughout the time from initial call to response from police. Officer Hancock testified at the evidentiary hearing that it was his experience "that people behind closed businesses or [in] poorly lit areas like that are potentially up to something whether they're either trying to break into a business or they're engaging in some type of illegal activity." ***See Defendant's Brief at Appendix*** 26:3-8; App. 110.

The Circuit Court found that the stop was justified because suppression is

> "[W]hat's in the officer's mind and what they observe in their experience. It's not uncommon for an officer at 3 in the morning to think that a single person in a dark alley is suspicious and when he walked away I think there was probable cause to have a Terry stop[.]" ***See Defendant's Brief at Appendix*** 71:4-12;App. 150.

When a court is reviewing a set of facts to determine whether those facts do give rise to reasonable suspicion, the court "should apply a commonsense approach to strike a balance between the interests of the individual being stopped to be free from unnecessary or unduly intrusive searches and seizures, and the interests of the State to effectively prevent, detect, and investigate crimes." ***State v Rutzinski***, 2001 WI 22 ¶15, 241 Wis. 2d at 738, 623 N.W. 2d 516 (citing ***Hensley***, 469 U.S. at 228, 105 S. Ct. 675; ***Waldner***, 206 Wis. 2d at 56, 556 N.W.2d 681). The Circuit Court did just that in our present case when weighing the known factors to the officer to investigate a crime and the interests of the defendant.

> "In this case it was after 3 in the morning. It's behind a locked tavern. Other locked businesses apparently are in this alley. There is a man standing against the wall in a dark alley, poorly lit – lighted, and the officer happens to pull in. And as he gets out of his car this defendant walks away from the officer as he's talking to him. He says – apparently then he talks to him and tells him to take his hand out of his pockets and he does so… There is – well it is certainly to Mr. Lorenzo's – Luiz – Lorenzo's detriment that he decided to walk away from that officer. Had he not decided to walk

> away he probably would – they would – he would have said in some form or manner I'm waiting for a ride, the car would have pulled up, considering that they were sober there would have been no further contact and they would have just gone away." ***Id. at*** 69-71;App. 148-150.

In every case, the court must "undertake an independent objective analysis of the facts surrounding the particular search and seizure" and determine if the need for the government to make the search and seizure "outweighs the searched or seized individual's interests in being secure from such police intrusion." ***Id***. (citing ***Hensley***, 469 U.S. at 228, 105 S. 9Ct. 675; ***State v. McGill***, 2000 WI 38, ¶18, 234 Wis. 2d 560,609 N.W.2d 795; ***Waldner***, 206 Wis. 2d at 56, 556 N.W.2d 681). This test for the presence of reasonable suspicion was further elaborated in ***State v. Williams***, 2001 WI 21, ¶22,241 Wis. 2d 631, N.W.2d 106, where the court stated that reasonable suspicion "is dependent upon both the content of information possessed by the police and its degree of reliability." ***Id***. Both the quantity and the quality of the information is to be evaluated. ***Id***.

In ***Illinois v Wardlow,*** 120 S.Ct. 673 (2000) the Wisconsin Supreme Court addressed a situation in which an officer stopped Wardlow when he fled upon seeing a caravan of police vehicles converge on an area of Chicago known for

heavy narcotics trafficking. When officers caught up with him on the street, an officer stopped Wardlow and conducted a pat-down search for weapons, because in his experience there were usually weapons in the vicinity of narcotics transactions. Discovering a handgun, the officers arrested Wardlow. The Illinois trial court denied Wardlow's motion to suppress, finding the gun was recovered during a lawful stop and frisk. He was convicted of unlawful use of a weapon by a felon. In reversing, the Illinois Appellate Court found that the officer did not have reasonable suspicion to make the stop. The Illinois State Supreme Court affirmed, determining that flight in a high crime area does not create a reasonable suspicion justifying a *Terry* stop. The United States Supreme Court held that the stop was in fact supported by reasonable suspicion justifying a *Terry* stop. ***Id.*** at 677. The Court determined that it was not merely Wardlow's presence in an area of narcotics trafficking, but also his unprovoked flight when noticing the police that was suspicious to officers. ***Id.*** at 676. The Court further concluded that cases have recognized that nervous, evasive behaviors are pertinent factors in determining reasonable suspicion. ***Id. (***citing ***United States v. Brignoni–Ponce,*** 422 U.S. 873, 885, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); ***Florida v. Rodriguez,*** 469 U.S. 1, 6,

105 S.Ct. 308, 83 L.Ed.2d 165 (1984) *(per curiam);* ***United States v. Sokolow****, supra,* at 8–9, 109 S.Ct. 1581). The Court explained that the officer was justified in suspecting that Wardlow was involved in criminal activity, and, therefore investigating further. ***Id***.

The same reasoning the Supreme Court applied in the ***Wardlow*** case can be applied in our present case. In our case, Officer Hancock was on duty on September 25, 2011 at 3:00 AM when he received a call of subjects being disorderly. ***See Defendant's Brief at Appendix*** 17-18:23-4; App. 101-102. When Officer Hancock responded to the location he observed the defendant standing against the wall of a closed business with no residences in the vicinity. ***Id***. at 19:2-6;App. 103. The area was poorly lit and Officer Hancock testified that officers "receive numerous calls in that area, and I know that to be a frequent area where people will go to kind of be out of the direct line of sight from anyone travelling on 22nd Avenue." ***Id***. at 19:7-16;App. 103. Officer Hancock approached in a marked squad car without the emergency lights activated. ***Id***. at 19-20:19-2;App. 103-104. The defendant immediately started to walk into nearby bushes that were on the other side of the alley after Officer Hancock arrived. ***Id***. at 19:21-24;App. 103. It was at that

point Officer Hancock told the defendant to stop and to come over to him. ***Id***. at 20:5;App. 104. The defendant then came out of the bushes with his left hand in his pants pocket. ***Id***. at 20:8-10;App. 104. Officer Hancock told the defendant to remove his hand, which the defendant did. ***Id***. at 20:10-12;App. 104. Officer Hancock proceeded with his investigation by asking the defendant questions. ***Id***. at 20:15-17;App. 104. The defendant then put his hand back into his pocket. ***Id***. at 20:17-18;App. 104. When asked to remove it by Officer Hancock the second time, the defendant refused. ***Id***. at 20:18-20;App. 104. Officer Hancock then placed the defendant into an escort hold and the defendant pulled away. ***Id***. at 20:22;App. 104.

Much like in ***Wardlow,*** the defendant in our present case tried to leave the area upon seeing the officers and was observed in an area known for frequent calls. Unlike Wardlow, in our present case additional factors were also present. The time of night being the middle of the night at 3:00 AM after bar close, the defendant not only began walking away from Officer Hancock but was walking into bushes, the area was poorly lit, all the businesses in the area were already closed and there were no residences in the area. None of these factors were present in ***Wardlow*** when the Court held that the officer was justified in

suspecting that Wardlow was involved in criminal activity and, therefore the stop was supported by reasonable suspicion. ***See Illinois v Wardlow,*** 120 S.Ct. 673 (2000). Yet, these additional factors were all articulated by Officer Hancock at the evidentiary hearing as indicators for reasonable suspicion at the time of the stop of the defendant. ***See Defendant's Brief at Appendix*** 17-19; App. 101-103.

Similarly, in ***United States v. Dykes***, 406 F.3d 717 (2005), three unmarked Washington D.C. police cars pulled into a parking lot in response to complaints of illegal drug trafficking in the area. Several people were standing nearby including Dykes and Theodore Duncan, who were next to each other. When the police entered the parking lot, Duncan threw narcotics and ran away. As Duncan fled, Dykes walked away from the police cars. The police then got out of their cars. Upon looking back and seeing the officers wearing identification leave their vehicles, Dykes ran away. Dykes was then forced to the ground by one of the officers. Once on the ground, Dykes immediately lay on his stomach with his hands underneath him, near his waistband. Dykes was repeatedly ordered to show officers his hands, but Dykes did not comply. Officers pulled on Dykes' arms to remove his hands from beneath his body. The officers

succeeded in extracting Dykes' hands, at which point they handcuffed him and located a pistol in his waistband and drugs in his pockets. ***See Id.*** The United States Supreme Court stated that, “There is no question but that the officers had reasonable suspicion to stop Dykes.” ***Id***. at 720. The ***Dykes*** court likens the fact pattern to that of the ***Wardlow*** case. ***Id.*** In our case it is clear that Officer Hancock initially responded to the defendant’s vicinity for a Disorderly Conduct call and he was the only person present, behind a closed business, in a poorly lit area, located in an area in which Officer Hancock has had prior contact with people who have been back in the same area doing illegal activity. ***See Defendant’s Brief at Appendix*** 30:13-20;App. 114. Under the totality of the circumstances argument, knowing what Officer Hancock knew at the time, and realizing reasonable suspicion is a far less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, Officer Hancock had reasonable suspicion to justify the stop of the defendant. See ***Wardlow*** at 675. As Officer Hancock stated, “It is my job to investigate where I think that a crime is being possibly going to be committed. And when I observe something suspicious, it is my duty to

investigate that.” ***See Defendant’s Brief at Appendix*** 30:5-8;App. 114.

CONLUSION

For the stated reasons, it is respectfully requested that the decision of the Circuit Court made on July 10, 2014 should be upheld as the stop of the defendant was legal and was supported by reasonable suspicion by the officer.

Dated at Kenosha, Wisconsin, this 12th day of February, 2016.

Respectfully submitted,

By: _____

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained within Section 809.l9(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 21 pages.

Dated this 12th day of February, 2016.

_____

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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 s. 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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

Dated this 12th day of February, 2016.

_____

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