STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2015AP002429-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SHANNON OLANCE HENDRICKS,

Defendant-Appellant.

On Appeal from a Judgment of Conviction, Entered in the Milwaukee County Circuit Court, the Honorable David Borowski, Presiding, and Order Denying Postconviction Relief, Entered in the Milwaukee County Circuit Court, the Honorable M. Joseph Donald, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

Mr. Hendricks entered a plea to one count of child enticement with intent to have "sexual contact." Prior to accepting Mr. Hendricks' plea, the circuit court neither explained to Mr. Hendricks nor verified that he understood the meaning of "sexual contact." Mr. Hendricks' filed a post-conviction motion for plea withdrawal, alleging that (1) the colloquy was deficient because the court did not explain the definition of "sexual contact," and (2) he did not understand the definition of "sexual contact" at the time he entered his plea. The circuit court denied Mr. Hendricks' motion without an evidentiary hearing, concluding that "sexual contact" is not an element of the offense to which Mr. Hendricks pled.

Did the circuit court err when it denied Mr. Hendricks' post-conviction motion for plea withdrawal without an evidentiary hearing?

The circuit court denied Mr. Hendricks' post-conviction motion without an evidentiary hearing. (75;App.105-108).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Hendricks does not request oral argument or publication.

STATEMENT OF FACTS AND CASE

The State originally charged Mr. Hendricks with one count of Second Degree Sexual Assault of a Child Under Sixteen, in violation of Wisconsin Statute §948.02(2). (2). The complaint alleged that Mr. Hendricks touched the breast and buttocks of T.B., his girlfriend's then fourteen-year-old niece. (2).

This matter was set for trial, and a jury was selected. (55). The day after jury selection, Mr. Hendricks entered a guilty plea. In exchange for his plea to an amended charge of Child Enticement under Wisconsin Statute § 948.07, the State agreed to recommend prison time concurrent to a revocation sentence triggered by this case. (56:4;App.139).

At the plea hearing, the circuit court noted that Mr. Hendricks had to plead to one of the specific subsections of child enticement (one of six intended reasons that the person entices the child). (56:10;App.145). After a sidebar, the court stated that Mr. Hendricks would be pleading to enticement for purposes of sexual contact. (56:10-11;App.145-146). Though the court explained to Mr. Hendricks that he would be entering a plea to child enticement for purposes of sexual contact, it did not explain to Mr. Hendricks—or verify that he understood—the meaning of the term "sexual contact." (*See generally* 56;App.136-151).

After entering his plea, Mr. Hendricks, through counsel, filed a pre-sentencing motion for plea withdrawal. (15). As grounds, counsel noted that Mr. Hendricks felt the proceedings were "too rushed" and did "not think that he is guilty and should not therefore be sentenced and should receive his right to a trial." (15). Mr. Hendricks supplemented this motion, explaining that he had been "overwhelmed because he was told that the alleged victim was present at trial

and she was not" and had now "changed his mind". (16). Mr. Hendricks also testified at a hearing on the motion that he was taking medication that made him feel drowsy and "really mellow" such that he would "easily just go with whatever is going on." (60:10).

A series of hearings on Mr. Hendricks' plea withdrawal motion followed. (58;59;60;61;62;63). These hearings, however, did not address the court's failure to verify whether Mr. Hendricks understood the meaning of "sexual contact." (*See* 58;59;60;61;62;63).[1]

At one point during these hearings, the court ordered a competency evaluation "based on the tirade and continued spewing of somewhat logical but somewhat incoherent thoughts" from Mr. Hendricks. (58:17). The doctor who performed the evaluation concluded that while Mr. Hendricks has "below average intelligence," he was competent to proceed. (18).

The circuit court denied Mr. Hendricks' pre-sentencing motion for plea withdrawal. (63). The court found Mr. Hendricks' testimony incredible. (60:34). The court explained that it believed there was a "contradiction" in Mr. Hendricks' claim that he was taking medication at the time of the plea which "makes him go along with everything, but now he's on the same medication and he's specifically filing a motion to not go along with everything". (60:10;*see also* 63:8). The court found that Mr. Hendricks showed "nothing more" than a "complete and total change of heart." (63:9).

[1] Mr. Hendricks provided a more detailed discussion of the issues discussed and evidence presented at these hearings in the fact section of his post-conviction motion, which he has included in the Appendix to this brief. (69:2-10;App.110-118).

Following sentencing, (*see* 64), Mr. Hendricks, by undersigned counsel, filed a post-conviction motion to amend the sentence credit and modify the sentence so that the sentence would run as the court intended, and to vacate the DNA surcharge. (39). The circuit court granted the motion. (45).

Undersigned counsel then filed a no-merit report in this matter. This Court issued an order, explaining that counsel had not identified a point in the record "where the circuit court determined Hendricks's understanding of the phrase 'sexual contact,'" and further that counsel did not "discuss whether the omission of such a determination during the plea colloquy would support an arguably meritorious claim that the circuit court failed to complete its duty to ensure Hendricks's understanding of the elements of the offense." (*See* 2014AP2355 6/12/15 Order; *see also* 75:1,n.1;App.108 (circuit court's explanation that this Court found arguable merit to this issue in its June 12, 2013 order)).

In light of this issue, counsel subsequently moved to dismiss the no-merit report to allow Mr. Hendricks to file a post-conviction motion raising this issue; this Court granted that request. (*See* 66).

Counsel filed a post-conviction motion on Mr. Hendricks' behalf seeking plea withdrawal, on grounds that at the time he entered his plea, he did not understand the meaning of "sexual contact" as required under ***State v. Nichelson***, 220 Wis. 2d 214, 582 N.W.2d 460 (Ct. App. 1998), and ***State v. Jipson***, 2003 WI App 222, 267 Wis. 2d 467, 671 N.W.2d 18. (69;App.109-126). He sought an evidentiary hearing on his motion. (69:1,18;App.109,126).

The State filed a response in which it agreed that Mr. Hendricks met his *prima facie* burden and joined in his

request for an evidentiary hearing. (71;App.127-133). The State explained that it believed it would be able to prove by clear and convincing evidence at the hearing that Mr. Hendricks understood the meaning of "sexual contact" at the time he entered his plea. (71;App.127-133). Mr. Hendricks filed a reply, reiterating his request for an evidentiary hearing. (72;App.134-135).

The circuit court denied Mr. Hendricks' motion without an evidentiary hearing. (75;App.105-108). The Court noted that ***Nichelson*** and ***Jipson*** both involved the offense of sexual assault of a child, where this case involves child enticement. (75:2;App.106). The court noted: "There is not a single case which holds that the meaning of sexual contact is an essential element of child enticement." (75:2;App.106). The court stated that the purpose of the child enticement statute is to punish the act of "succeeding in getting a child to enter a place with intent to commit such a crime," while the purpose of the sexual assault statute is to punish the "contact itself." (75:3;App.107). Thus, the court reasoned that "[*a]ctual sexual contact is not a required element*" of child enticement. (75:3;App.107)(emphasis in original). "[T]herefore," the court concluded, "a court is not required to explain the meaning of sexual contact" when a defendant enters a plea to child enticement. (75:3;App.107).

Mr. Hendricks now appeals.

ARGUMENT

I. The Circuit Court Erred When it Denied Mr. Hendricks' Post-Conviction Motion for Plea Withdrawal Without an Evidentiary Hearing.

In order to withdraw a plea after sentencing, a defendant must show that the withdrawal is necessary to correct a "manifest injustice." ***State v. Booth***, 142 Wis. 2d 232, 235, 418 N.W.2d 20 (Ct. App. 1987). A defendant meets this showing if the plea was not constitutionally valid. ***Hatcher v. State***, 82 Wis. 2d 559, 565, 266 N.W.2d 320 (1978). To establish that a plea was not constitutionally valid, the defendant must show that it was not knowingly, voluntarily, and intelligently entered. ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

To show that a plea was not knowingly, voluntarily, and intelligently entered, the defendant must make a prima facie showing that (1) a deficiency in the plea colloquy exists and (2) the defendant did not "know or understand the information that should have been provided at the plea hearing." ***State v. Hoppe***, 2009 WI 41, ¶ 4, n.5, 317 Wis. 2d 161, 754 N.W.2d 794 (discussing the requirements of ***Bangert***).

If a defendant "alleges sufficient material facts that, if true, would entitle the defendant to relief," the defendant is entitled to an evidentiary hearing on the post-conviction motion. ***State v. Love***, 2005 WI 116, ¶ 42, 284 Wis. 2d 111, 700 N.W.2d 62. Importantly, whether to grant a hearing is not left to the court's discretion—if the motion establishes a *prima facie* violation and makes the requisite allegations, "the court *must* hold a postconviction evidentiary hearing". ***State v. Brown***, 2006 WI 10, ¶ 40, 293 Wis. 2d 594, 716 N.W.2d 906 (emphasis added).

"Once the defendant files a ***Bangert*** motion entitling him to an evidentiary hearing, the burden shifts to the State to prove by clear and convincing evidence that the defendant's plea was knowing, intelligent, and voluntary despite the identified defects in the plea colloquy." ***Hoppe***, 2009 WI 41, ¶ 44.

Whether a plea was entered knowingly, voluntarily and intelligently is a question of constitutional fact: this Court accepts the circuit court's findings of historical and evidentiary facts unless they are clearly erroneous, but reviews independently whether those facts demonstrate a knowing, voluntary, and intelligent plea. ***Brown***, 2006 WI 100, ¶ 19.

A. Mr. Hendricks alleged a deficiency in the plea colloquy, as the court did not ensure as required that he understood the meaning of "sexual contact."

i. The circuit court was required to ensure that Mr. Hendricks understood the meaning of "sexual contact."

Wisconsin Statute § 971.08(1) requires that, prior to accepting a guilty plea, a circuit court must verify that a defendant is entering a plea "voluntarily *with understanding of the nature of the charge*". Wis. Stat. § 971.08(1)(a) (emphasis added).

The crime of child enticement, as set forth under Wis. Stat. § 948.07, provides that "[w]hoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room, or secluded place is guilty of a

Class D felony." Wis. Stat. § 948.07. The statute then provides six different "acts" which qualify, one of which is "[h]aving *sexual contact* or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095". Wis. Stat. § 948.07(1)(emphasis added).[2]

Wisconsin Statute § 948.01(5) explains what constitutes "sexual contact" for Chapter 948 offenses:

> (a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:
>
> 1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.
>
> 2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.
>
> (b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually

[2] The other five acts are: (2) "[c]ausing the child to engage in prostitution"; (3) "[e]xposing genitals, pubic area, or intimate parts to the child or causing the child to expose genitals, pubic area, or intimate parts in violation of s. 948.10"; (4) "[r]ecording the child engaging in sexually explicit conduct"; (5) "[c]ausing bodily or mental harm to the child"; or (6) "[g]iving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961". Wis. Stat. § 948.07.

> humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.
>
> (c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

Wis. Stat. § 948.01(5).[3]

In ***State v. Nichelson***, 220 Wis. 2d 214, 582 N.W.2d 460 (Ct. App. 1998), this Court ordered plea withdrawal after concluding that: (1) the circuit court failed to comply with Wis. Stat. § 971.08, as it failed to ensure that the defendant, charged with one count of first-degree sexual assault of a child, understood that one of the elements that the State would have to prove was that "his purpose in sexually touching the child was his own sexual gratification;" and (2) the State failed at the post-conviction hearing to prove by clear and convincing evidence that the defendant had understood this element at the time he entered his plea. ***Id.*** at 220-225.

In ***State v. Bollig***, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199, the Wisconsin Supreme Court held that one of the essential elements of attempted sexual contact with a child

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[3] In her explanation of the definition of "sexual contact" in Mr. Hendricks' post-conviction motion, undersigned counsel cited the language set forth in Wisconsin Statute § 939.22(34). (69:17;App.125). While substantively the same as 948.01(5), the statutes are structured slightly differently. *Compare* Wis. Stat. § 948.015(5) *with* Wis. Stat. § 939.22(34). Wisconsin Statute § 939.22 explains that its definitions apply in Chapters 939 to 948, unless "the word or phrase is defined in s. 948.01 for purposes of ch. 948." Wis. Stat. § 939.22. Thus, the proper statute to reference for the definition of "sexual contact" in this matter is Wisconsin Statute § 948.01(5).

was that the alleged contact was for the purpose of the defendant's sexual gratification or the victim's humiliation. ***Id.***, ¶ 50.

Then, in ***State v. Jipson***, 2003 WI App 222, 267 Wis. 2d 467, 671 N.W.2d 18, this Court found a plea colloquy to be deficient where the circuit court failed to ensure that the defendant understood what "sexual contact" meant. The defendant pled no contest to one count of second-degree sexual assault of a child by sexual contact. ***Id.***, ¶ 2. Post-conviction, the defendant sought plea withdrawal on grounds that he did not understand the meaning of "sexual contact" at the time he entered his plea. ***Id.***, ¶ 4. The State argued that there was "no requirement that the defendant understand the exact legal terms of each element." ***Id.***, ¶ 10.

Citing ***Nichelson***, this Court rejected the State's argument, and explained that to "understand the nature of the charge, the defendant must be aware of all the essential elements of the crime." ***Id.***, ¶ 9 (citing ***Nichelson***, 220 WIs. 2d at 218). This Court recognized that while the "purpose of the sexual contact is not an element of the crime listed under Wis. Stat. § 948.02(2), but rather is a definition of the element "sexual contact" found in Wis. Stat. § 948.01(6), the courts have nevertheless crafted this to be an element of the offense." ***Id.***, ¶ 9.

In this case, even though the State agreed that Mr. Hendricks met his *prima facie* burden entitling him to an evidentiary hearing, the circuit court denied his motion without a hearing. (75;App.105-108). It did so based on its conclusion that "sexual contact" is not an element of the offense of child enticement, because child enticement punishes the act of enticing the child *for* purposes of "sexual contact," and not the "sexual contact" itself. (75:3;App.107).

The circuit court's reasoning—to which this Court owes no deference—is flawed and its conclusion is wrong. Under the circuit court's logic, it did not have an obligation to verify that Mr. Hendricks understood the specific meaning of "sexual contact" because Mr. Hendricks was not entering a plea to "sexual contact" itself, but to acting *with the intent* to have "sexual contact." But how does that distinction negate the court's need to ensure that Mr. Hendricks understood what it was that he was alleged to have intended to do?

The jury instruction itself reflects that "sexual contact" is a required element which the court in turn must ensure the defendant understands. One of the required elements listed in the instruction is that the defendant "caused (name of victim) to go into a (vehicle)(building)(room)(secluded place) *with intent to* _____." Wis. JI-CRIM 2134 (emphasis added); (*see also* 12). The instruction explains what should be included in the blank space: "Here identify the conduct specified in subsecs. (1) to (6) of § 948.07. Care should be taken to provide a complete description of what the conduct requires, *including a definition of terms where necessary*." Wis. JI-CRIM 2134, n.4 (emphasis added). The Jury Instruction Committee suggested the following for child enticement cases for purposes of sexual contact: "…have sexual contact with (name of victim). Sexual contact is an intentional touching by the defendant of an intimate part of another, done for the purpose of (sexual arousal or gratification)(sexually degrading or humiliating that person)." ***Id.*** The instruction itself thus provides the meaning of sexual contact.

Indeed, when compared to an offense criminalizing a particular act itself (here sexual contact), if anything, it is seemingly *more* important that a court ensure that a defendant who is pleading guilty to intending to commit that act

understand exactly what the State would have to prove he intended to do. Adults cause children to go into vehicles, buildings, rooms, or secluded places all the time. But not all adults are guilty of child enticement. It is the adult's *intentions* which make the act criminal. And the offense to which Mr. Hendricks pled required that he have a very specific purpose for the enticement—"sexual contact". If he did not have that intention, then he was not guilty of the offense to which he pled.

Consider the court's rationale applied to another offense: Wisconsin law provides that a person is guilty of burglary if he intentionally enters a building, without the consent of the person in lawful possession and knowing he does not have that consent, and does so with an *intent to steal*. Wis. Stat. § 943.10; *see also* Wis. JI-CRIM 1421. If "steal" were not such a commonly-understood term, is the circuit court here really suggesting that a defendant would not have to understand what "steal" means before entering a plea to burglary? And indeed, even though it is commonly understood, the jury instruction for burglary does explain what "intent to steal" means and notes that the "intent to steal" is "an essential element of burglary." Wis. JI-CRIM 1421.

The circuit court here also noted: "There is not a single case which holds that the meaning of sexual contact is an essential element of child enticement." (75:2;App.106). But this Court has reached that conclusion, albeit perhaps implicitly. In ***State ex rel. Patel v. State***, 2012 WI App 117, 344 Wis. 2d 405, 824 N.W.2d 862, this Court addressed the defendant's appeal of the circuit court's order denying his petition for a writ of *coram nobis*. ***Id.***, ¶ 1. The defendant, like Mr. Hendricks, entered a plea to one count of child

enticement, contrary to Wisconsin Statute § 948.07(1). ***Id.***, ¶ 2.

After sentencing, the defendant filed a motion for plea withdrawal on grounds that "neither the pleadings, the guilty plea questionnaire, nor the plea colloquy informed Patel of an element of the offense under Wis. Stat. § 948.01(5)—that the purpose of his sexual conduct was degradation, humiliation, arousal or gratification—and that in the absence of being informed, his plea was not knowingly, voluntarily, and intelligently made." ***Id.***, ¶ 9. Thus, Patel argued that the "plea colloquy was defective and that he had no knowledge of *an essential element* of the crime to which he pled guilty". ***Id.***, ¶22 (emphasis added).

This Court explained that one of the requirements for a writ for *coram nobis* to be granted is that the legal error does not "appear on the record," meaning it was not discernible from a review of the record. ***Id.***, ¶ 16. With regard to the failure to explain the meaning of "sexual contact," this Court concluded: "[t]he alleged defect in the plea colloquy is undoubtedly an error appearing on the record." ***Id.***, ¶ 23. Importantly, this Court noted that the "plea questionnaire did not mention this *particular element* of the offense." ***Id.*** (emphasis added). This Court found that this "error was easily discernible from a review of the record." ***Id.*** Implicit in this Court's analysis of its review of the *coram nobis* petition is the conclusion that where the defendant has been charged with child enticement for purposes of sexual contact, the meaning of "sexual contact" is indeed an element of the offense.

The circuit court therefore had an obligation to ensure that Mr. Hendricks understood the specific meaning of "sexual contact."

ii. The circuit court failed to ensure that Mr. Hendricks understood the meaning of "sexual contact."

At the plea hearing in this case, the circuit court failed as required to ensure that Mr. Hendricks understood the meaning of "sexual contact" at the time he entered his plea.

A plea questionnaire form with attached jury instructions was submitted to the court at the plea hearing. (12). The court verified that Mr. Hendricks had reviewed the plea questionnaire with his attorney earlier that day and signed it. (56:12;App.147). It verified with defense counsel that he discussed the elements of the offense with Mr. Hendricks: "Counsel, you discussed with your client the elements of this offense; you attached an element sheet, correct?" (56:7;App.142). Defense counsel answered yes, that they "did go over the elements." (56:7;App.142).

The attached jury instructions, however, did not contain any indication of which subsection of child enticement (which of the "acts" set forth in the statute) applied to Mr. Hendricks. (*See* 12). The area in which that information was to be provided was left completely blank. (12).[4]

Later in the plea hearing, the circuit court itself recognized that the parties needed to agree upon one of these

[4] The attached jury instructions read as follows: ("Child Enticement, as defined in § 948.07 of the Criminal Code of Wisconsin, is committed by one who with intent to _____ causes any child who has not attained the age of 18 years to go into any vehicle, building, room, or secluded place")(2. The defendant caused (name of victim) to go into a (vehicle) (building) (room) (secluded place) with intent to _____. The phrase "with intent to" means that the defendant must have had the mental purpose to _____").

subsections of child enticement, and after a sidebar explained: "I just discussed with the attorneys off the record, and I'll make it as clear as possible on the record, that the defendant is entering a plea, and I'll continue with the colloquy, the plea under 948.07 needs to be entered to child enticement but under a specific subsection." (56:10;App.145). The court noted that everyone agreed that Mr. Hendricks would plead to enticement for purposes of sexual contact: "Obviously, in this case, according to the complaint and the information, and what I just discussed with the attorneys, what applies, correct me if I'm wrong, is Subsection (1), the enticement was for the purpose of, at a minimum, sexual contact, correct, counsel?" (56:10-11;App.145-146). Defense counsel agreed. (56:11;App.146). The court, however, did not explain to Mr. Hendricks what "sexual contact" meant, or verify that he indeed understood this subsection which the parties had only just agreed upon at the sidebar.

The court subsequently verified that Mr. Hendricks understood that he was admitting to child enticement "for the purpose of potentially having sexual contact with that child and that's indicated in the complaint, indicated in this case," and Mr. Hendricks agreed. (56:11;App.146). The court, however, still did not explain to Mr. Hendricks what "sexual contact" means, nor did it verify whether Mr. Hendricks understood what that term meant. (*See generally* 56;App.136-151).

Lastly, when discussing the factual basis for the plea, defense counsel noted: "Your Honor, we are agreeing to the complaint. As far as what the contact was, we're agreeing to what the victim testified to at the preliminary hearing, which, you know, would also support the plea." (56:13;App.148). The court asked Mr. Hendricks if he was "admitting to that," and Mr. Hendricks said yes; the court then asked: "You're

admitting to the contact, again, with a child who was under 18, the victim, with a date of birth of 9/19/1996, and you're admitting that it was sexual contact, correct, sir?" (56:13;App.148). But still, the court did not verify that Mr. Hendricks understood what "sexual contact" means. (*See generally* 56;App.136-151).

Thus, the circuit court failed to satisfy its duty at the plea colloquy to ensure that Mr. Hendricks understood the meaning of "sexual contact."

B. Mr. Hendricks alleged that at the time he entered his guilty plea, he did not understand the meaning of "sexual contact".

As stated in his post-conviction motion, "Mr. Hendricks asserts, and at a hearing would testify, that at the time he entered his plea, he did not understand the statutory meaning of 'sexual contact.'" (69:18;App.126). Mr. Hendricks therefore alleged facts sufficient to support his *prima facie* burden, which entitled him to an evidentiary hearing. The circuit court erred in denying his request for this evidentiary hearing.

CONCLUSION

For these reasons, Mr. Hendricks respectfully requests that this Court reverse the circuit court's ruling denying his post-conviction motion and remand this matter for an evidentiary hearing on Mr. Hendricks' motion for plea withdrawal.

Dated this 26th day of February, 2016.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

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 of body text. The length of the brief is 4,108 words.

CERTIFICATE 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 filed on or after 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 26th day of February, 2016.

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CERTIFICATION AS TO 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 § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's 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 one or more initials or other appropriate pseudonym or designation 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 26th day of February, 2016.

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* Undersigned counsel's copy of this transcript, which she has included in the Appendix, contains markings (underlines) which are not present in the original transcript.

**The Appendix has been redacted to comply with the rules of confidentiality.