STATE OF WISCONSIN COURT OF APPEALS DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No. 2016-AP-127-CR
Circuit Court Case No. 15-CT-421

v.

GREGORY J. MCMILLAN,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND SENTENCE IMPOSED IN THE CIRCUIT COURT OF DANE COUNTY ON SEPTEMBER 11, 2015, DANE COUNTY CASE NO. 15-CT-421, THE HONORABLE NICHOLAS MCNAMARA, PRESIDING

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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STATEMENT OF THE ISSUES PRESENTED

I. Whether the totality of the circumstances supported the trial court's finding that reasonable suspicion existed to conduct a Terry stop of the defendant's

automobile?

The court determined that reasonable suspicion existed under Terry to conduct a seizure of the defendant's vehicle. The court found that several facts supported the investigative seizure including the time, approximately 12:30 a.m. and that the area where the McMillan vehicle had parked was an area of low traffic with a low volume of people at that time of night. Id. at 36. (App. A-38). It further found that when McFarland Police Officer Onken saw the vehicle make a right hand turn onto McFarland Court and later saw it parked in the parking lot of a closed business, although away from the actual building, with McMillan talking on the phone that the conduct was suspicious enough to justify a Terry stop. The court found that although there was testimony at the suppression hearing that there were bars in the area the court discounted the information finding it to be "minimally important, if at all." R. 35; p. 35. (App. A-37). The court concluded that "clearly the Fourth Amendment is implicated in what's happening here." Id. at 37. (App. A-39).

II. Whether law enforcement was acting in a bona fide community caretaker function when it seized the defendant as he was standing outside of his vehicle talking on his phone in the parking lot of a closed business away from the business itself?

Even though the State failed to offer any evidence supporting a bona fide community caretaker function or make any argument to the trial court regarding the warrantless exception the court nonetheless determined that if the seizure wasn't valid under Terry that Officer Onken was acting in a community caretaking function which was "authorized as an exception to the warrantless seizure under the Fourth Amendment." R. 35; p. 40. (App. A-42).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The parties' briefs will fully present and meet the issues on appeal and further develop the legal theories and authorities on each side. Rule §809.22 (2) (b) Wis. Stats.

Oral argument is not requested at this time.

STATEMENT OF THE CASE AND FACTS

On March 21, 2015 Police Officer Jason Onken, an officer with three and one half years' experience, was operating his fully marked squad car on Terminal Drive near McFarland Court in McFarland, Wisconsin. R. 35; p. 4-5. (App. A-6-7). Onken, who was on patrol driving through the area, noticed a black Dodge Charger directly in front of him as he traveled northbound on Terminal Drive. Id. at 5. (App. A-7). Onken followed the vehicle for two to three blocks when the vehicle made a right hand turn onto McFarland Court. Id. at 5-6. (App. A-7-8). Onken observed no improper driving as he followed the vehicle. After the vehicle made a right hand turn onto McFarland Court Onken proceeded straight about a block and a half down Terminal Drive, came back

through a back parking lot, and noticed that the vehicle had pulled over in the parking lot of a closed business, significantly away from the business itself. Id. R. 22 Exhibit 4. Onken activated his emergency lights and made contact with the driver of the vehicle, Gregory McMillan, who was standing outside of the vehicle talking on his cell phone. Id. at 9. (App. A-11) R. 22 Exhibit 6. Subsequent to this initial contact with McMillan he was ultimately arrested for operating a motor vehicle while under the influence of an intoxicant. The issue of whether probable cause to arrest the defendant existed or not is not a disputed legal issue in this appeal.

On May 14, 2015 Gregory McMillan made his initial appearance in Dane County Circuit Court and not guilty pleas were entered to the two count criminal complaint alleging that the defendant operated a motor vehicle while under the influence of an intoxicant and with a prohibited alcohol concentration as a third offense. R. 4, 5, 6.

On May 18, 2015 the defendant filed several pretrial motions and a final pretrial conference was held on June 2, 2015. R. 8-17. On June 16, 2015 the defendant filed a Notice of Motion and Motion to Suppress Evidence Based Upon an Unconstitutional Automobile Stop alleging that Officer Onken did not have a reasonable articulable suspicion to conduct a seizure of the McMillan vehicle. R. 19. A hearing on the motion was held on July 16, 2015. R. 35.

During the motion hearing Onken testified that at approximately 12:30 a.m. on March 21, 2015 he was traveling on Terminal Drive located near McFarland Court in McFarland, Wisconsin. R. 35; p. 4. (App. A-6). As he traveled northbound on Terminal

Drive he noticed a black Dodge Charger directly in front of him. The area of Terminal Drive is predominantly a business area and an industrial park. Id. at 5. (App. A-7). He followed the vehicle for approximately two to three blocks when the vehicle made a right hand turn onto McFarland Court. Id. at 5-6. (App. A-8). Onken testified that there are no open businesses on McFarland Court at that time. Id. at 8. (App. A-10). Despite Onken's testimony that there was no reason for a vehicle to be on that street there were parked cars at the closed businesses and a white van parked with the engine running on McFarland Court at the time the Charger turned right. R. 35; p. 9-12. (App. A-11-13). R. 22 Exhibit 6. After the vehicle turned off onto McFarland Court Onken proceeded northbound on Terminal Drive, took a right on a private road and came up on the parked vehicle from behind where he activated his emergency lights as a show of authority. Id. at 21. (App. A-23). Onken conceded that the vehicle was not parked near the business itself, but was parked facing southbound on the far west side of the parking lot of that particular business, the Dakota Supply Group. Id. at 19. R. 22 Exhibit 4. According to Onken it was not unusual for cars to be parked at these businesses at night when they were closed. Id. at 20. (App. A-22). Although Onken believed the white or light colored van parked on the right hand side of McFarland Court as the Charger turned right, was also suspicious he elected not to follow the Charger as it turned right because it was an "open road." Id. at 12-13. (App. A-14-15). Onken further testified that although there "were a couple of burglaries in that area two to three years prior" to this incident there was "no recent burglary activity in the area" Id. at 17. (App. A-19). Onken also

believed it was suspicious that McMillan was talking on his cell phone. Id. at 18. (App. A-20). After hearing the testimony the trial court denied the Motion to Suppress finding that both reasonable suspicion existed to conduct a Terry stop and in the alternative that the officer was acting in a community caretaker function. Id. at 35. (App. A-37-49). (See also R. 22 Exhibit 6, the squad cam video of the contact between Onken and McMillan entered into evidence at the suppression hearing). Subsequent to the Motion to Suppress the matter was resolved and set for a plea and sentencing hearing on September 11, 2015.

On November 2, 2015 the defendant filed a Notice of Motion and Motion for Relief and Stay Pending Appeal of the court's denial of the suppression motion. R. 24. On September 11, 2015 the defendant entered a plea of guilty to the OWI 3rd allegation and the court imposed a sentence which included a fine of one thousand four hundred ninety four and 00/100 dollars ($1,494.00); a two hundred and 00/100 dollars ($200.00) DNA surcharge; and placed the defendant on a probation for a period of two years. R. 30. (App. A-1-2). A jail sentence of nine months was imposed and stayed and the defendant's license was revoked for a period of thirty six (36) months. Id. The defendant was also required to install an Ignition Interlock Device for a period of thirty six (36) months and was to complete an alcohol assessment. R. 30. (App. A-1-2). After hearing argument on the defendant's motion for stay the court granted the motion and stayed the entire sentence pending appeal. R. 36. An Order for Stay Pending Appeal was signed on September 28, 2015. R. 31. (App. A-51).

The defendant filed a Notice of Intent for Post Conviction Relief on November 15, 2015 and a Notice of Appeal was filed on January 8, 2016. R. 32, 33. This direct appeal followed.

Further facts will be set forth as necessary herein below.

ARGUMENT

I. THE TOTALITY OF THE CIRCUMSTANCES DOES NOT SUPPORT THE FINDING BY THE TRIAL COURT THAT REASONABLE SUSPICION EXISTED TO CONDUCT A TERRY STOP OF THE DEFENDANT'S VEHICLE.

A. Standard of Review

The denial of a suppression motion is analyzed under a two-part standard of review; the circuit court's findings of fact will be upheld unless they are clearly erroneous but whether the facts warrant suppression of the evidence is reviewed independently. State v. Conner, 2012 WI App. 105 ¶15.

"Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of fact." State v. Popke, 2009 WI 37 ¶10. The ultimate question of "whether the facts as found by the [circuit] court meet the constitutional standard" is reviewed de novo. State v. Hindsley, 2000 WI App. 130, ¶22.

B. Reasonable Suspicion to Support A Traffic Stop

An investigative stop violates the Fourth Amendment unless it is supported by reasonable suspicion. State v. Colstad, 2003 WI App. 25 ¶7-8. An investigative stop is lawful under the Fourth Amendment if the Officer reasonably suspects "that criminal

activity may be afoot." Williams 2001 WI 21 ¶21 (citing Terry v. Ohio, 392 U.S. 30 (1968)). Reasonable suspicion is present if the officer's suspicion is "grounded in specific, articulable facts, and reasonable inferences from those facts that an individual is committing or is about to commit a crime."

Here the totality of the circumstances, does not establish reasonable suspicion that McMillan had committed or was about to commit a crime. Officer Onken followed the black Charger for a short time, t**wo to three blocks**, although he doesn't have an exact time as to how long he was behind the McMillan vehicle. R. 35; p. 5. (App. A-7). The vehicle made a right hand turn onto McFarland Court which is a business district or industrial park. Id. at 6. (App. A-8). Although Onken claimed at the suppression hearing that he believed somehow the Dodge Charger was attempting to avoid him, he made no claim of this in his police report. Id. at 16. (App. A-18). Moreover, this claim is contradicted by the court's conclusion that he observed no "improper driving." Id. at 36. (App. A-38). During the two to three block period which Onken followed the vehicle he did not observe any improper driving. Id. Onken testified that he thought the turn onto McFarland Court was suspicious but he did not stop the car at that time because it was an open road. Id. at 13. (App. A-15). Even though he testified that he followed the Charger down Terminal Drive Onken could not remember the route he took to travel northbound on Terminal Drive. Id. at 11. (App. A-13). On cross examination Onken testified that he was as close as one or two car lengths behind the vehicle. In order to travel northbound on Terminal Drive the McMillan vehicle would have had to travel on

Siggelkow Road, yet Onken never saw the vehicle travel on Siggelkow Road and could not remember whether he traveled on Siggelkow Road that evening. Id. at 10-11. (App. A-12-13). This lack of recollection is disconcerting.

Clearly there is nothing illegal or improper about the Dodge Charger turning right onto McFarland Court. Even though Onken testified that there are not usually cars parked throughout this industrial park at night, as the Dodge Charger turned right onto McFarland Court there was a white van, or a light colored van, parked on the right hand side of McFarland Court which was running. Id. at 12. (App. A-14). R. 22 Exhibit 6. Onken later conceded that there were parked cars at several businesses which he drove by in an attempt to intercept the Dodge Charger. Id. at 19. (App. A-21). He further conceded that it is not unusual for cars to be parked there at night when the businesses were closed. Id. at 20. (App. A-22). When Onken approached the vehicle it was not parked near the closed business, the Dakota Supply Group. Id. at 19. (App. A-21). R. 22 Exhibit 6. In fact, it was parked facing southbound on the far west side of the parking lot of that building. Id. at 19; R. (App. A-21). R. 22 Exhibit 4. An individual, subsequently identified as the defendant herein, was standing outside of his vehicle talking on his cell phone. As Onken approached the parked vehicle he activated his emergency lights as a show of authority. R. 35; p. 21. (App. A-23). This constituted a seizure under the Fourth Amendment. See generally, California v. Hodari D., 499 U.S. 621, 626 (1991).

Pulling one's vehicle into a closed business in the middle of the night is not, in and of itself, a sufficient basis for reasonable suspicion of criminal activity without additional suspicious factors. See 4 LAFAVE, SEARCH AND SEIZURE §9.5 (e), at 687-91 (5th ed. 2012) (discussing reasonable suspicion as it relates to certain premises and times of day). Unlike other cases where this court has found reasonable suspicion to conduct an investigatory stop of a vehicle at a closed business, there additional suspicious factors existed and those additional factors are not present in this case. Here, there was no recent history of burglaries or break ins at the industrial park. Onken conceded that there weren't any break ins except for some which occurred two to three years prior to this incident. R. 35; p. 17. (App. A-19).

In State v. Baker, 2013 WI App. 84 an unpublished opinion cited pursuant to §809.23 (3) (b) Wis. Stats., for persuasive value, this court found reasonable suspicion where Baker's minivan was observed in a gas station lot at 1:54 a.m. (App. A-52). The vehicle was parked in an odd manner about seven feet from the entry to the station building. Id. at ¶4. (App. A-52). The driver's side faced the building as if the driver was stopping to get something out of the building. Moreover, the officer pulled approximately twenty feet behind the minivan and shined the minivan with his "high beam spotlight" to determine whether anyone was in the minivan. Id. at ¶5. (App. A-). After some period of time the driver of the minivan, Baker, "suddenly" sat up. After he sat up Baker then began to drive away very slowly. This court affirmed the circuit

court's finding that reasonable suspicion existed to stop Baker's vehicle under those circumstances.

Unlike the facts of Baker, there was no recent burglary activity in the area or "smash and grab" thefts. Here, McMillan was not parked near the Dakota Supply Group but was rather parked on the far edge of the parking lot facing west, a considerable distance from the building. R. 22 Exhibits 1-4. Moreover, he never attempted to leave or flee as Officer Onken approached him with his emergency lights on instead he remained outside his vehicle talking on his cell phone.

In State v. Parker, 2012 AP-245-CR (Wis. Ct. App. 7-12-2012) an unpublished opinion, this court affirmed the trial court's determination that reasonable suspicion existed justifying the encounter of a Wood County Sheriff's Deputy and the defendant Parker when the Deputy observed Parker's car enter the parking lot of a closed tire repair shop at 3:02 a.m. (App. A-57). ¶3. Like McMillan the deputy in Parker did not observe any unusual or improper driving behavior but made additional observations of suspicious behavior which supported the investigatory stop. Those observations included Parker being in the driver seat of a different vehicle, a truck, with the door open. ¶6. (App. A-57). The deputy did not observe anyone else with Parker who might have been privileged either to enter or to operate the truck which she was in. ¶13. (App. A-57). Unlike the facts here, McMillan remained at the outside of his vehicle as Onken approached and activated his emergency lights. He did not flee, was not in a different vehicle, and in fact was not close to the Dakota Supply Group Building which was closed.

In United States v. Rickus, 737 F.3d 360, 365 (3rd Cir. 1984) the Third Circuit Court of Appeals concluded that "traveling through a closed business district at 3:30 in the morning at a speed of 15-20 miles per hour below the posted speed limit" is a factor in assessing reasonable suspicion. (emphasis added). In United States v. Buchanon, 975 F. Supp. 1432, 1434 (D. Kan. 1997) the court cited "[a] number of cases [which] has found reasonable suspicion to stop a vehicle which has parked near a closed business late at night when the defendant engages in suspicious behavior when he or she becomes aware of an officer's presence." See, United States v. Dawdy, 46 F.3d 1427, 1429-1430 (8th Cir.), *cert. denied*, 116 S. Ct. 195 (1995) (defendant parked in the back of a closed business at 10:00 p.m. Recent false burglary alarms at the business, and the defendant attempted to leave when he saw the officer); United States v. Watson, 953 F.2d 893, 897 (5th Cir.) *cert. denied*, 504 U.S. 928 (1992) (defendant's car pulled into an abandoned gas station at 3:00 a.m., and defendant sought to seek or retrieve some item when they observed officers). Here, McMillan did not engage in suspicious activity when Onken conducted the investigatory stop in the Dakota Supply Group parking lot. Although Onken claimed at the suppression hearing that the turn onto McFarland Court was suspicious and he believed the vehicle was attempting to "duck" him that claim is suspect at best and at worst incredible. The claim that the vehicle was attempting to "duck" him is a significant observation, conveniently testified to at the suppression hearing yet never once mentioned or referred to in Onken's police report. R. 35; p. (App. A-33). Onken's

assertions in this regard four months after the fact, not contemporaneously noted, should be given little if any weight.

Onken did not have reasonable suspicion to stop the vehicle as it turned onto McFarland Court. He did not have reasonable suspicion of impaired driving. As Onken approached the parked vehicle away from the closed business McMillan did not engage in any additional suspicious activity. The ultimate question of whether a stop is reasonable under the Constitution can include the following additional factors: 1) whether alternative means of further investigation are available, short of an investigative stop; 2) whether the opportunity for further investigation would be lost if the officer does not act immediately; and 3) what actions following the stop would be necessary for the officer to determine whether to arrest or release the suspected individual. State v. Guzy, 139 Wis.2d 663, 678 (1987). Here alternative means of further investigation were available to Officer Onken short of an investigative stop. Instead of activating his emergency lights as a show of authority and restricting the defendant's freedom of movement, Onken could have simply approached McMillan who was standing outside of his vehicle casually talking on his phone. R. 22 Exhibit 6. See County of Grant v. Vogt, 2014 WI 76. Here, there was no immediate need for the officer to act. The fact that there may have been burglaries two to three years prior to this incident adds little to the analysis, it is stale information. There was no information or claim of any recent thefts or burglaries of any kind from the businesses located in the business park. Unlike the facts in Parker, the defendant was not missing from his vehicle, in another vehicle, or slouched

down or potentially hiding in his vehicle as in Baker. Unlike the other cases finding reasonable suspicion McMillan's suspicious activities amount to being in the parking lot of a closed business a significant distance from the building itself engaged in the innocent behavior of talking on his cell phone. This is insufficient under the totality of the circumstances and is unreasonable under the Fourth Amendment. Reasonable inferences from the facts adduced at the motion hearing do not establish that McMillan had committed, was committing, or was about to commit a crime. Certainly there was no factual basis to support reasonable suspicion that McMillan was operating under the influence of an intoxicant and this particular investigative stop was based on an insufficient number of suspicious facts to warrant the intrusion no matter how minimal. This stop was based on a hunch predicated upon the mere fact that there were closed businesses near to where McMillan parked his Charger in order to use his cell phone.

II. THE SEIZURE OF THE DEFENDANT CAN NOT BE JUSTIFIED UNDER A BONA FIDE COMMUNITY CARETAKER FUNCTION.

A. Community Caretaker Test

Law enforcement officers may exercise two types of legitimate functions; law enforcement functions and community caretaker functions. State v. Pinkard, 2010 WI 81 ¶18 (citing Cady v. Dombrowski, 413 U.S. 433, 441 (1973)). A "bona fide community caretaker function" exists only if a law enforcement officer has "an objectively reasonable basis" to conclude "that a motorist may have been in need of assistance" at the time of the stop. State v. Kramer, 2009 WI 14, ¶36-37. In State v. Anderson, 142 Wis.2d

162 (1987) the Court of Appeals set out a three-prong test for evaluating whether the community caretaker function applied to a particular set of facts. The court stated:

> [W]hen a community caretaker function is asserted as justification for the seizure of a person, the trial court must determine: (1) that a seizure within the meaning of the fourth amendment has occurred; (2) if so, whether the police conduct was bona fide community caretaker activity; and (3) if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual.
>
> As to the last factor – weighing the public need and interest against the intrusion—relevant considerations include: (1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.
>
> Anderson, 142 Wis.2d at 169-170 (footnote omitted).

B. The State Failed To Adduce Any Evidence That Law Enforcement Was Acting In A Bona Fide Community Caretaker Function.

The community caretaker function, an exception to the warrant requirement, is satisfied only if "the officer's exercise of a bona fide community caretaker function was reasonable." State v. Kramer, 2009 WI 14 ¶40 (citing State v. Kelsey C.R., 2001 WI 54, ¶35). This reasonableness inquiry means that courts must "balance[e] a public interest or need that is furthered by the officer's conduct against the degree and nature of the restriction upon the liberty interest of the citizen." Id. Here the court concluded, in the alternative, that if reasonable suspicion did not justify the Terry stop it was justified under the community caretaker function. R. 35; p. 35-47. (App. A-37-49). Despite the court's alternative conclusion the record does not demonstrate that Officer Onken was

engaged in any way in a community caretaker function. First, the State did not adduce any evidence at the hearing to support the community caretaker function. Exceptions to the warrant requirement are to be carefully delineated. "[T]he State bears the burden of proving that the officer's conduct fell within the scope of a reasonable community caretaker function." Kramer at ¶17. There is nothing in the record indicating that McMillan was in need of any type of assistance. As Onken approached and activated his emergency lights McMillan remained at the side of his vehicle speaking on the phone. He did not wave his hands or make any gesture to summon the officer to come to him, indicating that he may have some type of problem with his vehicle or emergency medical need. Here the facts demonstrate, and the court concluded, that the Fourth Amendment was involved once the officer used his lights as a show of authority. It is submitted that Officer Onken used a significant degree of overt authority when he engaged his lights. The record does not in any way establish any type of exigency or emergency, and the State did not put on any evidence that Onken was acting as a community caretaker in this matter. Instead the trial court decided sua sponte that the exception applied in the face of a record void of any facts warranting this finding. Thus, the trial court erred when it used an "end around" to justify the investigative stop based on this exception to the Fourth Amendment.

CONCLUSION

Reasonable suspicion did not exist to warrant an investigative stop relating to the McMillan vehicle which was parked away from a closed business with the defendant

outside of his vehicle talking on his cell phone. "A traffic stop is a major interference in the lives of the [vehicle's] occupants." Coolidge v. New Hampshire, 403 U.S. 443, 479 (1971). Every time a law enforcement officer stops a car an invasion of privacy occurs and the Fourth and Fourteenth Amendments are implicated. Id. After Officer Onken engaged his emergency lights, an admitted show of authority, McMillan did not engage in any additional suspicious activity. Instead he remained at the side of his vehicle talking on his cell phone. The facts and the reasonable inferences from them do not indicate that criminal activity was afoot. Had McMillan been parked near the building of the Dakota Supply Group or engaged in some type of other suspicious conduct an investigative stop would have been justified. Onken's convenient suppression hearing testimony that the vehicle made a quick turn as if to "duck" the officer should be given little if any weight. This significant observation was not contemporaneously noted and never mentioned in his police report. In fact the court found there was no "improper driving." Here the only significant fact is that McMillan is present in a business area where the businesses were closed. There was no history of recent burglaries or attempted break ins to any of the businesses. Finally, Officer Onken could have utilized a less intrusive method of establishing contact with McMillan by simply pulling up to the vehicle, walking up to him and questioning him about what he was doing without implicating the Fourth Amendment. Based on these facts reasonable suspicion did not exist to conduct an investigative stop.

The State did not offer any evidence justifying the encounter under a bona fide community caretaker function. Exceptions to the warrant requirement are to be carefully delineated and the State bears the burden of proving that the officer's conduct fell within the scope of a bona fide caretaking function. Here the State did not even come close to establishing this burden and the trial court erred when it in the alternative concluded that Officer Onken was acting in a bona fide caretaker function based on evidence adduced at the suppression hearing. Therefore, based on this record the court should reverse the trial court's finding that reasonable suspicion existed to conduct an investigatory stop and in the alternative reverse the finding that Onken was engaged in a bona fide community caretaker function.

Respectfully submitted this 8th day of June, 2016.

_____
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CERTIFICATION

Undersigned counsel hereby certifies that this appellate brief conforms to the rules contained in §809.19 (8) (b) and (c) Wis. Stats. for a brief produced with the proportional serif font. The length of this brief is 5,433 words.

Signed:

_____
Patrick J. Stangl

CERTIFICATION OF COMPLIANCE WITH RULE 809.19 (12)

The undersigned certifies that an electronic copy of this brief, excluding the appendix, if any, complies with the requirement of §809.19 (12). The electronic brief is identical in content and format to the printed brief filed this date.

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

Signed:

_____
Patrick J. Stangl

CERTIFICATION OF APPENDIX

I hereby certify that with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial 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 first names and last initials 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.

Signed:

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Patrick J. Stangl

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