STATE OF WISCONSIN

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

DISTRICT I

Case No. 2016AP173-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

BRIAN GRANDBERRY,

Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction
Entered in the Milwaukee County Circuit Court, the
Honorable Janet Protasiewicz Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. As a matter of law, was there insufficient evidence to convict Brian Grandberry of carrying a concealed weapon (CCW), when the firearm he possessed was transported in his vehicle in full compliance with the safe transport statute, Wis. Stat. § 167.31?

The circuit court did not directly address this issue; however, it found Grandberry guilty of carrying a concealed weapon based on his stipulation to the facts in the criminal complaint.

2. Is the CCW statute, Wis. Stat. § 941.23, void for vagueness as applied to a person like Grandberry who transports a firearm in a vehicle in compliance with the safe transport statute?

The circuit court denied Grandberry's motion to dismiss this case on the grounds of statutory vagueness.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Grandberry would welcome oral argument if the court would find it helpful. *See* Wis. Stat. § 809.22. Publication is not authorized, however, because this is a one-judge appeal of a case involving a misdemeanor conviction. Wis. Stat. §§ 751.31(2)(f), 809.23(4)(b). Nevertheless, this court would be warranted in convening a three-judge panel on its own motion, and in issuing a published opinion, to resolve the issues presented in this appeal.

With certain limited exceptions, a person is guilty of carrying a concealed weapon if he or she "goes armed with" a concealed and dangerous weapon. Wis. Stat. §§ 941.23(1)(ag); 175.60(1)(ag). In ***State v. Walls***, 190 Wis. 2d 65, 526 N.W.2d 765 (Ct. App. 1994), this court recognized (but did not hold) that the transportation of a firearm in a vehicle, in full compliance with the safe transport statute, does not constitute going armed with a concealed weapon. *See* ***id.*** at 69 n.2. Accordingly, whether a person can actually be guilty of carrying a concealed weapon if he or she complies with the requirements of the safe transport statute is an issue of substantial and continuing public interest. Publication would therefore be warranted to provide clarity on this issue. *See* Wis. Stat. § 809.23(1)(a)1., 5.

Moreover, if this court now concludes, contrary to its reasoning in ***Walls***, that a person can transport a firearm in a vehicle in a manner that is consistent with the safe transport statute and still be in violation of the CCW statute, then a constitutional issue arises. Under such an interpretation, the CCW statute would effectively preclude the transportation of a firearm in a vehicle under all but three circumstances: (1) if the firearm is placed above the lower portion of the car's window frame, such as on the dashboard; (2) if the firearm is placed in the car's trunk; or (3) if the owner of the firearm has a concealed carry permit. *See* Wis. Stat. § 941.23; *see also* ***Walls***, 190 Wis. 2d 65 (finding that handgun was "concealed" where it was lying of the front passenger seat).

The safe transport statute, however, does not require any of these conditions. It expressly permits the transportation of a firearm in a vehicle so long as the firearm is either unloaded or is a handgun. *See* Wis. Stat. § 167.31(2)(b)1. Conduct permitted by the safe transport statute would thus appear to be prohibited by the CCW

statute. This apparent conflict raises a real and significant question as to whether the CCW statute actually provides fair notice of its prohibitions to an ordinary person who transports a firearm inside a vehicle in compliance with the safe transport statute. Publication would thus be warranted to clarify whether the CCW statute is unconstitutionally vague as applied under those circumstances. *See* Wis. Stat. § 809.23(1)(a)1., 2., 5.

STATEMENT OF THE CASE AND FACTS

On October 10, 2014, the State filed a criminal complaint charging Grandberry with one count of carrying a concealed weapon, a Class A misdemeanor, contrary to Wis. Stat. § 941.23(2). The complaint alleged that on November 9, 2014, police conducted a traffic stop of a car being driven by Grandberry. During the stop, one of the officers asked Grandberry if he had any firearms, and Grandberry told him there was a gun in the glove compartment. After confirming that Grandberry did not have a concealed carry permit, the officers searched the glove compartment and discovered a loaded semi-automatic handgun. (2:1).

On February 12, 2015, Grandberry filed a motion to dismiss the case on the grounds that the CCW statute, as applied to him, was void for vagueness. (5). He pointed out that his conduct, while seemly prohibited by the CCW statute, was actually permitted by the safe transport statute, which permits the placement, possession, or transportation of a handgun in a vehicle, even if the handgun is loaded. *See* Wis.

Stat. § 167.31(2)(b)1.[1] Grandberry thus asserted that the coexistence of these conflicting statutes rendered the CCW statute unconstitutionally vague as applied to him. (5:1-2, 7-8). He also argued that because of the conflict, the CCW statute should be construed to prohibit the prosecution of a person who transports a firearm in a vehicle in compliance with the safe transport statute.[2] (5:1-2, 8-10).

On July 9, 2015, the circuit court, the Honorable Janet Protasiewicz, denied Grandberry's motion in an oral ruling. The court offered the following reasoning in support of its ruling:

> I just cannot imagine how the intent of the legislature would be – the carrying concealed weapon statute from my understanding has not changed in decades and decades. It's remained intact. How the people of this community do not have a right to be protected from people that aren't permit holders from having that weapon in their vehicle. I just don't see it. I don't see that you've proven beyond a reasonable doubt that the statute as applied is unconstitutional either on its face or as applied to Mr. Grandberry.

(14:12; App. 112).

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[1] Subsection (2)(b) of the safe transport statute provides in relevant part as follows:

> (b) Except as provided in sub. (4), no person may place, possess, or transport a firearm, bow, or crossbow in or on a vehicle, unless one of the following applies:
>
> 1. The firearm is unloaded or is a handgun.

[2] Grandberry also alleged that, under the circumstances of this case, a conviction for carrying a concealed weapon would violate his right to bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, § 25 of the Wisconsin Constitution. (5:2). Grandberry does not raise this argument on appeal.

Thereafter, on September 8, 2015, the circuit court conducted a stipulated court trial at the parties' request. Pursuant to this arrangement, Grandberry stipulated to the facts in the criminal complaint, and the court found him guilty of carrying a concealed weapon. (16:1-2). That same day, the court imposed and stayed a sentence of three months in the House of Corrections and placed Grandberry on probation for a period of one year. (16:9).

This appeal follows. (8, 10).

ARGUMENT

In this case, the undisputed facts show that Grandberry was transporting a handgun in his vehicle at the time of his arrest. As a matter of law, his actions fully complied with the requirements of the safe transport statute, and as such, do not constitute "carrying" a concealed weapon. In ***Walls***, 190 Wis. 2d 65, this court "recognized that the placement, possession, or transportation of . . . firearms in vehicles as permitted by § 167.31(2)(b), Stats., does not constitute going armed with a concealed weapon." (Wis. Legis. Council Info. Memo, IM-2011-10, at 1 n. 3; App. 116).

Accordingly, if this court agrees that ***Walls*** correctly interpreted the interplay between the CCW and safe transport statutes, then Grandberry's conviction should be vacated on the grounds of insufficiency of the evidence. However, even if this court now concludes that ***Walls*** was incorrect, then the apparent conflict between the two statutes renders the CCW statue unconstitutionally vague as applied in this case. This court cannot reasonably conclude, in light of the conflicting nature of the statutes, that a person of ordinary intelligence would have fair notice of how the CCW statute applies to the transportation of firearms in vehicles, if this court itself

misconstrued the interplay between the statutes in ***Walls***. Thus, regardless of whether ***Walls*** was correct, Grandberry's conviction should be vacated.

I. There Was Insufficient Evidence To Convict Grandberry of Carrying A Concealed Weapon Because His Conduct Fully Complied With the Safe Transport Statute.

A. General legal principles and standard of review.

A conviction that is based on insufficient evidence cannot constitutionally stand. ***Jackson v. Virginia***, 443 U.S. 307 (1979). The due process clauses of the United States and Wisconsin constitutions provide individuals with protection from conviction in a criminal case except "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." ***In re Winship,*** 397 U.S. 358, 365 (1970); *accord* ***State v. Smith,*** 117 Wis. 2d 399, 415, 344 N.W.2d 711 (Ct. App. 1983).

In Wisconsin, a criminal defendant may challenge the sufficiency of the evidence on appeal regardless of whether he or she specifically raised the issue at trial. ***State v. Hayes***, 2004 WI 80, ¶ 4, 273 Wis. 2d 1, 681 N.W.2d 203. An appellate court does not substitute its judgment for the fact-finder, but instead asks whether the evidence, viewed in the light most favorable to the State, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. ***Id.*** ¶ 56. If the reviewing court concludes the evidence was insufficient, the conviction must be reversed, with a remand to the circuit court for entry of a judgment of acquittal. ***State v. Wulff***, 207 Wis. 2d 143, 144-145, 557 N.W.2d 813 (1997) (citing ***Burks v. United States***, 437 U.S. 1, 18 (1978)).

B. As a matter of law, the transportation of a firearm in compliance with the safe transport statute does not constitute carrying a concealed weapon.

Subject to certain limited exceptions,[3] the CCW statute makes it illegal for a person to carry a concealed and dangerous weapon. Wis. Stat. § 941.23. The offense has the three elements:

1. The defendant carried a dangerous weapon.

2. The defendant was aware of the presence of the weapon.

3. The weapon was concealed.

Wis. JI-Criminal 1335.

It is the first element – the "carrying" of a dangerous weapon – that the State failed to prove in this case. The word "carried" means "to go armed with." Wis. Stat. §§ 941.23(1)(ag), 175.60(1)(ag). The phrase "to go armed with," in turn, means that the weapon must have been on the defendant's person or within the defendant's reach. ***Walls***, 190 Wis. 2d at 69.

In ***Walls***, this court concluded that the lawful placement or transportation of firearms in vehicles, as permitted by Wis. Stat. § 167.31(2)(b), does not constitute "going armed with" a dangerous weapon. ***Walls***, 190 Wis. 2d

[3] The CCW statute enumerates certain classes of people who are exempt from the prohibition, such as peace officers, out-of-state law enforcement officers, and individuals with a valid license to carry a concealed weapon under Wis. Stat. § 175.60, among others. *See* Wis. Stat. § 941.23(2).

at 69 n.2, 72. In that case, police discovered a handgun lying on the front seat of a car in which the defendant was a passenger. The parties stipulated to most of the dispositive facts; however, they disagreed about whether the handgun was "concealed" within the meaning of Wis. Stat. § 941.23. ***Id.*** at 67-68. On appeal, this court held that the handgun was concealed. ***Id.*** at 69.

The court in ***Walls*** noted that the CCW statute "evinces a strong rationale to prevent the carrying of concealed weapons in automobiles, as well as on a person." ***Id.*** at 71. The court therefore concluded that a person is guilty of carrying a concealed weapon in an automobile if: (1) the weapon is inside the vehicle and within the defendant's reach; (2) the defendant is aware of the presence of the weapon; and (3) the weapon is hidden from ordinary view, "meaning it is indiscernible from the ordinary observation of a person located outside and within the immediate vicinity of the vehicle." ***Id.*** at 71-72. Applying this test to the facts of that case, the ***Walls*** court held that the handgun was concealed, because police did not observe the gun until after "inspection" and "examination" of the vehicle. ***Id.*** at 72-73.

The ***Walls*** court, however, placed an important limitation on this holding. It recognized that the possession, placement, or transportation of a firearm inside a vehicle does not constitute "going armed with" a weapon if it is done in a manner that is consistent with the requirements of the safe transport statute. ***Id.*** at 69 n.2, 72. In this regard, the court stated as follows:

> We are mindful "that there is a long tradition of widespread lawful gun ownership by private individuals in this country." ***Staples v. United States***, 511 U.S. 600, [610], 114 S.Ct. 1793, 1799, 128 L.Ed.2d 608 (1994). Thus, our conclusion in this case in no way limits the

> *lawful* placement, possession, or transportation of, unloaded (or unstrung) and encased, firearms, bows, or crossbows in vehicles as permitted by § 167.31(2)(b), Stats., which provides in part:
>
> > (b) Except as provided in sub. (4), no person may place, possess or transport a firearm, bow or crossbow in or on a vehicle, unless the firearm is *unloaded and encased* or unless the bow or crossbow is unstrung or is enclosed in a carrying case.

Id. at 69 n.2 (emphases in original).

As noted in this passage, the safe transport statute at the time only permitted the placement, possession, or transportation of firearms in vehicles if the firearm was "unloaded and encased." *See* Wis. Stat. § 167.31(2)(b) (1993-94). In 2011, however, the legislature amended the statute to permit the placement, possession, or transportation of firearms in vehicles so long as "[t]he firearm is unloaded or is a handgun." Wis. Stat. § 167.31(2)(b); *see also* 2011 Wis. Acts 35 and 51. In light of this amendment, ***Walls*** should now be read as establishing that the "lawful placement, possession, or transportation of [handguns or other unloaded firearms] as permitted by § 167.31(2)(b)" does not constitute "going armed with" a dangerous weapon. *See* ***Walls***, 190 Wis. 2d at 69 n.2. There is no principled reason why the statutory amendments would not broaden the ***Walls*** court's conclusion in this manner.[4]

Thus, ***Walls*** recognizes that the possession, placement, or transportation of a firearm inside a vehicle in compliance

[4] The term "dangerous weapon" has always included "any firearm, whether loaded *or unloaded*." Wis. Stat. § 939.22(10) (emphasis added).

with the safe transport statue, by its very nature, cannot be a violation of the CCW statute. Not only did the court state that its application of the CCW statute to vehicles in that case "in no way limits" a person's ability to possess, place, or transport a weapon inside a vehicle in compliance with the safe transport statute, it specifically emphasized that doing so was "*lawful*," notwithstanding the prohibitions of the CCW statute. ***Walls***, 190 Wis. 2d at 69 n.2.

The Wisconsin Legislative Council shares this interpretation of ***Walls***. In an Information Memorandum on the proposed changes to the safe transport statute in 2011, the Council, citing ***Walls***, specifically stated that the placement, possession, or transportation of a firearm in a vehicle as permitted by the safe transport statute does not constitute "going armed with" a dangerous weapon:

> Wisconsin courts generally do not treat having an unloaded and encased firearm within one's reach as "going armed with" the firearm.
>
> . . . .
>
> For instance, in ***State v. Walls***, 190 Wis. 2d 65 (Ct. Appl. 1994), the Court of Appeals recognized that the placement, possession, or transportation of unloaded and encased firearms in vehicles as permitted by § 167.31(2)(b), Stats., does not constitute going armed with a concealed weapon.

(Wis. Legis. Council Info. Memo, IM-2011-10, at 1 n. 3; App. 116).

In this case, the undisputed facts clearly establish that Grandberry was transporting a handgun in his vehicle at the time of his arrest. (2:1; 16:1-2). Again, such conduct is now expressly authorized by the safe transport statute, even if the

handgun is loaded. *See* Wis. Stat. § 167.31(2)(b)1. As a matter of law, therefore, Grandberry's conduct did not constitute "carrying" or "going armed with" a dangerous weapon. *See* ***Walls***, 190 Wis. 2d at 69 n.2. Since this is an essential element of the offense of carrying a concealed weapon, there was insufficient evidence to convict Grandberry in this case.

II. The Conflicting Nature Of the CCW Statute and the Safe Transport Statute Renders the CCW Statute Void For Vagueness As Applied To Grandberry.

Grandberry further argues that if this court now decides, contrary to its conclusion in ***Walls***, that a person can be guilty of carrying a concealed weapon even if he or she fully complies with the safe transport statute, then the CCW statute should be found to be unconstitutionally vague as applied to Grandberry. If conduct that is prohibited by the CCW statutes also appears to be permitted by the safe transport statute, then an ordinary person like Grandberry would not have fair notice of the CCW statute's prohibitions with respect to the transportation of firearms in vehicles. This court should therefore find that the CCW statute is void for vagueness under the facts of this case.

A. General legal principles and standard of review.

On appeal, the constitutional validity of a statute presents a question of law that this court reviews *de novo*. ***State v. Pittman***, 174 Wis. 2d 255, 276, 496 N.W.2d 74 (1993). Legislative enactments are presumed to be constitutional, and a challenger must demonstrate that it is invalid beyond a reasonable doubt. ***Id.***

An as-applied challenge is a claim that a statute is unconstitutional as it relates to the facts of a particular case or

to a particular party. ***State v. Smith***, 2010 WI 16, ¶ 10 n.9, 323 Wis. 2d 377, 780 N.W.2d 90. The court assesses the merits of such a challenge by considering the facts of the particular case in front of it, not hypothetical facts in other situations. ***State v. Hamdan***, 2003 WI 113, ¶ 43, 264 Wis. 2d 433, 665 N.W.2d 785.

It is a fundamental tenet of due process that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." ***United States v. Batchelder***, 442 U.S. 114, 123 (1979). Thus, a statute is void for vagueness if it does not provide "fair notice" of the prohibited conduct or an objective standard for enforcement of violations. ***Pittman***, 174 Wis. 2d at 276-77. Stated another way, a statute is void if it is so vague that one who is intent on obeying the law cannot tell when his or her conduct comes near the proscribed area or if a trier of fact must apply its own standards of culpability rather than those set out in the statute. ***Giaccio v. Pennsylvania***, 382 U.S. 399, 402-03 (1966); ***State v. Propanz***, 112 Wis. 2d 166, 172-73, 332 N.W.2d 750 (1983). The standard has also been described as "whether the statute or ordinance is so obscure that men of ordinary intelligence must necessarily guess as to its meaning and differ as to its applicability." ***City of Milwaukee v. Wilson***, 96 Wis. 2d 11, 16, 291 N.W.2d 452 (1980). This test is identical under both the United States Constitution and the Wisconsin Constitution. ***County of Kenosha v. C & S Management, Inc.***, 223 Wis. 2d 373, 393-94, 588 N.W.2d 236 (1999).

Normally, a statute need have only "a reasonable degree of clarity"; however, a statute that infringes on a constitutionally protected right, such as the right to bear arms, requires more exacting precision, and a more stringent vagueness test applies. *See* ***Dog Federation of Wis., Inc. v.***

City of South Milwaukee, 178 Wis. 2d 353, 360, 504 N.W.2d 375 (1993) (citing ***Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.***, 455 U.S. 489, 499 (1982)).

B. The CCW statute is unconstitutionally vague as applied to a person who complies with the safe transport statute.

Viewed separately, the CCW and safe transport statutes appear clear. Read together, however, they create unconstitutional vagueness.

Courts have generally construed the CCW statute broadly, giving liberal interpretations to the terms "concealed" and "going armed with." Again, for example, in ***Walls***, this court held that a handgun lying on the front seat of a car was concealed. 190 Wis. 2d at 72-73. This conclusion was apparently due to the fact that the gun was placed below the lower portion of the car's window frame, and was thus not observable by a person located outside but near the vehicle. *See* ***id***. In addition, courts have generally considered firearms located anywhere inside the interior portion of a vehicle to be within a defendant's reach and thus "carried" for purposes of the CCW statute. For example, courts have found that firearms were within a defendant's reach in the following circumstances: where the gun was in a locked glove compartment, ***State v. Fry***, 131 Wis. 2d 153, 388 N.W.2d 585 (1986), *overruled on other grounds in* ***State v. Dearborn***, 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 972; where the gun was located in the center console of the vehicle, ***State v. Fisher***, 2006 WI 44, 290 Wis. 2d 121, 714 N.W.2d 495; where the gun was located beneath the driver's seat, ***State v. Cole***, 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328; and where the gun was located behind and below the back of the

driver's seat, ***Mularkey v. State***, 201 Wis. 429, 230 N.W. 76 (1930).

Consequently, the CCW statute effectively prohibits the placement or transportation of a firearm in a vehicle except in the following three circumstances: (1) where the gun is placed above the lower portion of the car's window frame, such as on the dashboard; (2) where the gun is placed in the car's trunk, and thus out of the defendant's reach; or (3) where the driver or passenger possessing the gun has a concealed carry permit under Wis. Stat. § 175.60.

Grandberry submits that the first of these possible methods of lawfully transporting a firearm in a vehicle – placing a gun on the car's dashboard – is unreasonable and thus not a realistic possibility at all. Placing a gun on a car's dashboard for purposes of transporting it is ill-advised and unsafe, as the firearm could easily slide or fall from the dashboard when the car is moving. This leaves only two reasonable alternatives: placing the gun in the trunk, or having a concealed carry permit.

However, the safe transport statute – the statute that specifically deals with transporting firearms in vehicles – does not require either of these two conditions. Again, it permits the placement, possession, or transportation of a firearm in a vehicle so long as the firearm is either unloaded or is a handgun. Wis. Stat. § 167.31(2)(b)1. This begs the obvious question: if a person cannot legally transport a firearm in a vehicle unless the firearm is either in the trunk or unless they have a concealed carry permit, why doesn't the safe transport statute say so?

Grandberry asserts that a person of ordinary intelligence would logically expect to find these types of specific requirements in the safe transport statute if they

existed. He further asserts that an ordinary person, reading both the CCW statute and the safe transport statute together, would not reasonably know that he or she was required to place a firearm in the trunk or have a concealed carry permit in order to lawfully transport the weapon in his vehicle. Rather, the plain reading of the safe transport statute would lead a reasonable person to believe that he or she could lawfully transport a firearm in any place inside a vehicle, so long as the firearm is either unloaded or is a handgun.

Because placing and transporting a handgun or other unloaded firearm in a vehicle is expressly authorized by the safe transport statute, an ordinary person would not reasonably expect that, unless he or she puts the firearm in the trunk or has a concealed carry permit, the very act of placing a firearm in a vehicle unlawfully conceals it. Thus, as applied to a person who possesses, places, or transports a firearm in a vehicle in compliance with the safe transport statute, the CCW statute fails to provide fair notice of its prohibitions. It is therefore unconstitutionally vague. This is especially true given that the CCW statute infringes on a constitutionally protected right, and is thus subject to a more stringent vagueness test. *See* ***Dog Federation of Wis., Inc.***, 178 Wis. 2d at 360.

Moreover, the conclusion that the CCW statute is void for vagueness is only strengthened if this court determines that ***Walls*** was incorrect or that the Wisconsin Legislative Council misinterpreted that decision. If this court and the Legislative Council were previously unable to correctly interpret the interplay between the CCW statute and the safe transport statute, how could a person of ordinary intelligence be expected to do so? How could an ordinary person have fair notice of prohibitions that are so vague and uncertain that this court and the Legislative Council previously

misconstrued them? If ***Walls*** was incorrect, it highlights the conflicting nature of the CCW statute and the safe transport statute, and demonstrates that when the statutes are read together, they create unconstitutional vagueness. This court should therefore hold that the CCW statute is void for vagueness as applied to Grandberry.

CONCLUSION

For the foregoing reasons, Brian Grandberry respectfully requests that this court reverse the judgment and order of the circuit court on the grounds of insufficiency of the evidence and remand the case to the circuit court with directions to enter a judgment of acquittal. In the alternative, Grandberry requests that this court reverse the judgment and order of the circuit court, declare Wis. Stat. § 941.23, as applied to Grandberry, to be unconstitutionally vague, and remand the matter to the circuit court for entry of a judgment of dismissal.

Dated this 26th day of April 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 3,743 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 April 2016.

Signed:

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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; and (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.

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