STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No.: 16 AP 420 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

ANGELO M. REYNOLDS,

Defendant-Appellant

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED ON
MARCH 6, 2015 IN THE CIRCUIT COURT
FOR DANE COUNTY, BRANCH V,
THE HON. NICHOLAS J. MCNAMARA PRESIDING.

Respectfully submitted,

ANGELO M. REYNOLDS,
Defendant-Appellant

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STATEMENT ON PUBLICATION

Appellant recognizes that this appeal, as a one-judge appeal, does not qualify under this Court's operating procedures for publication. Hence, publication is not sought.

STATEMENT ON ORAL ARGUMENT

Oral argument would be appropriate in this case only if the Court concludes that the briefs have not fully presented the issues being raised on appeal.

STATEMENT OF THE CASE AND FACTS

Appellant, Mr. Angelo M. Reynolds, was charged with operating a motor vehicle while intoxicated (OWI) and with a prohibited alcohol concentration (PAC), both as third offenses, contrary to Wis. Stat. § § 346.63(1)(a) and (1)(b), respectively. (4:1-11). On August 31, 2014, Deputy Schiro was dispatched to UW Hospital regarding a motorcycle accident that occurred in the township of Vermont. (*Id.*) Deputy Schiro identified Mr. Reynolds as the driver of the motorcycle. (*Id.*) After an investigation that included administering both standardized and non-standardized field sobriety tests, Deputy Schiro requested Mr. Reynolds perform a preliminary breath test (PBT). (*Id.*)

Motion Hearing: March 6, 2015

On March 6, 2015, Mr. Reynolds appeared for a motion hearing in the Dane County Circuit Court before the Honorable Nicholas J. McNamara. (47:1.) The issue presented was whether, based upon the totality of the circumstances, the State proved that Deputy Schiro had probable cause under Wis. Stat. § 343.303 to request and administer a PBT to Mr. Reynolds. (17:1.)

Dane County Deputy Sheriff Deputy Schiro was the only witness called to testify at the hearing. (47:13.) Deputy Schiro testified that between 9:00 p.m. and 10:00 p.m. on August 31, 2014,

he was dispatched to the UW Hospital to "check on an individual that was involved in a motorcycle crash." (47:13-14.) Prior to arriving at the hospital, Deputy Schiro was aware that Mr. Reynolds was in a serious accident and possibly incoherent. (47:53.) Per information Deputy Schiro received from dispatch, a witness described Mr. Reynolds as conscious and breathing, but incoherent. (47:35.) Deputy Schiro was also informed Mr. Reynolds was unable to move his arm and leg, was in pain, and was screaming and yelling. (*Id.*)

At 9:50 p.m., Deputy Schiro arrived at the hospital and spoke with the treating nurse. (47:43.) He was told that Mr. Reynolds had been given a dose of fentanyl, a potent pain killer, and was heavily sedated. (*Id.*) He then spoke with EMT Terri Barton, who told him that she did not smell a strong odor of alcohol from Mr. Reynolds. (47:45.)

At 9:55 p.m., Deputy Schiro contacted Mr. Reynolds. (47:14.) Mr. Reynolds was restrained in a hospital bed wearing a cervical collar. (47:19-21.) Deputy Schiro observed blood upon Mr. Reynolds' face and injuries to Mr. Reynolds' right leg. (47:36-37.) Upon questioning, Mr. Reynolds told Deputy Schiro he was traveling from Pine Bluff to his residence in Ridgeway. (47:16.) Mr. Reynolds stated that at approximately 7:30 p.m. he was run off the road by an oncoming silver pickup truck. (*Id.*) This statement was consistent

with what Mr. Reynolds told EMS personnel at the scene of the accident. (47:46)

Deputy Schiro testified that when speaking with Mr. Reynolds he could smell alcohol on his breath. (47:17.) Mr. Reynolds did inform Deputy Schiro that he drank four beers that evening prior to the motorcycle accident, but was not asked specifically when he consumed those beers. (47:28.) Deputy Schiro also testified he observed bloodshot eyes and that Mr. Reynolds was "loud and boisterous." (47:17.) There was no testimony linking these observations to impairment.

Deputy Schiro testified he was trained in 2006 on the use of field sobriety tests by the Dane County Sheriff's Office Training Academy. (47:17-18.) Through his training, Deputy Schiro was familiarized in the use of standardized field sobriety testing including the horizontal gaze nystagmus (HGN) test, the walk-and-turn test, and the one-leg stand test. (*Id.)* As it relates the HGN test, Deputy Schiro testified he was aware of and trained in the existence of non-alcohol related nystagmus. (47:48.) This training included the effect that traumatic incidents had on causing nystagmus. (*Id.*) For example, he was aware that the motorcycle accident in this case could cause nystagmus. (*Id.*) To rule out non-alcohol related nystagmus, Deputy

Schiro was trained to test for equal pupil size, existence of resting nystagmus and equal tracking. (47:48-49).

Deputy Schiro administered standardized and non-standardized field sobriety tests to Mr. Reynolds. (47:18-27.) Deputy Schiro is trained to perform the standard field sobriety tests the same way each time. (47:44.) Furthermore, he is aware that changing one single element comprises the validity of the test results. (*Id.*) Notwithstanding that, Deputy Schiro administered the HGN test while Mr. Reynolds was lying down, a deviation from the standard format. (*Id.*)

When Deputy Schiro administered the HGN test to Mr. Reynolds, he testified he observed six out of six clues including lack of smooth pursuit, nystagmus at maximum deviation and nystagmus prior to onset of 45-degree angle. (47:21.) However, Deputy Schiro was unable to testify conclusively if he, prior to administering the HGN test to Mr. Reynolds, performed any pre-checks to ensure non-alcohol related nystagmus was not present. (47:54.) Such pre-checks would have included a check for resting nystagmus, equal pupil size and equal tracking. (*Id*.) Deputy Schiro acknowledged that performing these checks are needed to rule out the possibility of non-alcohol related nystagmus that could occur after traumatic incidents. (47:51.)

Deputy Schiro also administered the following non-standard field sobriety tests: vertical gaze nystagmus (VGN), finger dexterity, and alphabet. (47:23-28.) On the VGN test, Deputy Schiro testified he observed nystagmus. (*Id.*) There was no testimony he conducted any prechecks to ensure the nystagmus was not due to the accident in that test either. (*Id*). On the finger dexterity test, Mr. Reynolds completed the series of tests correctly, but touched the middle portion of his index finger with his thumb instead of the tip of his index finger on the second repetition. (47:25.) Lastly, on the alphabet test, Deputy Schiro instructed Mr. Reynolds to recite the letters B to K. (47:27.) Mr. Reynolds complied with the directions except that he did not include the letter "J." (*Id.*) Deputy Schiro did not testify as to how any specific observation on these non-standardized tests correspond to an individual's impairment.

After completing the standardized and non-standardized field sobriety tests, Deputy Schiro requested that Mr. Reynolds complete a PBT. (47:30.)

After hearing oral argument, the circuit court denied the Motion to Suppress filed by Mr. Reynolds. The court started its analysis by finding that a crash alone could be enough to believe someone was impaired; "What matters is that there was a crash which is a justifiable basis in the totality of circumstances for an officer to

believe that a person was operating that vehicle impaired." (47:69.) The court found it significant that Deputy Schiro could smell alcohol when walking into the hospital room. (*Id.*) The court also found Mr. Reynolds' bloodshot and glossy eyes were an indicator of impairment.[1] (*Id*.) There was no testimony indicating that bloodshot eyes are indicative of impairment, however. [2] The court inferred from Deputy Schiro's testimony that Schiro thought Mr. Reynolds' "loud and boisterous" behavior was beyond what would have been expected due to pain from his crash, but the court felt that being loud and boisterous should not be given much weight. (47:70.)

The court found that while there was nothing wrong with performing the HGN test in a non-standardized form, a reasonable officer would not have relied upon the HGN test without performing the pre-checks to rule out non-alcohol related nystagmus. (47:75-76.) The court gave the results of the non-standardized field sobriety tests "some weight," but ultimately found they were not even necessary. (47:76-77.)

[1] Deputy Schiro testified only that Mr. Reynold's eyes were bloodshot, not that they were glossy.

[2] A National Highway Traffic Safety Administration (NHTSA) study regarding the validity of various clues of intoxication excluded bloodshot eyes from consideration because of the subjectivity of that supposed clue and the many other causes for it besides the consumption of alcohol. Jack Stuster, U.S. Department of Transportation, NHTSA Final Report, *The Detection of DWI at BACS below 0.10*, DOT HS-808-654 (Sept. 1997) at 14 and E-10.

In coming to its decision, the court relied upon and gave significant weight to ***State v. Lange***, 2009 WI 49, 317 Wis. 2d 383, 766 N.W.2d 551. (47:71.) Citing ***Lange***, the court seemingly applied a bright line rule that an officer in this situation does not need to administer field sobriety tests, or any other test, prior to asking for a PBT - that an accident alone meets the probable cause standard. (47:72-73.) The court noted that it was unknown whether the accident happened the way Mr. Reynolds said it did or not. (47:68-69.)

The court concluded that use of a preliminary breath test is a reasonable approach for an officer "given the information he had and given the totality of the circumstances with [Mr. Reynolds] injured and being treated." (47:77)

On February 22, 2016, Mr. Reynolds appeared for a plea and sentencing in the Dane County Circuit Court before the Honorable Nicholas J. McNamara. (50:1.) He entered a plea of operating a motor vehicle while intoxicated as third offense, contrary to Wis. Stat. § 346.63(1)(a). (50:13.) He was sentenced to eight (8) months jail that was imposed and stayed. (50:26.) He was placed on probation for a period of two (2) years. (*Id.*) As a condition of probation, Mr. Reynolds was sentenced to serve fourteen (14) days in the Dane County Jail with work release privileges. (*Id.*) Mr. Reynolds was ordered to have an ignition interlock device on any vehicle that he

owns or operates commencing upon obtaining a valid license and continuing for 24-months. (*Id.*) Lastly, Mr. Reynolds was ordered to comply with all the conditions of the Dane County Veterans Court, or if that was unavailable, then comply with the Dane County Operating While Intoxicated Treatment Court. (50:27.)

Mr. Reynolds filed his notice of intent to pursue post-conviction relief that same day. (44.) Mr. Reynolds now appeals the denial of his Motion to Suppress. (45).

ARGUMENT

This Court should reverse the lower court's order denying the motion to suppress filed by Mr. Reynolds. The State failed to prove in the circuit court that Deputy Schiro had probable cause to lawfully request and administer the PBT as required by Wis. Stat. § 343.303. Therefore, the result of the PBT should have been suppressed. Without the PBT result, Deputy Schiro did not have probable cause to arrest Mr. Reynolds for a suspected OWI. Mr. Reynolds would not have entered a plea had the results of the PBT been suppressed because the arrest would have been found to be invalid, and all subsequent evidence would have been suppressed. Thus, there would have been insufficient evidence to convict.

Mr. Reynolds respectfully requests that this Court reverse the circuit court's denial of his motion to suppress and remand to the circuit court for further proceedings.

I. THE STATE FAILED TO PROVE THAT DEPUTY SCHIRO HAD PROBABLE CAUSE UNDER WIS. STAT. § 343.303 TO REQUEST MR. REYNOLDS SUBMIT TO A PBT.

Wis. Stat. § 343.303, in pertinent part, provides the following: "If [an officer] has probable cause to believe that [a] person is violating s. 346.63(1) . . . the officer, prior to an arrest, may request the person provide a sample of his or her breath . . ." Wis. Stat. §

343.303. "Probable cause is a determination made by 'looking at the totality of the circumstances' and is a 'flexible, common-sense measure of the plausibility of particular conclusions about human behavior.'" ***State v. Goss***, 338 Wis.2d 72, 806 N.W.2d 918, 927 (2011). In ***Cnty. of Jefferson v. Renz***, 231 Wis.2d 293, 603 N.W.2d 541 (1999), the Court clarified the applicable standard of probable cause to request a breath sample under Wis. Stat. § 343.303 as the following:

> "probable cause to believe" refers to a quantum of proof greater than the reasonable suspicion necessary to justify an investigative stop… but less than the level of proof required to establish probable cause for arrest.

Id. at 316. The evidence in this case is insufficient to meet this probable cause standard.

A. Standard of review.

Whether the requisite probable cause existed for Deputy Schiro to administer a PBT to Mr. Reynolds under Wis. Stat. § 343.303 is a matter of law this Court reviews *de novo*. *See* ***Renz*** at 301. It requires this Court to decide whether probable cause existed in the circumstances presented in this case. *Id.* at 316. In determining whether probable cause exists, the Court is to look at the totality of circumstances. ***State v Babbitt***, 188 Wis.2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994). This Court should uphold a trial court's findings of fact unless they are clearly erroneous. ***Renz*** at 317.

B. The circuit court incorrectly applied *State v. Lange*.

The lower court erroneously relied upon ***Lange*** when determining whether there was probable cause for Deputy Schiro to administer a PBT to Mr. Reynolds. (47:71-74.) The circuit court opined that "there's some similarities and some differences factually, both that would be more consistent with Lange but also different from Lange in a favorable way to the [Mr. Reynolds]". (47:72.) In ***Lange***, the Court determined that "the law enforcement officer at the time of the defendant's arrest, [had] probable cause under the circumstances . . . to believe that the defendant was guilty of operating a motor vehicle while under the influence of an intoxicant." *Id.* ¶ 4.

In ***Lange***, the law enforcement officers observed a car driving erratically at 3:00 a.m. on a Sunday morning. *Id.* ¶ 9. Following the vehicle, they observed that it crashed into a telephone pole. *Id* ¶ 10. The defendant was seriously injured when he was ejected from the vehicle; he was unconscious and rushed to a hospital. *Id* ¶ 11-14. The court held that the defendant's arrest for operating while intoxicated was supported by probable cause, notwithstanding that the officers were not able to obtain any evidence of intoxicants including, but not limited to, odors, admissions or containers. *Id* ¶ 40. The Court based its finding on the following: (1) The defendant's driving, (2) the officer's experience, (3) the time of night, (4) the defendant's prior

conviction, and (5) the inability for further investigation due to the defendant's injuries. Id. ¶ 23-34.

In this case, the circuit court's reliance on ***Lange*** is misplaced because of significant factual differences. The facts of the present case and those in ***Lange*** diverge enough that the principles in ***Lange*** are not applicable here, and to the extent ***Lange applies***, it supports Mr. Reynolds.

First, the driving is vastly different. The defendant's driving in ***Lange*** was described as "not merely erratic and unlawful; it was the sort of wildly dangerous driving that suggests the absence of a sober decision maker behind the wheel." ***Id***. ¶ 24. The officer in ***Lange*** observed the defendant's vehicle exceed the speed limit by more than 50 miles per hour, observed the car flee an officer, drive on the wrong side of the road, fail to navigate a turn, and ultimately crash into a utility pole. ***Lange*** ¶ 24-27.

While Mr. Reynolds was involved in an accident like the defendant in ***Lange***, the crashes were vastly different. Mr. Reynolds was not observed driving at all much less in an "extremely wild and dangerous" manner. Rather, Deputy Schiro was dispatched to "check on an individual that was involved in a motorcycle crash." (47:13-14.) The undisputed description of the events that lead to Mr. Reynolds' injuries was that he was run off the road by another vehicle. The only

information Deputy Schiro was aware of regarding this crash was that Mr. Reynolds gave a consistent account of being run off the road by another vehicle. Deputy Schiro had absolutely no reason to doubt the accuracy of Mr. Reynolds' statements, and the trial court did not find that Reynolds' account was inaccurate.

The ***Lange*** Court relied not only upon the defendant's crash, but also on the defendant's wildly dangerous driving prior to the crash, which was characteristic of an intoxicated driver. ***Id***. ¶ 24. Here, the circuit court mistakenly applied ***Lange*** to mean that any crash could lead to probable cause to request a PBT. Under this theory, a person stopped at a stoplight that is rear ended could be required to submit to a PBT simply because he or she was involved in a crash. Without any information about poor driving, it was inappropriate for the court to infer any suspicion upon Mr. Reynolds simply because he was involved in an accident.

In ***Lange***, the time of night, a Saturday night at bar time, was a factor in the Court's evaluation. "It is a matter of common knowledge that people tend to drink during the weekend…" ***Id***. ¶ 32, *see also* ***State v. Post***, 2007 WI 60, ¶ 36, 301 Wis.2d 1, 733 N.W.2d 634 (poor driving around "bar time" lends to the belief that operator is driving while intoxicated). The facts presented here are much different. Mr. Reynolds was involved in a crash at 7:30 p.m., not a time frequently

associated with intoxicated drivers. A person is less likely to be intoxicated in the early evening than he is at bar time on a weekend.

In ***Lange***, the Court also found it important in the probable cause assessment that the officer knew the defendant had a prior conviction for OWI. ***Id.*** ¶ 33. Here, unlike the officer in ***Lange***, Deputy Schiro did not testify he was aware Mr. Reynolds had a prior conviction for OWI before the request for a PBT. This is yet another factor that distinguishes the facts here from those in ***Lange***.

There may have been some passing similarities between this case and the facts in ***Lange***, but the differences are both striking and in Mr. Reynolds' favor. Mr. Reynolds was not seen driving erratically, there was no evidence Mr. Reynolds was responsible for the crash he was involved in, the time of day does not lead a reasonable officer to presume intoxication, and Deputy Schiro was not aware of any prior OWI convictions. These are not insignificant differences; they cut to the very core of the reason the Court in ***Lange*** found probable cause. Due to the numerous factual dissimilarities, ***Lange*** should not be relied upon.

In attempting to tie this case to ***Lange***, the lower court created a rule whereby the mere existence of an accident is enough to create probable cause. This Court should reject such a rule as it goes against the totality of circumstances assessment a court must rely upon.

C. Under the totality of circumstance, Deputy Schiro did not have probable cause to request a PBT.

A law enforcement officer may request a PBT if there is probable cause to believe that the person has committed an OWI. ***Renz*** at 311. The Court held the following:

> '…[P]robable cause to believe' refers to the quantum of proof greater than the reasonable suspicion necessary to justify an investigative stop… but less than the level of proof required to establish probable cause for arrest.

Id. at 316.

In this case, there was not probable cause under Wis. Stat. § 343.303 for Deputy Schiro to administer a PBT. First, the lower court, relying upon ***Lange***, gave undue weight to the existence of the motorcycle accident. The circuit court determined, without reliance upon any evidence of bad driving, "that there was a crash which is a justifiable basis in the totality of the circumstances for an officer to believe that a person was operating that vehicle impaired." (47:69.) Under this standard, law enforcement officers would be justified to assume every vehicle accident is the result of an impaired driver. An accident alone, as the circuit court suggests, does not lead to probable cause the driver is impaired.

Second, the lower court relied upon the statements made by Deputy Schiro regarding the smell of intoxicants without

consideration of the statements made by EMT Terri Barton. The court relied upon Deputy Schiro's testimony that he smelled intoxicants in the hospital room where Mr. Reynolds was being treated. (47:69.) However, Deputy Schiro testified EMT Terri Barton "did not observe a strong odor of alcohol on Mr. Reynolds." (47:45.) Instead of weighing the conflicting observations, the circuit court relied exclusively on Deputy Schiro's observation. The lower court should not have given Deputy Schiro's observations the significant weight it did, given the conflicting observations.

Third, the lower court inappropriately made inferences based upon Deputy Schiro's testimony that Mr. Reynolds was "at times loud and boisterous." (47:17.)

> I'm inferring… from the officer's testimony that loud and boisterous means that it was the officer's perception that the defendant was not just in pain, but that his voice and boisterousness was beyond what he would have expected…

(47:70.) The lower court should not have given this any weight in the probable cause determination and the court should not have drawn this inference from the testimony provided by Deputy Schiro. The extent to which the court considered Deputy Schiro to have felt this way was clearly erroneous, as Deputy Schiro did not testify that any loudness and boisterousness were beyond what a person with serious injuries would show. While the circuit court gave little weight to this factor,

("Again, I don't think that that should be given too much weight." (*Id*.)), it should not have been given any weight. Deputy Schiro did not testify this loud and boisterous behavior was due to intoxication rather than pain. The record is void of any evidence to support the court's conclusion Mr. Reynolds' actions were a result of intoxication rather than pain. Therefore, the court should not have considered Mr. Reynolds' behavior to be evidence of intoxication in its analysis.

Finally, the circuit court should not have relied upon observations made of Mr. Reynolds in general and during the field sobriety tests Deputy Schiro administered. The court was "deeply troubled" by the clear and complete lack of evidence that Deputy Schiro performed the basic pre-checks to rule out non-alcohol related nystagmus. (47:75.) The court rightfully did not rely upon the HGN test, finding a reasonable officer would not have relied upon them without completing the pre-checks. (47:76.)

However, the court found observations on the finger dexterity and alphabet tests should be given some weight. (47:76-77.) Prior to administering these tests, Deputy Schiro was aware that Mr. Reynolds had been administered a powerful, potent pain killer and was sedated. (47:43.) To administer a PBT, Deputy Schiro had to have probable cause Mr. Reynolds was impaired *at the time of driving*. Any observations during field sobriety tests were irrelevant to this probable

cause determination because Deputy Schiro was aware Mr. Reynolds had been administered fentanyl *after driving*. Mr. Reynolds was likely to show signs of impairment during his contact with Deputy Schiro because Mr. Reynolds was impaired by a medically administered narcotic. Observations during the field sobriety tests offer no evidence as to Mr. Reynolds' condition at the time of driving prior to receiving a dose of fentanyl. No reasonable officer, being aware that Mr. Reynolds was seriously injured and medically sedated, would rely upon field sobriety tests.

What the State is left to rely upon for probable cause is an accident, Mr. Reynolds' admission of consuming four beers over an undisclosed period, and the odor of an intoxicant. Case law supports the position that this is not enough to show probable cause.

In ***State v. Seibel***, 163 Wis.2d 164, 471 N.W.2d 226 (1991), the Supreme Court addressed the following circumstances: a motorcyclist (eventually to become the defendant) crossed the center-line on a curve, striking an oncoming car head-on in the opposing lane of traffic. ***Id***. at 167. The cyclist was conveyed to the hospital, and the investigating police chief thought that he smelled intoxicants on the motorcyclist's breath, and did smell intoxicants upon the fellow bikers who had been traveling with the defendant. ***Id***. at 168. Also, the cyclist was belligerent at the hospital; conduct which the Supreme

Court characterized as exhibiting "a lack of contact with reality often associated with excessive drinking." ***Id***. at 182. The ***Seibel*** court held that these facts constituted a reasonable suspicion of operating while intoxicated, though not probable cause.

In ***State v. Swanson***, 164 Wis.2d 437, 475 N.W.2d 148 (1991), abrogated on other grounds by ***State v. Sykes***, 279 Wis. 2d 742, 695 N.W. 2d 277 (2005), the defendant, at about bar time, drove his vehicle onto the sidewalk, nearly hitting at least one pedestrian. When contacted by police, he exhibited the odor of intoxicants. ***Id***. at 442. The Supreme Court considered these facts to constitute only reasonable suspicion of operating under the influence or reckless endangerment, but it held they were not sufficient to constitute probable cause for either offense. ***Id***. at 453.

In both ***Seibel*** and ***Swanson***, thus, the Court made plain by example that more than merely an odor of intoxicants and an accident exhibiting bad driving by the defendant was required to constitute probable cause. No case has held that probable cause to request a PBT exists when a person on a motorcycle crashed because he was run off the road by a truck and had the odor of intoxicants.

Based upon the totality of the circumstances, Deputy Schiro did not have the probable cause necessary to request Mr. Reynolds perform a PBT.

CONCLUSION

This Court should reverse the circuit court's orders denying Mr. Reynolds' motion to suppress. The court erroneously relied upon ***Lange*** and determined that a crash alone is enough justification to request a PBT. This Court should not create a rule that allows for probable cause to be determined simply by an accident and odor of an intoxicant. In this case, there is not sufficient probable cause based upon the totality of the circumstances for Deputy Schiro to request Mr. Reynolds perform a PBT.

Mr. Reynolds therefore respectfully requests that this Court reverse the circuit court's denial of his motion to suppress and remand to the circuit court for further proceedings.

Dated at Madison, Wisconsin, November 9, 2016.

Respectfully submitted,

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Defendant-Appellant

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CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced using the following font:

Proportional serif font: Min. printing resolution of 200 dots per inch, 13-point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 5115 words.

I further certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated: November 9, 2016.

Signed,

BY: _____
TRACEY A. WOOD
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CERTIFICATION

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 s. 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 first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notion that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: November 9, 2016.

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CERTIFICATION

I certify that this appendix conforms to the rules contained in s. 809.19(13) for an appendix, and the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

Dated: November 9, 2016.

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