STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs. Appeal No.: 16 AP 490 CR

JOHN D. MYER,

Defendant-Appellant.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED ON
NOVEMBER 30, 2015 IN THE CIRCUIT COURT
FOR DANE COUNTY, BRANCH II,
THE HON. JOSANN M. REYNOLDS PRESIDING.

Respectfully submitted,

JOHN D. MYER,
Defendant-Appellant

TRACEY WOOD & ASSOCIATES
Attorneys for the Defendant
One South Pinckney Street, Suite 950
Madison, Wisconsin 53703
(608) 661-6300

BY: TRACEY A. WOOD
State Bar No. 1020766

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STATEMENT OF THE ISSUES

I. WAS MYER'S SEIZURE JUSTIFIED BY THE COMMUNITY CARETAKER FUNCTION?

TRIAL COURT ANSWERED: YES

STATEMENT ON PUBLICATION

Defendant-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

This is an appeal from the denial of a motion to suppress on March 14, 2015 (R. 14; R. 31) and the denial of a motion for reconsideration on August 17, 2015. R. 19, R. 32.

The court heard John Myer's motion to suppress on March 4, 2015 without taking testimony, deciding the motion solely on factual representations incorporated in defendant's motion. In lieu of evidence, the parties stipulated to the facts in the defense motion and further stipulated that the time of the contact between Mr. Myer and the officer was 2:37 a.m. R. 31, p. 7. At the August 17, 2015 hearing on defendant's motion for reconsideration, the State called Officer Keith Wilke of the Village of Maple Bluff Police Department to expand on the facts in the defense motion and to explain his subjective motivation in seizing Mr. Myer. R. 32, p. 3-13.

The relevant facts upon which the trial court made its decision from the defendant's motion were that Officer Wilke observed a vehicle in a closed business parking lot. R. 14, p. 2; R. 31. The headlights were activated, and Mr. Myer appeared to be asleep in the front seat of the vehicle. Id. Officer Wilke then opened the driver's side door, and Mr. Myer woke up "as he had been leaning on the door and fell over as it opened." R. 14, p. 2; R. 31. Mr. Myer was

safely parked without hazard lights, and no signs prohibited people from using that parking lot after hours. Id. The motion further alleged that the officer "could not have been motivated by a *desire* to help because he had no reason to believe Mr. Myer *needed* help." R. 14, pp. 2-3; R. 31.

The motion further alleged the officer would testify that he simultaneously knocked on and yanked open the car door, nearly causing Mr. Myer to fall out of his vehicle, as his sleeping body's weight was resting on the driver's door. R. 14, p. 3; R. 31. The motion further alleged that "officer Wilke endangered Mr. Myer's bodily safety." Id. The motion alleged that the officer knocked but did not await a response before opening the door. Id.

The State argued: "I think the Court can find based upon the facts alleged by the defense and those facts alone, the officer was acting within a community caretaker role." R. 31, p. 3. The court, before acting on stipulated facts, noted that the parties could agree to the "additional fact that this happened between 2:30 and 3 a.m. R. 31, p. 6. Both parties then agreed to proceed upon the above noted stipulated facts. R. 31, pp. 6-7.

The trial court made a preliminary finding that at the point the officer:

> made contact with this defendant by knocking on his window and opening his door as is set forth in your own motion, based on the time and circumstances, I believe the officer had every right and obligation and reasonable suspicion in a caretaker function to make contact with this driver.

R. 31, p. 10.

The court later clarified its finding and stated "the officer made that contact and opened his door acting in his capacity as community caretaker." R. 31, p. 12.

The defense filed a Motion and Brief in Support of Reconsideration. R. 19. That filing noted the above facts and argued that the trial court's finding that the seizure was justified by the community caretaker rationale was incorrect because the officer had no true desire to help Mr. Myer. Additionally, the officer chose the most intrusive means available to contact Mr. Myer—opening the driver's door and causing him to fall. R. 19, p. 2. The court then held an evidentiary hearing as to the officer's basis for contacting Mr. Myer. R. 32.

Officer Wilke testified that he had been a firefighter and paramedic for 30 years, R. 32, p. 4, and a police officer for 15 or 16 years. R. 32, p. 3. At about 2:30 a.m. on October 20, 2014, R. 32, p. 6, while on patrol in his squad car, Officer Wilke saw a car stopped in the parking lot of a closed business. R. 32, p. 4, 5. The car's

engine was running and its headlights were on. R. 32, p. 5. Officer Wilke drove past, performed a U-turn and headed back toward the parked car. R. 32, p. 5. As he approached, Officer Wilke saw a white male, later identified as Mr. Myer, in the driver's seat. R. 32, pp. 4, 5. Mr. Myer's head was tilted back, R. 32, p. 5 and his mouth was open. R. 32, pp. 8, 17.

Officer Wilke exited his squad car, walked up to Myer's car door and knocked on the window. He did not wait for Myer to respond to the knock. R. 32, p.9 – 10. Instead, Wilke immediately opened the door:

> DEFENSE COUNSEL: And you stated that you knocked on the window and immediately opened the car door, correct?
>
> OFFICER WILKE: Yes. All in one motion I knocked and then went for the door handle, correct.

R. 32, p. 9. Upon opening Myer's door, Officer Wilke told Mr. Myer to turn off the ignition. There was no testimony that Mr. Myer failed to do so. R. 32, p. 7.

In the course of his experiences as a paramedic, Officer Wilke had responded to numerous incidents of alcohol or narcotic overdoses. R. 32, p. 6. He said:

> Well, with the way his head was back, I've run numerous incidents of alcohol and/or narcotic overdoses where many of them were from

> subjects that were shooting up in vehicles or intoxicated in vehicles.

R. 32, p. 6. Officer Wilke testified that a narcotic overdose can suppress the breathing reflex to the point of apnea, hypoxia or even respiratory arrest. R. 32, p. 6. Respiratory arrest can cause permanent injury or death within a matter of minutes. R. 32, p. 6. He said he wanted to see if this was an overdose or if Myer was sleeping. R. 32, p. 6. This contradicts the original stipulated fact that Mr. Myer appeared to be sleeping. R. 14, R. 31.

Prior to opening Myer's door, Wilke saw nothing that was inconsistent with the possibility that Myer was simply sleeping. R. 32, pp. 6 – 7, 8, 11. The officer admitted he did not knock on the window and wait for a response. R. 32, p. 11. He said "I could have stood there and waited, yes." In response to the question "And even a short period of waiting would have told you whether that person responded to your knock or did not respond to your knock?", he said "Possibly."

He admitted that people overdose at all times of the day. People also sleep in their vehicles at all times of the day. Officer Wilke said "I had no idea at that time what the status of the subject was." R. 32, p. 12.

The State then argued again this was a community caretaker exception, and the trial court agreed, denying the suppression motion on that ground. R. 32, p. 17-18. Mr. Myer entered a guilty plea and was sentenced on November 30, 2015. R. 33. A Notice of Intent to Pursue Post Conviction Relief was filed on November 30, 2016. R. 28. Myer now appeals to this Court. R. 29.

Additional facts are set forth as necessary in the following argument.

ARGUMENT

I. OFFICER WILKE'S SEIZURE OF MYER WAS NOT JUSTIFIED UNDER THE COMMUNITY CARETAKER EXCEPTION.

A. Standard of Review.

When reviewing the denial of a motion to suppress evidence, this Court should uphold the circuit court's findings of fact unless clearly erroneous." **State v. Maddix**, 2013 WI App 64, ¶ 12, 348 Wis. 2d 179, 831 N.W.2d 778 (citations omitted). "[T]he application of constitutional principles to facts is a question of law that we review de novo." **Id.** (citations omitted). Accordingly, this Court should "independently review whether an officer's community caretaker function satisfies the requirements of the Fourth Amendment and Article I, Section 11 of the federal and state Constitutions." **Id.** (citations omitted).

B. The Parties and Court Agreed this was a Seizure.

The trial court's decision assumed a seizure existed and determined the seizure was justified on community caretaker grounds. The State argued, at both the original motion hearing and at the hearing on the motion on reconsideration, that the community caretaker rationale justified the seizure; but appellant felt it important

to note those cases establishing that Mr. Myer was seized at the outset.

Officer Wilke walked up to Myer's car door and immediately knocked on the window. R. 32, p. 7, 9. He did not wait for Myer to respond to the knock. R. 32, p. 9 – 10. Instead, as Wilke knocked on the window, he simultaneously opened the door, R. 32, p. 9, and told Myer to turn off the ignition. R. 32, p. 7. Myer presumably did so, as there was no testimony indicating he did not comply. R. 32, p. 7. A seizure occurs when an officer, by means of physical force or show of authority in some way restrains the liberty of a citizen. ***U.S. v. Mendenhall***, 446 U.S. 544, 552 (1980). When he opened Myer's door and told him to turn off the ignition, Officer Wilke intended to restrain Myer:

> OFFICER WILKE: As far as my actions towards the vehicle occupant, I told him to turn the vehicle off because if there was an impairment issue, *I didn't want him moving the vehicle* and striking myself, my squad or another object.

R: 32 p. 7 (Emphasis added).

> DEFENSE COUNSEL: Why did you not wait for a response?
>
> OFFICER WILKE: Because I didn't know at that time whether the door was locked, unlocked, *and I tried to get control of the vehicle and because I want that vehicle shut off.*

R. 32, p. 9. (Emphasis added).

In ***Cty. of Grant v. Vogt***, 356 Wis. 2d 343, 850 N.W.2d 253 (2014), our Supreme Court held that no seizure occurred where an officer knocked on a car window and motioned to the occupant to roll down the window. The court noted that while "this is a close case," ***Id.*** at ¶54, the officer's actions did not "constitute a show of authority sufficient to give rise to the belief in a reasonable person that the person is not free to leave." ***Id.*** Before reaching this conclusion, the ***Vogt*** court carefully reviewed decisions from other jurisdictions which examined whether an officer's knock on a vehicle window constituted a seizure. ***Id.*** at ¶¶ 33–38. No Wisconsin case addresses whether a seizure occurs when an officer opens the door of an occupied car and causes a person to fall because of that opening of the door, but that is clearly a much more intrusive police action than what our Court reviewed in ***Vogt, Id.*** Thus, no party argued that this was not a seizure; and the trial court assumed it was a seizure. As in ***Vogt***, a review of decisions from other jurisdictions will be helpful.

Two jurisdictions have held that a seizure occurs when an officer opens the door of an occupied car. In ***Com. v. Stephens***, 451 Mass. 370, 885 N.E.2d 785 (Mass.2008), the vehicle occupant was awake. The court held that the occupant "was stopped 'at the point

where the police officers approached the vehicle *and* opened the doors.'" ***Id.*** at 383 (Emphasis added by the appellate court). In ***State v. Icard***, 363 N.C. 303, 677 S.E.2d 822 (N.C.2009), a vehicle passenger was awake but failed to respond to a knock on the window. The officer's opening of a door was one factor contributing to the appellate court's conclusion that a seizure occurred.

Unlike ***Vogt***, this is not a "close case." ***Vogt, supra*** at ¶3. It is beyond reasonable dispute that when Officer Wilke opened Myer's door and directed him to turn off the ignition, Officer Wilke restrained Mr. Myer through a show of authority. *See* ***Mendenhall supra*** at 552.

Because Officer Wilke opened Myer's door with the intention of preventing Myer from leaving, as in ***Stephens*** and ***Icard, supra***, the seizure in this case occurred at the moment Wilke opened Myer's door. Furthermore, Wilke's instruction to turn off the ignition was a "show of authority" restraining Myer and was, therefore, a seizure within the meaning of the Fourth Amendment. ***Mendenhall***, 446 U.S. 544 at 552.

C. Under the Totality of Circumstances, this Seizure was not Justified by a Community Caretaker Theory.

In ***State v. Kramer***, 315 Wis. 2d 414, 759 N.W.2d 598 (2009), our Supreme Court carefully examined application of the community caretaker exception in the setting of a traffic stop. Kramer's vehicle was legally parked at the side of a highway with its hazard lights activated. Todd Wagner, a Sheriff's Deputy, passed Kramer's vehicle, then executed a U-turn, activated his police cruiser's emergency overhead lights, and stopped behind Kramer's vehicle. ***Id.*** at ¶¶ 4-7. At a suppression hearing, Wagner testified that he stopped to ascertain whether there was a driver in the car and to offer assistance if needed. Wagner further testified that he activated his emergency lights to ensure that passing traffic would be alert to the stopped vehicles. Wagner approached Kramer's driver-side front window and engaged him in conversation. In the course of that conversation, Wagner discerned that Kramer had been drinking and ultimately arrested him for operating a motor vehicle while under the influence of an intoxicant. ***Id.***

The parties briefed two issues: 1) whether Kramer was seized without either probable cause or reasonable suspicion within the meaning of the Fourth Amendment of the United States Constitution

and Article I, Section 11 of the Wisconsin Constitution, when Wagner activated his police cruiser's emergency overhead lights and pulled up behind Kramer's vehicle; and (2) if such a seizure did occur, whether Wagner's conduct fell within the scope of his community caretaker function. ***Id.*** at ¶ 2. The court elected not to resolve the first issue and instead assumed, without deciding, that a seizure occurred. ***Id.*** at ¶3. The Court held that the officer's conduct fell within the scope of his community caretaker function. ***Id.*** The court wrote:

> If Wagner's conduct constituted a seizure made without probable cause or reasonable suspicion, then whether that conduct violated the Fourth Amendment of the United States Constitution or Article I, Section 11 of the Wisconsin Constitution depends on whether Wagner's interaction with Kramer as a community caretaker was reasonable. *Kelsey C.R.*, 243 Wis.2d 422, ¶ 34, 626 N.W.2d 777. The State bears the burden of proving that the officer's conduct fell within the scope of a reasonable community caretaker function. *State v. Ziedonis*, 2005 WI App 249, ¶ 15, 287 Wis.2d 831, 707 N.W.2d 565.

Id. at ¶ 17. The community caretaker analysis is the same under both the United States and Wisconsin Constitutions. ***State v. Matalonis***, 366 Wis. 2d 443, 875 N.W.2d 567 (2016). In ***Kramer***, our supreme court adopted a three-part test first articulated by the Court of Appeals in ***State v. Anderson***, 142 Wis. 2d 162, 417 N.W.2d 411 (Ct. App. 1987) (***Anderson I***):

> [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.

Kramer at ¶21 quoting ***Anderson I***, 142 Wis. 2d at 169.

The first issue - whether a seizure occurred – is not an issue in this case, as the parties and trial court assumed a seizure occurred. When an officer, without invitation or warning, suddenly opens a car door and directs an occupant to turn off the ignition, it is beyond reasonable dispute that a seizure has occurred.

Analysis of the second issue - whether Officer Wilke's conduct was in pursuit of a bona fide community caretaker activity - is a bit more difficult. As the trial court observed, community caretaker and investigative motives may co-exist in the framework of a legitimate community caretaker activity. R. 32, p. 18, *accord*, ***Kramer*** at ¶¶30-33, 39; *see also* ***State v. Matalonis***, 366 Wis. 2d 443, 875 N.W.2d 567 (2016), petition for writ of certiorari pending in United States Supreme Court. The question is whether the officer's actions were "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. ***State v. Gracia,*** 345 Wis. 2d 488, ¶16, 826 N.W.2d

87 (2013), quoting ***Cady V. Dombrowski***, 413 U.S. 433 (1973). As the Supreme Court noted in ***Gracia***, "Although it is only one factor to be taken into consideration in judging the objective beliefs of police, the subjective intent of the officers is relevant. ***Gracia, supra*** at 504. Had Wilke been motivated by a true concern of an overdose, his knock on Myer's window would be consistent with legitimate community caretaker activity. However, the parties stipulated Wilke believed Myer to be sleeping in the first hearing. It was only in the second hearing that Officer Wilke speculated Myer could have overdosed by "shooting up" in the car. R. 14, p. 2; R. 32, p. 6. Using that logic, anytime someone is asleep anywhere, an officer can conduct a warrantless seizure because anyone sleeping may have shot up narcotics. A community caretaker finding cannot be premised on mere speculation.

Furthermore, the fact the officer yanked open the door, causing the same person he was supposedly concerned about to fall partially out of the car, belies any true desire to help. This was not a situation with a car being parked on the side of the road with its hazards on like in ***Kramer, Id.***, it was a man sleeping in a legally parked car.

Analysis of the final issue - whether the public need and interest outweigh the intrusion on the privacy of the individual – clearly establishes that this seizure was unlawful. That is because it is the central issue in this case and because it involves a balancing test which considers four factors:

> (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.

Kramer at ¶ 41. The stronger the public need and the more minimal the intrusion on an individual's liberty, the more likely the police conduct will be held to be reasonable. ***Id.***

With respect to the first factor, the ***Kramer*** court noted that the public has a substantial interest in ensuring that police assist motorists who may be stranded on the side of a highway, especially after dark and outside of an urban area when help is not close at hand. ***Id.*** at ¶42. In this case, by contrast, there was nothing to suggest to Officer Wilke that Myer was stranded. Again by contrast with the facts of ***Kramer***, Myer's hazard lights were not flashing. The level of public interest was accordingly lower, essentially the same level of public interest demonstrated by the circumstances in

Vogt, supra. As in ***Vogt***, Myer was parked in a parking lot with the motor running during the early morning hours. As in ***Vogt***, this level of public interest certainly warranted Wilke's approach to Myer's car and, as in ***Vogt***, a mere tap on the window to determine if Myer was indeed sleeping as the officer first noted would not have been unreasonable. (R. 14, p. 3). It was only at the second hearing that the officer added in the possibility Myer could have overdosed as a further justification. That was the first time such a possibility was mentioned (R. 32).

But the level of public interest did not warrant Wilke's immediate seizure of Myer and his vehicle. The State sought to suggest a high level of exigency, but this effort foundered on Officer Wilke's candid admission that, for all he knew, Myer was just sleeping:

> THE STATE: What did you do once you determined this was a potential life and death situation?
>
> OFFICER WILKE: Well, the only way for me to determine whether this is an overdose of a substance or if he's just sleeping is to make actual physical contact with him to see what his physical and mental state is.

R. 32, pp. 6 - 7. Everything Officer Wilke saw prior to opening the door was entirely consistent with Myer simply sleeping. R. 32, pp. 6 – 7, 8, 11. Wilke's recitation of the mere possibilities of apnea,

hypoxia and respiratory arrest, R. 32, p. 6, suggested a level of drama and exigency that did not exist. Even the officer admitted he had no idea of Myer's status in the second hearing. R. 32, p. 12. He was completely speculating as to Myer's status. Furthermore, the parties stipulated to the facts of the motion, and one of those facts was that Myer appeared to be sleeping. R. 31, R. 12. Opening a car door and causing a sleeping person to fall out of the car is not justified under these circumstances. Thus, the first factor of the ***Kramer*** balancing test favors the conclusion that Wilke's community caretaking actions were not reasonable.

The second factor of the balancing test asks the Court to consider the attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed. In this case, time and location are again similar to the circumstances in ***Vogt***. But the degree of overt authority and force displayed by Officer Wilke - opening the door, causing Myer to fall, and directing Myer to turn off the ignition - far surpass the window-knock-and-inquiry settings of ***Kramer*** and ***Vogt*** and the cases from other jurisdictions reviewed in ***Vogt***: ***State v. Randle***, 152 Idaho 860, 276 P.3d 732 (Idaho.App.2012), ***State v. Steffes***, 791 N.W.2d 633 (N.D.2010) and ***State v. Bryant***, 161 S.W.3d 758 (Tex.App.2005).

Because ***Vogt*** was "a close case," defendant respectfully suggests that *a fortiori* the present case cannot be a close one. In the circumstances presented to Officer Wilke, a knock and inquiry and appropriate time to allow for a response would have been reasonable; opening Myer's door, causing him to fall over as the door was opened since he was leaning on it, and commanding him to turn off the ignition, were not.

The third factor asks whether an automobile is involved. This was not a moving but a parked car in an empty parking lot, so no member of the public was endangered. Moreover, the ***Vogt*** court appropriately directed the attention of lower courts in this narrow and oft-recurring set of circumstances to helpful decisions from other jurisdictions. ***Id***. at ¶33-38. No case in Wisconsin or any other jurisdiction attempts to justify an intrusion like Officer Wilke's on the basis of the community caretaker exception. Addressing this factor, the ***Kramer*** court wrote:

> Under the third factor, we consider whether the involvement of an automobile has an effect on whether the community caretaker function was reasonably performed. Here, the officer simply walked up to Kramer's driver-side window and asked if he needed assistance. As we explained in discussing the second factor, *that was the only reasonable approach that Wagner could take in performing this community caretaker function.*

Kramer at ¶44. (Emphasis added.) Knocking on Myer's door and asking if he needed assistance would have been a reasonable approach that Officer Wilke could have taken in performing his community caretaker function. He, however, did not just knock and wait to see if Myer woke up, Wilke knocked and opened the door, causing Myer to fall out all at the same time.

The fourth factor of the balancing test requires our courts to consider the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished. ***Vogt*** held that in circumstances similar to ours - an officer's approach and knock on the window of a stopped vehicle - there was no seizure and therefore no invasion of Fourth Amendment rights. That option was available to Officer Wilke and entirely feasible. He even admitted he did not need to yank open the door of the vehicle. After he knocked he said "I could have stood there and waited, yes." R. 32, p. 11. Given that all available evidence suggested Myer was merely sleeping, awakened promptly in response to Wilke opening the door, and then presumably obediently turned off the ignition since the officer did not testify to the contrary, there is every reason to conclude that a knock on Myer's window would have been sufficient to awaken him. A simple knock would have allowed Officer Wilke to pursue his

community caretaker inquiry without an intrusion on Myer's Fourth Amendment rights.

Because the seizure of Mr. Myer was not justified under the community caretaker theory, the trial court erred in denying the motion to suppress. Mr. Myer would not have entered a plea of guilty to the charge had his motion been granted; and the case would have been dismissed for lack of evidence. Thus, he respectfully requests this Court reverse.

CONCLUSION

For the reasons stated in this Brief, the judgment of the trial court should be reversed, and this action be remanded to that court, with directions that the court grant defendant-appellant's motion to suppress.

Dated at Madison, Wisconsin, August 18, 2016.

Respectfully submitted,

JOHN D. MYER, Defendant

TRACEY WOOD & ASSOCIATES
Attorneys for the Defendant
One South Pinckney Street, Suite 950
Madison, Wisconsin 53703
(608) 661-6300

BY: _____
TRACEY A. WOOD
State Bar No. 1020766

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 5,124 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: August 18, 2016.

Signed,

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State Bar No. 1020766

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; and
(3) 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: August 18, 2016.

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TRACEY A. WOOD
State Bar No. 1020766

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: August 18, 2016.

Signed,

BY: _____
TRACEY A. WOOD
State Bar No. 1020766

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