STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal Case No. 2016AP000765-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

GEORGE W. MALLUM, III,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND SENTENCE ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MEL FLANAGAN, PRESIDING AND FROM A POSTCONVICTION DECISION AND ORDER ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MICHELLE ACKERMAN HAVAS, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

John T. Chisholm
District Attorney
Milwaukee County

Kristin M. Schrank
Assistant District Attorney
State Bar No. 1073997

Attorneys for Plaintiff-Respondent

District Attorney's Office
821 West State Street, Room 405
Milwaukee, WI 53233-1485
(414) 278-4646

TABLE OF CONTENTS

Page

ISSUES PRESENTED 1

STATEMENT ON ORAL ARGUMENT AND PUBLICATION 2

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 5

ARGUMENT 5

I. Mr. Mallum's conviction on Count 3 of the amended criminal complaint should not be vacated 5

a. Mr. Mallum's conviction on count 3 of the amended criminal complaint should not be vacated based upon multiplicity grounds 6

b. Mr. Mallum's conviction on Count 3 of the amended criminal complaint should not be vacated based upon the court's failure to instruct the jury on the issue of whether the crime was domestic violence 6

II. The conditions imposed on Mr. Mallum by the trial court were appropriate 8

III. The trial court appropriately ordered Mr. Mallum to pay the domestic abuse surcharge 10

IV. The court should not find that 18 U.S.C. § 922 is facially unconstitutional or unconstitutional as applied in this case 10

V. The court should not find that Wisconsin Statute Section 973.055 is unconstitutional as applied in this case 10

CONCLUSION 11

TABLE OF AUTHORITIES

CASES CITED

Page

Evans v. Wis. DOJ, 2014 WI App 31,
353 Wis. 2d 289, 844 N.W.2d 403 9

Harrell v. State,
88 Wis. 2d 546, 277 N.W.2d 462 (Ct. App. 1979).....6

Pension Management, Inc. v. DuRose,
58 Wis. 2d 122, 205 N.W.2d 553 (1973).....10

Prue v. State,
63 Wis. 2d 109, 216 N.W.2d 43 (1974).....8

State v. Anderson,
219 Wis. 2d 739, 580 N.W.2d 329 (1998).....3

State v. Cole, 2003 WI 112,
264 Wis. 2d 520, 665 N.W.2d 328 11

State v. Galvan, 2007 WI App 173,
304 Wis. 2d 466, 736 N.W.2d 890 11

State v. Grayson,
172 Wis. 2d 156, 493 N.W.2d 23 (1992).....5

State v. Janssen,
219 Wis. 2d 362, 580 N.W.2d 260 (1998).....5, 11

State v. McCleary,
49 Wis. 2d 263,182 N.W.2d 512 (1971).....5

State v. Oakley, 2001 WI 103,
245 Wis. 2d 447, 629 N.W.2d 200 8

State v. Rabe,
96 Wis. 2d 48, 291 N.W.2d 809 (1980).....6

State v. Sauceda,
168 Wis. 2d 486, 485 N.W.2d 1 (1992).....5

State v. Tappa,
127 Wis. 2d 155, 378 N.W.2d 883 (1985).....6

U.S. v. Hayes, 555 U.S. 415, 420-21 (2009).....9

State v. Verhagen,
198 Wis. 2d 177, 542 N.W.2d 189 (Ct. App. 1995).....10

WISCONSIN STATUTES CITED

§ 939.63.....7

§ 968.075.....7

§ 973.055.....2, 7, 8, 10, 11, 12

§ 973.09.....8

§ 973.15.....8

OTHER AUTHORITIES CITED

18 U.S.C. § 922.....2, 9, 10

STATE OF WISCONSIN

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

DISTRICT I

Appeal Case No. 2016AP000765-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

GEORGE W. MALLUM, III,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND SENTENCE ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MEL FLANAGAN, PRESIDING AND FROM A POSTCONVICTION DECISION AND ORDER ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE MICHELLE ACKERMAN HAVAS, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

ISSUES PRESENTED

I. Should the conviction on Count 3 of the amended criminal complaint be vacated:

   a. Based upon the fact that it is multiplicitous of Count 2?

   Trial Court Implicitly Answered: No

b. Based upon the fact that there was no verdict of guilt for domestic abuse?

Trial Court Answered: No

II. Was it error for the court to add the condition to Mr. Mallum's sentence that he could not have a gun for the rest of his life?

Trial Court Implicitly Answered: No

III. Was it error for the court to order Mr. Mallum to pay the domestic abuse surcharge?

Trial Court Implicitly Answered: No

IV. Is 18 U.S.C. § 922 facially unconstitutional or unconstitutional as applied to Mr. Mallum?

Trial Court was not presented this issue

V. Is the domestic abuse surcharge under Wisconsin Statute Section 973.055 unconstitutional as applied to Mr. Mallum?

Trial Court Implicitly Answered: No

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. § 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. § 809.23(1)(b)4.

STATEMENT OF THE CASE

The State of Wisconsin by Assistant District Attorney Evan Glaberson issued a criminal complaint charging George

Mallum with three counts: Endangering Safety by Use of a Dangerous Weapon (Under the Influence of Intoxicant), Domestic Abuse; Disorderly Conduct, Use of a Dangerous Weapon; and Disorderly Conduct, Domestic Abuse; on July 2, 2014. (R2). The allegations included that Mr. Mallum arrived home intoxicated, opened his safe, took out a firearm, and began flailing the firearm around wildly. (R2). The complaint noted that after obtaining the firearm, Mr. Mallum went to his grandson's bedroom where he pushed the point of the firearm into his grandson's chest. (R2). A struggle ensued over the firearm. (R2). Upon arrival by the South Milwaukee Police Department, Mr. Mallum became angry and belligerent and called his wife a "stupid fucking cunt" multiple times. (R2).

Mr. Mallum made his initial appearance as to the misdemeanor charges filed against him on July 3, 2014. (R1:2). Following a series of appearances, the State filed an amended criminal complaint on May 12, 2015. (R1:4). The amended criminal complaint changed the first count to Endangering Safety by Use of a Dangerous Weapon (Pointing), Domestic Abuse. (R1:4, R16)

.

Following the filing of several motions and the court hearing a motion to suppress, the court held a jury trial from July 20 through July 23, 2015. (R1:7-8). Officer David Hoeppner, Wisconsin State Crime Laboratory toxicologist Jennifer Evans, D.M., W.M., and Captain Peter Jeske testified on behalf of the State. (R1:7-8).

D.M. testified that he regularly spent time at his grandfather, Mr. Mallum's residence and sometimes stayed overnight. (R54:4). He stated that on June 30, 2014, he was at his grandfather's residence and awoke to an argument between his grandmother and his grandfather. (R54:6). D.M. testified that his grandfather was yelling. (R54:6-7). D.M. said that his grandfather came into the room where D.M. was sleeping and obtained a .45 caliber handgun from a safe. (R54:10, R54:21). An argument then ensued over the magazine for the firearm. (R54:10). At one point, D.M. said that his grandfather was arguing with his grandmother while holding the firearm. (R54:12). D.M. admitted to telling the police that Mr. Mallum was waving the firearm around. (R54:14). D.M. said that he put his arm around his grandfather in an effort to intervene.

(R54:15). He did this in an effort to calm Mr. Mallum down. (R54:16).

W.M. testified that she has been married to Mr. Mallum since 1989. (R55:4). She stated that she has lived at the residence with Mr. Mallum for about fifteen years. (R55:5). W.M. testified that on June 30, 2014, Mr. Mallum returned to the residence at about 1:00 A.M. (R55:6). W.M. said upon Mr. Mallum's return Mr. Mallum realized his gun was not in his dresser. (R55:14). In response, Mr. Mallum went to the room where the gun safe was and obtained his firearm. (R55:15). Mr. Mallum was agitated or upset and was asking where the magazine for his firearm was. (R55:16). W.M. described Mr. Mallum as boisterous. (R55:16). W.M. was concerned enough about Mr. Mallum's behavior that she contacted the police. (R55:17). W.M. said she was fearful during the incident because she was unsure whether the firearm was loaded. (R55:27).

The defense rested without calling any witnesses. (R1:8). On July 23, 2015, the court instructed the jury on the law that governed the case. (R1:8). The court instructed the jury on the elements of Count 1 (R56:8-9), Count 2 (R56:10-12), and Count 3. (R56:13-15). In closing arguments, the State outlined the questions that the jury would have to answer: whether Mr. Mallum pointed a gun at D.M., whether he waived a gun around while yelling at his wife, and whether after the police were called he continued to act in a disorderly manner toward his wife and the police officers who were present. (R56:21, 38). In closing argument, Mr. Mallum's trial counsel acknowledged that Mr. Mallum made an inappropriate statement when the police entered his residence. (R56:33).

Later on July 23, 2015, the jury found Mr. Mallum guilty of Counts 2 and 3, but was unable to reach a verdict on Count 1. (R1:8, R57:8-9). At that point, Mr. Mallum's trial counsel asked the court to strike the use of a dangerous weapon. (R57:13). The court denied that request noting that there was evidence in the record of disorderly conduct while Mr. Mallum did have a weapon in his possession. (R57:14).

On October 15, 2015, the State moved to dismiss Count 1. (R1:10). Following the dismissal of Count 1, the court

sentenced Mr. Mallum to 2 years of probation with a period of imposed but stayed jail time. (R1:10, R36). As a condition of probation, Mr. Mallum was ordered to pay the domestic violence surcharge. (R1:10, R36:2). The court had previously stated that given the facts and circumstances of the case the domestic abuse designation applied. (R58:35). The court indicated that under federal law, Mr. Mallum was not to have a gun for the rest of his life. (R58:38).

STANDARD OF REVIEW

The first issue in this case is multiplicity. Multiplicitous charges that combine a single criminal offense into multiple counts violate the double jeopardy provisions of the Wisconsin and United States Constitutions. *State v. Grayson*, 172 Wis. 2d 156, 159, 493 N.W.2d 23, 25 (1992). "Whether an individual's constitutional right to be free from double jeopardy has been violated is a question of law that this court reviews *de novo*. *State v. Anderson*, 219 Wis. 2d 739, 746, 580 N.W.2d 329, 332 (1998) citing *State v. Sauceda*, 168 Wis. 2d 486, 492, 485 N.W.2d 1, 3 (1992).

The second issue raised in this appeal is whether the court appropriately utilized its discretion when sentencing Mr. Mallum. A reviewing court must determine if the sentencing court erroneously exercised its discretion. *State v. McCleary*, 49 Wis. 2d 263, 278, 182 N.W.2d 512, 520 (1971).

The final issue raised in this appeal is the constitutionality of a statute. Constitutionality of a statute is a question of law which is determined independently. *State v. Janssen*, 219 Wis. 2d 362, 370, 580 N.W.2d 260 (1998).

ARGUMENT

I. Mr. Mallum's conviction on Count 3 of the amended criminal complaint should not be vacated.

a. Mr. Mallum's conviction on count 3 of the amended criminal complaint should not be vacated based upon multiplicity grounds.

Multiplicity is defined as the charging of a single criminal offense in more than one count. *Harrell v. State*, 88 Wis. 2d 546, 555, 277 N.W.2d 462, 464-65 (Ct. App. 1979). In Wisconsin, courts employ a two-prong test when analyzing a multiplicity problem. Under the first prong, courts inquire whether the charged offenses are identical in law and fact. If they are, the charges are multiplicitous. *State v. Rabe*, 96 Wis. 2d 48, 63, 291 N.W.2d 809, 816 (1980). However, if the charges are different in law or fact, they may still be multiplicitous under the second prong. *State v. Tappa*, 127 Wis. 2d 155, 164, 378 N.W.2d 883, 887 (1985). Under that test, the charges are multiplicitous if the legislature intended them to be brought as a single count. *Id*.

Count 2 and Count 3 are not identical in fact. Count 2 was disorderly conduct while using a dangerous weapon and Count 3 was disorderly conduct. Count 2, unlike Count 3, required proof that the jury find that Mr. Mallum possessed a dangerous weapon while he acted disorderly. As noted in the State's arguments to the jury, Count 2 involved Mr. Mallum arguing with his wife while he was waving a firearm around. Count 3, comparatively, involved Mr. Mallum using inappropriate language toward his wife after officers arrived on scene. These are different facts. Moreover, these offenses were separated, albeit in a very short time-frame, by Mr. Mallum's grandson intervening and disarming Mr. Mallum. Simply put, a jury could find Mr. Mallum guilty of one of the offenses while not guilty of the other. In the case at hand, the jury found sufficient evidence to convict Mr. Mallum of both counts.

b. Mr. Mallum's conviction on Count 3 of the amended criminal complaint should not be vacated based upon the court's failure to instruct the jury on the issue of whether the crime was domestic violence.

Mr. Mallum argues that his conviction for disorderly conduct on Count 3 should be vacated because the jury was not

instructed as to the definition of Domestic Abuse. While Mr. Mallum argues that Domestic Abuse is an additional charge, in fact Domestic Abuse is a modifier based upon Wisconsin Statute Section 968.075. Wisconsin Statute Section 968.075 is found within Chapter 968. This chapter of the Wisconsin Statutes deals with the commencement of criminal proceedings. More specifically, Wisconsin Statute Section 968.075 involves law enforcement procedures for domestic abuse arrests and prosecutions. This section does not delineate a penalty for an individual who commits an offense described.

Wisconsin Statute Section 968.075 can be directly compared to both the penalty enhancer of use of a dangerous weapon found in Wisconsin Statute Section 939.63 as well as the domestic abuse surcharge found in Wisconsin Statute Section 973.055. Wisconsin Statute Section 939.63 is found within Chapter 939 which is captioned "Crimes—Generally." Unlike Wisconsin Statute Section 968.075, it also includes a penalty section dependent upon the underlying offense.

Wisconsin Statute Section 973.055 assesses a domestic abuse surcharge when a court imposes a sentence for specified crimes (including disorderly conduct) and *the court* finds that the conduct constituting the violation involved an act by the adult person against his or her spouse. Wis. Stat. § 973.055 [emphasis added]. Of note is the fact that the statute that discusses the domestic abuse surcharge is found within Chapter 973. This chapter of the Wisconsin Statutes deals with sentencing, an issue left to the discretion of the court, rather than a jury. Moreover, the statute's second clause indicates that the court, rather than the fact-finder, determines whether the conduct constituting the violation involved a specified relationship.

In this case, the jury was asked to consider three counts. The jury found Mr. Mallum guilty on two of the counts, Counts 2 and 3. As for Count 2, given the penalty enhancer, the jury was required to answer whether the State proved that Mr. Mallum possessed a dangerous weapon while committing the offense of disorderly conduct. The jury found that the State had proven that it had. At the time of sentencing, the trial court made a specific finding that Mr. Mallum's disorderly conduct conviction in Count 3 qualified him for the domestic abuse

surcharge under 973.055 given the offense he was convicted of, disorderly conduct, and the relationship that existed between Mr. Mallum and the person that the act involved. Given that the trial court followed the proscriptions of Wisconsin Statute Section 973.055 there is no grounds to vacate the conviction or sentence.

II. The conditions imposed on Mr. Mallum by the trial court were appropriate.

Mr. Mallum contends that it was error for the court to add the condition to his "sentence" that he could not have a gun for the rest of his life. First, it is important to note that Mr. Mallum was given a probationary disposition. Probation is not a sentence. *Prue v. State*, 63 Wis. 2d 109, 114, 216 N.W.2d 43, 45 (1974).

Wisconsin Statute Section 973.09 comprehensively outlines a sentencing court's ability to place an individual on probation in lieu of imposing a sentence. It states that "if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under section 973.15 and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor. The court may impose any conditions which appear to be reasonable and appropriate." Wis. Stat. § 973.09. The court has "broad discretion in fashioning a convicted individual's condition of probation." *State v. Oakley*, 2001 WI 103, ¶ 12, 245 Wis. 2d 447, 460, 629 N.W.2d 200, 205. When granting a probationary disposition instead of incarceration, the court must take "reasonable judicial measures to protect society and potential victims from future wrongdoing." *Oakley*, 2001 WI at ¶ 12, 245 Wis. 2d at 461, 629 N.W.2d at 206.

In Mr. Mallum's case, the court heard a jury trial about an incident involving Mr. Mallum waving a firearm around while engaging in an argument with his wife. Mr. Mallum was subsequently disarmed and continued to be disorderly. The court was within its discretion to consider those facts and order that Mr. Mallum not possess a firearm while he was on probation.

Mr. Mallum further argues that it was error for the court to add the condition to his "sentence" that he could not have a gun for the rest of his life. In point of fact, the court did not impose such a condition: the court cautioned Mr. Mallum that under federal law, he was prohibited from possessing a firearm, as a result of the conviction, because the court had determined that the offense was a "misdemeanor crime of domestic violence." Rather than imposing a condition of a sentence, the court was providing notice of a consequence of his conviction.

Under 18 U.S.C. § 922(g)(9), it is "unlawful for any person…who has been convicted…of a misdemeanor crime of domestic violence…[to] possess in or affecting commerce, any firearm or ammunition." *See U.S. v. Hayes*, 555 U.S. 415, 420-21, 426 (2009). This can be further broken into two parts: an individual is convicted of a misdemeanor offense and that the misdemeanor offense "has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse…." 18 U.S.C. § 921(a)(33)(A).

The court of appeals of Wisconsin has considered whether disorderly conduct is a misdemeanor offense with an element of use or attempted use of physical force. In *Evans v. Wis. DOJ*, 2014 WI App 31, 353 Wis. 2d 289, 844 N.W.2d 403, the court of appeals affirmed the Department of Justice's decision to deny Mr. Evans a license to carry a concealed weapon based upon a disorderly conduct conviction. The court utilized the "modified categorical approach" and consulted the criminal complaint and plea transcript to find that Mr. Evans' conviction was for a misdemeanor offense with an element of use or attempted use of physical force. The court pointed out that Mr. Evans failed to show a single case in which a court had concluded that disorderly conduct never qualified as a misdemeanor crime of domestic violence. *Evans*, 2014 WI App at ¶ 21, 353 Wis. 2d at 299, 844 N.W.2d at 407.

In the case at hand, the sentencing court, after hearing the trial testimony made a determination that it qualified for the federal prohibition. Separate from the trial testimony, both the criminal complaint and the jury trial instruction transcripts show that violent was one of the descriptors used for the conduct that Mr. Mallum was charged and convicted of. Given

this review, the court's finding is supported by both law and fact. The fact remains, however, that in advising Mr. Mallum that he could not possess a firearm in the future, the court was not imposing a condition of his sentence: instead, the court was giving notice that possessing a firearm could subject him to prosecution at another time, in a different jurisdictional forum.

III. The trial court appropriately ordered Mr. Mallum to pay the domestic abuse surcharge.

As noted above, Mr. Mallum was convicted of an offense listed under Wisconsin Statute Section 973.055(1)(a)1. The sentencing court found that the disorderly conduct charge involved an act by Mr. Mallum against his spouse. Therefore, the court's order for Mr. Mallum to pay the domestic abuse surcharge was appropriate.

IV. The court should not find that 18 U.S.C. § 922 is facially unconstitutional or unconstitutional as applied in this case.

Mr. Mallum claims that 18 U.S.C. § 922 is facially unconstitutional and unconstitutional as applied in this case. Mr. Mallum has not been charged with a violation of 18 U.S.C. § 922. If Mr. Mallum is later charged with 18 U.S.C. § 922 in federal court, the appropriate forum for this issue will be a federal court where that court will determine the constitutionality of a federal statute. Since Mr. Mallum's issue is not ripe for determination, more specifically, it is based upon hypotheticals and future facts, the court should not address this issue. *See Pension Management, Inc. v. DuRose*, 58 Wis. 2d 122, 128, 205 N.W.2d 553, 555 (1973); *State v. Verhagen*, 198 Wis. 2d 177, 194 fn. 3, 542 N.W.2d 189, 194 fn. 3 (Ct. App. 1995).

V. The court should not find that Wisconsin Statute § 973.055 is unconstitutional as applied in this case.

Mr. Mallum claims that the application of a domestic abuse surcharge is unconstitutional as applied to him because he is subject to punishment without a determination by a trier

of fact of guilt. A statute is presumed to be constitutional. *Janssen*, 219 Wis. 2d at 370, 580 N.W.2d at 263. A party challenging a statute's constitutionality bears the burden of proving the statute unconstitutional beyond a reasonable doubt. *State v. Cole*, 2003 WI 112, ¶ 11, 264 Wis. 2d 520, 531, 665 N.W.2d 328, 333.

Mr. Mallum fails to distinguish the facts of his case from any other set of facts in which a person has been assessed a domestic abuse surcharge. The criminal complaint and the amended criminal complaint both contained notice that Mr. Mallum could be subject to the domestic abuse surcharge under Wisconsin Statute Section 973.055. While admittedly, the jury was not asked whether Count 3 was an act of domestic abuse, the statute specifically notes that the court will make that determination. After that determination is made, the sentencing court is without discretion and shall impose the surcharge unless it determines that the imposition of the surcharge would have a negative impact on the offender's family. Wis. Stat. § 973.055.

This is very different from a situation in which the jury would be asked whether the crime was an act of domestic abuse. An example of that is the situation where a person is charged as a domestic abuse repeater. In that situation the jury must determine whether the underlying charge was an act of domestic abuse because it will have an impact on whether the classification of the crime is elevated from a misdemeanor to a felony and whether an individual's potential penalty increases. A surcharge is an obligation which itself is not a sentence or a component of a sentence. *State v. Galvan*, 2007 WI App 173, ¶ 12, 304 Wis. 2d 466, 475, 736 N.W.2d 890, 894. Given that the penalty did not change in Mr. Mallum's situation because surcharges are not penalties, it was not required that the question of the domestic abuse surcharge be put to a jury's decision.

CONCLUSION

Mr. Mallum's conviction on Count 3 of the amended criminal complaint should not be vacated. Counts 2 and 3 were not identical in fact and convictions as to both are not

multiplicitous. Mr. Mallum's conviction on Count 3 of the amended criminal complaint should not be vacated based upon the fact that the jury was not asked to determine whether the defense was an act of domestic abuse. Determination of whether an offense is an act of domestic abuse is applicable if the penalty is increased. In the present case, Mr. Mallum was not charged as a domestic violence repeater and the potential penalty did not increase. While the court did impose the domestic abuse surcharge it did so in conformity with Wisconsin Statute Section 973.055. Mr. Mallum has failed to prove beyond a reasonable doubt that application of the surcharge was unconstitutional as applied to him. Finally, the court should not address the application of the federal firearms prohibition as Mr. Mallum currently does not have standing to raise this issue nor would this be the appropriate venue for that issue to be raised. Accordingly, the court should deny Mr. Mallum's appeal.

Dated this _____ day of September, 2016.

Respectfully submitted,

JOHN T. CHISHOLM
District Attorney
Milwaukee County

_____
Kristin M. Schrank
Assistant District Attorney
State Bar No. 1073997

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 3,567.

_____ _____

Date Kristin M. Schrank
Assistant District Attorney
State Bar No. 1073997

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 s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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.

_____ _____

Date Kristin M. Schrank
Assistant District Attorney
State Bar No. 1073997

P.O. Address:
Milwaukee County District Attorney's Office
821 West State Street- Room 405
Milwaukee, Wisconsin 53233-1485
(414) 278-4646
Attorneys for Plaintiff-Respondent.