STATE OF WISCONSIN

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

DISTRICT II

Case No. 2016AP838-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THOMAS D. DOWLING,

Defendant-Appellant.

On Appeal from a Judgment of Conviction and Order Denying Postconviction Relief Entered in the Ozaukee County Circuit Court, the Honorable Paul V. Malloy, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

Three Grafton police officers were dispatched to the Dowlings' apartment in response to a noise complaint that someone was yelling and slamming doors. By the time police arrived, the noises had stopped. Police knocked on the Dowlings' door and were greeted by the defendant's wife, Brooke Dowling, and a neighbor. They told police that the defendant, Thomas Dowling, had been making noise while drunk, but they got him into bed and he was sleeping. Police asked if they could come in. Brooke Dowling consented and the three officers went in the apartment. Immediately upon entering, Mr. Dowling came from the back of the apartment and instructed them to leave. When the police did not leave, Mr. Dowling became agitated and he was eventually arrested and convicted for the yelling and cursing that he directed at police after they refused to leave.

Did police violate Mr. Dowlings' constitutional right to be free from unwarranted searches and seizures when police refused to leave his apartment after he instructed them to do so? And was trial counsel ineffective for failing to pursue this suppression motion before trial?

The circuit court ruled that police were properly in the apartment pursuant to Brooke's consent, so trial counsel was not ineffective for failing to seek suppression.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Dowling requests neither publication nor oral argument as this case presents a straightforward issue that requires the application of settled law to a set of undisputed facts.

STATEMENT OF FACTS

On October 29, 2013, Grafton police were dispatched to Thomas Dowling's apartment after receiving a complaint about a person yelling and slamming doors. (79:66; App. 114). Three officers responded, but by the time they arrived, the yelling had stopped, and none of them heard any unusual noises. (79:86, 105, 130; App. 134, 153, 178). The officers knocked on the door to the Dowlings' apartment, and were greeted by Brooke Dowling (Mr. Dowling's wife) and a friend from a neighboring apartment. (79:106; App. 154). Each of the officers saw that nothing appeared to be wrong with Brooke and that she was calm and sober. (79:89, 118, 139; App. 137, 166, 187). The neighbor explained that he went to the apartment to help calm Mr. Dowling down after he heard him yelling. (79:106-07; App. 154-55). According to the Dowlings, Mr. Dowling was yelling for about five minutes after someone failed to make good on a bet made while playing darts at a local bar. (79:149, 161, 171-72).

By the time police arrived, Brooke and the neighbor got Mr. Dowling into bed where he fell asleep. (79:151). Even though the noise complaint had resolved itself, and Brooke was in no apparent distress, the officers decided to confront Mr. Dowling in the apartment.

The officers asked Brooke if they could enter. (79:132; App. 180). Although Brooke claimed that they entered before she could respond, the police testified that she nodded her head as an act of non-verbal consent to enter. (79:132, 153' App. 180). Upon entering the apartment, police called out for Mr. Dowling, and immediately saw him come from a room in the back of the apartment. (79:132-33; App. 180-81). Mr. Dowling promptly told the officers to leave, then became agitated when they stayed in the apartment. (79:110, 133; App. 158, 181). Police did not leave, but continued to try to talk with the Dowlings. At this point, Mr. Dowling began

yelling and cursing at police, so he was arrested for disorderly conduct. (79:80; App. 128). He continued yelling and swearing while being put in a squad car and while being driven to the police station. (79:82-84; App. 130-32).

On October 31, 2013, the State filed a complaint charging Mr. Dowling with one count of disorderly conduct, contrary to Wis. Stat. § 947.01. (1). Mr. Dowling was charged for the yelling and swearing that occurred *after* police arrived and remained in the apartment. (79:197).

Suppression Motion & Hearing

On March 3, 2014, Mr. Dowling filed a motion to suppress "any and all evidence obtained in this action as the result of the entry to the residence and arrest of the defendant." (15). The motion argued that police did not have a warrant to enter the residence, and no exception to the warrant requirement was present at the time of the entry.

At a suppression hearing, Officer Dustin Cline testified that when he arrived at the apartment—with Officers Justin Gehm and Patrick Brock—everything was calm and Brooke answered the door with her neighbor. (75:6-7). Brooke and the neighbor told police that they had calmed Mr. Dowling down after he had too much to drink, and that he was in the back bedroom sleeping. (75:7-8, 20). Officer Cline could not specifically remember asking to come in, nor could he remember exactly what Brooke did to let them in, but he believed she gave them consent to enter. (75:11-12).

Brooke testified that Mr. Dowling was asleep when police arrived. (75:32). She testified that the officers asked to come in, but they came in before she could consent or refuse. (75:32-33).

In rebuttal, the State had Officer Gehm testify. He testified that he was the one who spoke to Brooke after police

got to the apartment, and that she nodded her head when he asked if they could come in. (76:5-8;). The State offered to play a recording from a microphone the officer was wearing at the time, but acknowledged that Brooke's nod would not appear on the recording. (76:13). The court heard the portion of the recording where the officer knocked on the door and asked Brooke for permission to enter; Brooke gave no verbal response. (76:13-15).

The court found that Brooke voluntarily consented to the entry, believing Officer Gehm's testimony that she nodded when police asked to enter. (76:18-19; App. 106-07). The court added that the entry could not be supported by any exigent circumstances, but denied the suppression motion based on Brooke's consent:

> I think there was a consensual entry. The exigency I think is—there's a continuum of exigency as to how serious the incident was. I think the officers could have talked a little bit more to Ms. Dowling if you were going to rely on an exigency to figure out what was going on. She wasn't—there were no visible injuries. The report was some yelling going on. I think the neighbor . . . said that [Mr. Dowling] had had a few too many Long Island Iced Teas and I think had turned in for the night or had—was in for the night or something like that.
>
> And so I think that as far as exigency goes, it probably wouldn't authorize a full-blown entry. But I think there was consent, so I'll deny the motion.

(76:19; App. 107).

Trial & Sentencing

The case proceeded to trial where the three officers and the two Dowlings testified. Officer Brock testified that he arrived at the apartment just as Officers Cline and Gehm were going into the building. (79:69; App. 117). Even though the noise complaint had been resolved, he testified that they

insisted on continuing their investigation as if it were a domestic violence incident, and even after he concluded Brooke was likely not the cause of the disturbance and she seemed completely fine. (79:71-72, 89; App. 119-20, 137). He then testified about the ensuing yelling and cursing by Mr. Dowling that resulted in his arrest.

Officer Cline testified that after Brooke allowed them into the apartment, he saw Mr. Dowling coming down a hall inside the apartment toward the front door. (79:110; App. 158). He testified that Mr. Dowling was upset the police were in his home and told them to leave:

> Q: You said he was immediately agitated because you were there. Did he say that?
>
> A: You could tell by his demeanor, how he spoke. I think he probably told us to leave immediately.
>
> Q: And now from the information you had now, you're in his apartment, he asks you to leave; and what don't you leave?
>
> A: Well, we were allowed in by Brooke. At that time we were still investigating if, in fact, a family trouble or domestic violence related incident happened.

(79:110; App. 158). He testified that he then spoke to Brooke, but could hear Mr. Dowling yelling and cursing in the apartment after police refused to leave.

Officer Gehm testified that after Brooke let them in, he called out for Mr. Dowling, then saw him coming from the back of the apartment. (79:140; App. 188). He testified that Mr. Dowling only became agitated after police refused to leave the apartment:

> Q: But he wasn't, at least immediately, agitated by your presence, correct?

A: No, not immediately.

Q: All right. And maybe, I don't know, it sounded like you said at least initially he thanked you for your presence, is that what—Did I hear you right or is it something else?

A: He thanked us in a way as thanking us for being there, but now it's time to go.

Q: Okay. So he's not initially agitated in thanking you for your presence, but then when you wouldn't leave, that's when he starts becoming agitated, correct?

A: Yes.

(79:140-41, 133; App. 188-89, 181). He then testified about the yelling and swearing that led to the arrest.

The Dowlings both testified that Mr. Dowling was yelling in their apartment after Brooke drove him home from a bar where another person failed to make good on a bet in a game of darts. (79:149, 159-60, 171-72). They testified that after he yelled for about five minutes, Brooke and the neighbor got him into bed where he fell asleep until the police arrived. (79:151, 162, 172). Mr. Dowling confirmed that he became very agitated when the police came into his house without consent, and he testified that they refused his requests that they leave. (79:178).

The jury found Mr. Dowling guilty of disorderly conduct. (79:219). At the sentencing proceeding that immediately followed the trial, the court withheld sentence and placed Mr. Dowling on probation for one year. (79:222).

Postconviction

On February 19, 2016, Mr. Dowling filed a postconviction motion, which argued that his trial attorney was ineffective for failing to seek suppression of any evidence after Mr. Dowling instructed police to leave his apartment. (58). The motion conceded Brooke consented to the initial entry, but argued that Mr. Dowling's instruction that they leave trumped that consent and required them to leave under ***Georgia v. Randolph***, 547 U.S. 103 (2006). (58). The motion argued that trial counsel was ineffective for failing to raise this issue pretrial, or for failing to raise the issue mid-trial after the officers' testimony made apparent that Mr. Dowling told police to leave.

The court held a ***Machner*** hearing where trial counsel simply testified that he never considered seeking suppression under ***Randolph***. (80:5-6; App. 199-200).

The circuit court denied the postconviction motion, finding that ***Randolph*** was distinguishable because Mr. Dowling was not in the doorway refusing consent at the same time Brooke granted consent. (80:13; App. 207). The court found that Mr. Dowling's refusal only moments after Brooke's consent was ineffective. (80:13; App. 207). The court further found that police would have had probable cause to arrest Mr. Dowling *before* he told them to leave, so they were allowed to remain. (80:14; App. 208). The court concluded that because any suppression motion would have been denied, trial counsel was not ineffective, and the court denied the motion.

Mr. Dowling appeals.

ARGUMENT

I. Any Evidence Obtained After Mr. Dowling Told Police to Leave His Home Must Be Suppressed Because Once He Revoked Consent to Enter, the Police Were Required to Leave.

Officers Gehm and Cline both admitted that upon entering Mr. Dowling's apartment, Mr. Dowling immediately told them to leave and only became agitated after they remained in his home. The police had no constitutional basis to disregard Mr. Dowling's request and remain in his home. Even if Brooke consented to the initial entry, they were required to leave. When two occupants disagree about whether to allow police into a home, the Supreme Court has made unmistakably clear that the tie goes to the refusal. ***Georgia v. Randolph***, 547 U.S. 103, 122-23 (2006). Moreover, Mr. Dowling's refusal acted to withdraw any consent his wife had given. ***State v. Wantland***, 2014 WI 58, ¶¶ 21, 33, 355 Wis. 2d 135, 848 N.W.2d 810. Therefore, any evidence obtained after Mr. Dowling told police to leave must be suppressed. Further, trial counsel was constitutionally ineffective for failing to raise this suppression issue before or during trial.

A. Relevant law.

The United States and Wisconsin Constitutions protect the right of all persons to be free from unreasonable searches and seizures by the government. U.S. Const. amend IV; Wis. Const. art. I, § 11. The protections provided by those constitutional provisions are most carefully guarded in the home: "it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people." ***Randolph***, 547 U.S. at 15 (internal quotations omitted).

One of the few "jealously and carefully drawn" exceptions to the warrant requirement permits searches after

obtaining voluntary consent from a person authorized to give consent. ***Id.*** at 109. The State bears the burden of proving that a warrantless search was conducted after obtaining voluntary consent. ***State v. St. Martin***, 2011 WI 44, ¶ 19, 334 Wis. 2d 290, 800 N.W.2d 858.

This court applies a mixed standard of review when reviewing a circuit court's ruling on a motion to suppress evidence under the Fourth Amendment. ***State v. Trecroci***, 2001 WI App 126, ¶ 23, 246 Wis. 2d 261, 630 N.W.2d 555. The court will uphold the circuit court's findings of fact unless clearly erroneous. ***Id.*** In contrast, the court decides de novo whether the search was constitutionally permissible. ***Id.***

B. Police were constitutionally required to leave the Dowlings' apartment after Mr. Dowling instructed them to do so.

When two occupants of a residence give police conflicting information concerning whether they can enter, the law is clear that police must honor the refusal and remain outside. ***Randolph***, 547 U.S. at 122-23. As applied to this case, Mr. Dowling's instruction that police leave trumped any consent that Brooke may have given. Therefore, police should have left, and any evidence obtained after they remained must be suppressed as having been obtained unconstitutionally.

In ***Randolph***, the defendant's estranged wife returned to their common home with their son a few months after they separated. ***Id.*** at 106. While at the residence, she called police to report that the defendant took their son, and alleged that he had cocaine in the house. ***Id.*** at 107. When police arrived at the house, the defendant was there and denied police consent to enter. ***Id.*** Police then turned to the wife for consent, "which

she readily gave." ***Id.***[1] While in the residence, police found cocaine and the defendant was charged. ***Id.***

The Supreme Court ordered the evidence suppressed, holding that the wife's consent could not overcome the defendant's refusal of consent. In reaching that conclusion, the Court examined the relationships between the Fourth Amendment and ordinary social customs. The Court observed that when two individuals occupy a residence, neither "has a right or authority to prevail over the express wishes of another, whether the issue is the color of the curtains or invitations to outsiders." ***Id.*** at 114. Each occupant has an equal right to the space. But where police seek to enter the home, the refusing occupant possesses a tie-breaker: the Fourth Amendment. The Court observed that while a consenting occupant has a right to let police enter, that consent cannot overcome the refusing occupant's Fourth Amendment right to exclude police. ***Id.*** at 114-16. Thus, the Court held that "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant." ***Id.*** at 122-23.

That rule applies with full force in this case. Even if Brooke allowed police to enter, Mr. Dowling refused consent immediately thereafter. Officer Gehm testified that as soon as he got inside the apartment he saw Mr. Dowling, who promptly thanked them for their presence, but told them "it's time to go." (79:140-41, 133; App. 188-89, 181). Similarly, Officer Cline testified, "I think he probably told us to leave immediately." (79:110; App. 140). Thus, the officers' own testimony proves they were told to leave the apartment, and under ***Randolph***, they were required to do so.

[1] It was irrelevant that the wife no longer lived at the home; even a person with apparent authority to consent may allow police to enter a home. ***Illinois v. Rodriguez***, 497 U.S. 177 (1990).

This case is meaningfully indistinguishable from ***Randolph***. In both cases, one person gave consent to enter, but the defendant contemporaneously refused consent. Thus, just as in ***Randolph***, the Fourth Amendment required police to leave.

The ***Randolph*** Court acknowledged that certain exigencies may justify a warrantless entry over a co-occupant's objection. 547 U.S. at 117-19. For example, the Court hypothesized that entry could be justified if there were some basis to believe evidence would be destroyed, or if there were cause to believe someone was in physical danger. ***Id.***, 117-19, 123. But no such exigency existed here.

Clearly there was no threat of evidence destruction because police were simply investigating a noise complaint. There was no evidence to destroy.

Likewise, there was no reasonable basis to suspect that Mrs. Dowling was in danger. Despite the officers' attempt at trial to construe this as a domestic violence investigation, the circuit court rejected that rationale. At the suppression hearing, the court expressly ruled that the entry was not justified by any exigency, and limited the basis for the entry to Brooke's consent. (76:19; App. 107). And this conclusion was fully supported by the evidence. There was no evidence to suggest Brooke was a domestic violence victim. The officers all testified that when she answered the door, she appeared unharmed, sober, and safe. (75:8, 18-19; 76:89, 118, 139; App. 107-08, 137, 166, 187). Moreover, she and her neighbor told police that Mr. Dowling had been drunk, but he was in bed and had the neighbor to help. (75: 7-8, 10). None of these facts support an exigency that warrants departing from the rule in ***Randolph***. Therefore, any evidence obtained after Mr. Dowling told police to leave must be suppressed.

Since ***Randolph*** was decided, the United States and Wisconsin Supreme Courts have held that its rule does not

apply if the objecting occupant is not present at the place to be searched. ***Fernandez v. California***, 134 S. Ct. 1126 (2014); ***State v. St. Martin***, 2011 WI 44, 334 Wis. 2d 290, 800 N.W.2d 858. In those cases, police received consent to search from one occupant, but the other occupant was detained by police away from the residence when consent was given. ***Fernandez***, 134 S. Ct. at 1130-31; ***St. Martin***, 2011 WI 44, ¶ 9. In each case, the court held that the objecting occupant's absence prevented him from overcoming the present occupant's consent; therefore, the searches were upheld.

Fernandez and ***St. Martin*** offer no guidance in this case because Mr. Dowling was physically present when police sought to enter the apartment. Thus, unlike ***Fernandez and St. Martin***, he was not objecting from some distance; he was objecting inside the home, just as in ***Randolph***. Though he was not literally standing in the doorway with Brooke, his objection was contemporaneous with her consent. Officer Cline testified that as soon as they entered the apartment, he saw Mr. Dowling coming towards the front door and he told police to leave. (79:110; App. 158). Similarly, Officer Gehm testified that upon entering the apartment, he saw Mr. Dowling walked towards the door, at which point he thanked the police for being there, but told them they had to leave. (79:133, 140-41; App. 181, 188-89). The evidence reflects that police entered the apartment and *immediately* encountered an objecting Mr. Dowling. Thus, the rules from ***Fernandez*** and ***St. Martin*** are inapplicable because Mr. Dowling was a present objector when police came into the apartment.

Even if the court believes ***Fernandez*** and ***St. Martin*** apply because Mr. Dowling was not literally in the doorway when Brooke gave consent, his refusal still acted to withdraw her consent. Once consent is given, it may be subsequently limited or withdrawn. ***Florida v. Jimeno***, 500 U.S. 248, 252

(1991); ***State v. Wantland***, 2014 WI 58, ¶¶ 21, 33, 355 Wis. 2d 135, 848 N.W.2d 810. "Withdrawal of consent need not be effectuated through particular 'magic words,' but an intent to withdraw consent must be made by unequivocal act or statement." ***Wantland***, 2014 WI 58, ¶¶ 33. The standard for judging whether consent was withdrawn is how a reasonable person would understand the suspect's words or actions (e.g., slamming a trunk shut during a car search). ***Id.***

Here, the only reasonable interpretation of Mr. Dowling's words is as a withdrawal of consent. Officer Gehm's recollection was that Mr. Dowling told them "it's time to go," and Officer Cline testified "I think he probably told us to leave immediately." (79:110, 133, 140-41; App. 158, 181, 188-89). Any reasonable listener would interpret statements that "it's time to go" and to "leave" as withdrawals of consent to be in the apartment. Thus, if the circuit court is right that ***Randolph*** does not apply because Mr. Dowling was not physically present in the doorway when Brooke consented to the entry, Mr. Dowling still properly withdrew that consent, and police were required to leave, and any evidence obtained after they remained must be suppressed.

Finally, at the postconviction hearing, the circuit court suggested police had probable cause to arrest Mr. Dowling *before* he told them to leave. (80:14; App. 208). This factual conclusion is clearly erroneous as it is flatly contradicted by the officers' testimony. Officers Cline and Gehm both testified that Mr. Dowling told them to leave immediately after they got into the apartment, and that Mr. Dowling only became agitated *after* they refused his instruction to leave. (79:110, 133, 140-41; App. 158, 181, 188-89). Therefore, police had no probable cause to arrest Mr. Dowling when he told them to leave. Probable cause only arose *after* police unconstitutionally remained in the home, and any evidence obtained pursuant to the unconstitutional entry must be

suppressed. *See* ***Wong Sun v. United States***, 371 U.S. 471 (1963).

When confronted with Brooke's consent and Mr. Dowling's refusal, police were required to honor the refusal and leave. ***Randolph***, 547 U.S. at 122-23. Even if Mr. Dowling's refusal was ineffective under ***Randolph*** because he was not standing in the doorway when Brooke gave consent, he still withdrew that consent, thereby requiring police to leave. ***Wantland***, 2014 WI 58. ¶¶ 21, 33. Under either analysis, police were unconstitutionally present in Mr. Dowling's home when they made the observations that resulted in his arrest and conviction. Therefore, any evidence obtained after Mr. Dowling told police to leave must be suppressed.

C. Trial counsel was ineffective for failing to seek suppression based on Mr. Dowling's objection immediately after police entered the apartment.

The suppression argument at issue in this case must be reached on appeal through an argument that trial counsel was constitutionally ineffective because counsel did not raise the issue before or during trial. Trial counsel's pretrial suppression motion only addressed whether Brooke consented to the initial entry, it did not address Mr. Dowling's subsequent revocation of consent.

Mr. Dowling's right to the effective assistance of counsel is guaranteed by the state and federal constitutions. U.S. Const. amend. VI; Wis. Const. art. I, § 7. To prove that he was denied the effective assistance of counsel, Mr. Dowling must show that (1) trial counsel's performance was deficient, and (2) he was prejudiced by the deficiency. ***State v. Artic***, 2010 WI 83, ¶ 24, 327 Wis. 2d 392, 768 N.W.2d 430.

To prove deficient performance, Mr. Dowling must show that trial counsel's failure to file a suppression motion was not the product of reasonable professional judgment. ***Strickland v. Washington***, 466 U.S. 668, 690 (1984). "[W]here the asserted attorney error is a defaulted Fourth Amendment claim, a defendant must first prove that the Fourth Amendment claim is meritorious." ***United States v. Stewart***, 388 F.3d 1079, 1084 (7th Cir. 2004); ***Kimmelman v. Morrison***, 477 U.S. 365, 375 (1986). Thus, trial counsel performed deficiently if he had no strategic reason for failing to file a meritorious suppression motion.

To prove prejudice, Mr. Dowling must show that there is a "reasonable probability" that in the absence of counsel's deficiency, the result of the proceeding would have been different. ***Strickland***, 466 U.S. at 694. In other words, Mr. Dowling must show "that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." ***Kimmelman***, 477 U.S. at 375.

Whether counsel provided ineffective assistance is a mixed question of law and fact. ***State v. Smith***, 207 Wis. 2d 258, 266, 558 N.W.2d 379 (1997). "The circuit court's findings of fact will not be reversed unless they are clearly erroneous." ***Id.*** Whether counsel's conduct deprived the defendant of the effective assistance of counsel is a question of law this court reviews de novo. ***Id.***

In this case, the effectiveness of counsel is controlled entirely by the court's resolution of the Fourth Amendment issue. If trial counsel failed to file a winning suppression motion, he performed deficiently. At the ***Machner*** hearing, trial counsel conceded that he had no strategic reason for failing to seek suppression based on Mr. Dowling's instruction that police leave, and acknowledged that he simply had not considered this to be a case where ***Randolph***

applied. (80:4-6; App. 198-200). Counsel was clearly deficient if he simply overlooked a winning suppression motion. On the other hand, counsel cannot be deficient if the suppression motion would have been denied. ***Kimmelman***, 477 U.S. at 375. Therefore, whether counsel performed deficiently hinges on the court's assessment of the Fourth Amendment claim.

Likewise, whether Mr. Dowling was prejudiced by the deficiency also turns on the Fourth Amendment claim. Had the evidence been suppressed, there would have been more than a reasonable probability of an acquittal because all of the evidence against Mr. Dowling would have been suppressed. The prosecutor was clear that Mr. Dowling was only charged for the allegedly disorderly conduct occurring *after* police arrived: "The conduct for which the defendant is on trial is not the conduct that occurred before the officers got to the apartment but once they got there, what occurred at the apartment, what occurred in the squad, and what occurred at the police department." (79:197). Thus, all the evidence the State relied on for a conviction would have been suppressed, and there would be no possibility of a conviction.

Police violated Mr. Dowling's state and federal constitutional rights to be free from unwarranted searches and seizures when they remained in his home after he told them to leave. ***Randolph***, 547 U.S. 103. Moreover, Mr. Dowling's constitutional right to the effective assistance of counsel was violated when trial counsel failed to raise this suppression issue before or during his trial. Because the suppression motion would have been granted, and because trial counsel had no strategic reason for not making this dispositive motion, this court should vacate the judgment of conviction and suppress the evidence against Mr. Dowling.

CONCLUSION

For the reasons stated above, Mr. Dowling asks that the court reverse the decision of the circuit court, and remand with instructions to vacate the judgment of conviction and suppress any evidence seized after Mr. Dowling told police to leave.

Dated September 2, 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 4,612 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 September 2, 2016.

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

Dated September 2, 2016.

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