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STATE OF WISCONSIN
C O U R T O F A P P E A L S

District I

Case No. 16-AP000913-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

MARIE A. MARTIN,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND DECISION DENYING
MOTION TO SUPPRESS ENTERED BY THE CIRCUIT COURT
FOR MILWAUKEE COUNTY,
THE HONORABLE T. CHRISTOPHER DEE PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

**THE RECORD IS DEVOID OF ANY PROPER JUSTIFICATION FOR A
BELIEF THAT MS. MARTIN WAS ABOUT TO COMMIT ANY KIND OF
TRAFFIC OFFENSE, SPECIFICALLY THE OBJECTIVE FACTS
OBSERVED BY THE OFFICER DO NOT SUPPORT REASONABLE
SUSPICION THAT MS. MARTIN WAS ABOUT TO COMMIT A CRIME**

The Circuit Court erred in finding that it was reasonable
to believe that Ms. Martin was about to commit a crime. The
Court's determination that Officer Aide could have reasonably
expected that Ms. Martin would have been driving on city

streets in a short order is not supported by the record.

Officer Aide testified that another vehicle left the scene, and Ms. Martin's stayed for a longer period of time. (R.27:5, A-Ap. at A5). Officer Aide testified that she found it odd that a vehicle was still warming up for that amount of time and had not yet left the parking lot. (R.27:17, A-Ap. at A17). These facts support the opposite of the Circuit Court's conclusion that Ms. Martin was about to commit a crime. Ms. Martin was simply trying to keep warm in her vehicle while waiting for a ride. The fact that the vehicle did not leave as the other did, supports that fact that Ms. Martin was not about to commit a crime.

Plaintiff-Respondent cites *State v. Baudhuin* 141 Wis.2d 642, 416 N.W.2d 60 (1987), as applicable to this case but that case is distinguishable from the fact pattern in this case. In that case, the officer observed a traffic violation (impeding traffic) but stated the stop was made to see if the driver needed a hand. In that case the officer's subjective intent was not controlling because there were also objective facts to support the traffic stop. In this case, there were no observed traffic violations and no objective facts to support a stop.

Officer Aide testified that she "didn't have a reason to detain her until I observed some signs of intoxication".

(R.27:32, A-Ap. at A32). She did not observe any indicia of intoxication or signs that she was preparing to drive away.

She also knew that Ms. Martin sitting in a running vehicle, even though her license was revoked, did not violate the law.

(R.27:22, A-Ap. at A22). These objective facts show that there was not reasonable suspicion to believe that Ms. Martin was committing, or was about to commit, any offense.

Plaintiff-Respondent argues that there was nowhere else to go from the parking lot but out on a major street. That argument is mere speculation and speculation is not an objective fact that can support a stop. On the record before this Court, there are not sufficient objective facts that would amount to reasonable suspicion for the stop. As a result of the Circuit Court's erroneous application of the law to the facts in this case, the Court erred in denying Ms. Martin's Motion to Suppress.

CONCLUSION

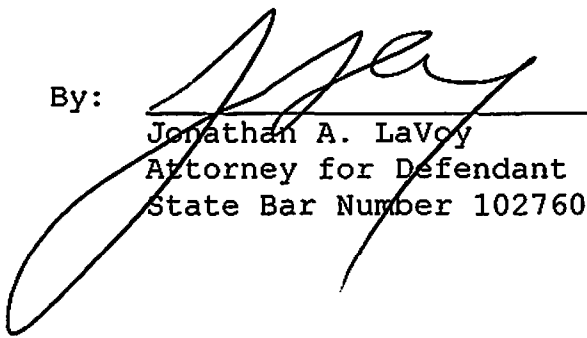
Based on the arguments above, case precedent, and the record before this Court, Ms. Martin respectfully requests this Court to find that the Circuit Court's findings were erroneous, reverse the Circuit Court's order denying the

defendant's motion to suppress, and remand to the Circuit Court consistent with this Court's order.

Dated in Brookfield, Wisconsin this 7th day of November, 2016.

KIM & LAVOY, S.C.

By:



Jonathan A. LaVoy
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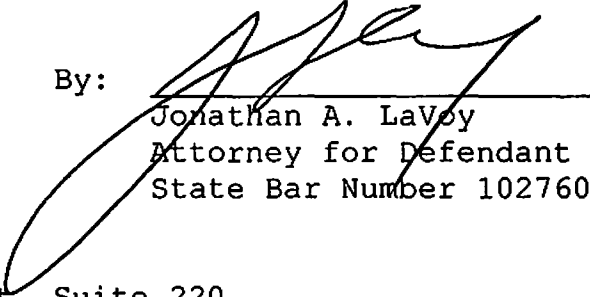
FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and Wis. Stat. § 809.19(8)(c) for a brief produced with a monospace font. The length of this brief is four (4) pages.

Dated in Brookfield, Wisconsin this 7th day of November, 2016.

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(13)

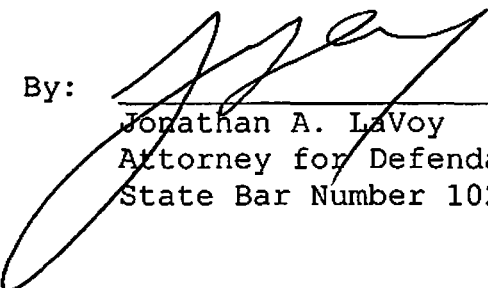
I hereby certify that I have submitted an electronic copy of this appendix that complies with Wis. Stats. § 809.19(13).

A copy of this certificate has been served with the paper copies of this appendix filed with the Court and served on all opposing parties.

Dated in Brookfield, Wisconsin this 7th day of November,
2016.

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CERTIFICATE OF MAILING

I hereby certify that this brief and all accompanying certifications were deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious on November 7, 2016.

I further certify that the brief and all accompanying certifications were correctly addressed and postage was pre-paid.

Dated in Brookfield, Wisconsin this 7th day of November, 2016.

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