

**RECEIVED**

**11-18-2016**

STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
District I  
CLERK OF COURT OF APPEALS  
OF WISCONSIN

Case No. 2016 AP 001742 CR

---

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

DAMIEN SCOTT,

Defendant-Appellant

---

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION  
ENTERED ON MARCH 29, 2016, THE HONORABLE  
WILLIAM POCAN PRESIDING,  
ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

---

BRIEF AND APPENDIX OF APPELLANT

---

MARK S. ROSEN  
ROSEN AND HOLZMAN  
400 W. MORELAND BLVD., SUITE C  
WAUKESHA, WI 53188  
Attorney for Defendant-Appellant  
State Bar No. 1019297

TABLE OF CONTENTS

ISSUE PRESENTED.....	1
POSITION ON ORAL ARGUMENT AND PUBLICATION.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS.....	5
ARGUMENT.....	14
THE TRIAL COURT ERRED IN DENYING DEFENDANT'S SUPPRESSION MOTION. THE POLICE DID NOT HAVE REASONABLE SUSPICION TO STOP DEFENDANT'S VEHICLE.....	14
CONCLUSION.....	19
APPENDIX.....	101

CASES CITED

<u>State vs. Anagnos</u> , 341 Wis.2d 576, 815 N.W.2d 675 (2012) ..	16-17
<u>State vs. Anderson</u> , 165 Wis.2d 441, 477 N.W.2d 277 (1991) .	17
<u>State vs. Harris</u> , 206 Wis.2d 243, 557 N.W.2d 245 (1996) ...	15-16
<u>State vs. Johnson</u> , 299 Wis.2d 675, 729 N.W.2d 182 (2007) ..	15
<u>State vs. Knapp</u> , 285 Wis.2d 86, 700 N.W.2d 899 (2005) .....	15
<u>State vs. Kyles</u> , 269 Wis.2d 1, 675 N.W.2d 449 (2004) .....	15
<u>Whren vs. United States</u> , 116 S.Ct. 1769 at 1772 (1996) ....	15-16
<u>Wong Sun vs. United States</u> , 371 U.S. 471 (1963) .....	17

OTHER CITED AUTHORITY

Wis. Stats. 968.24 .....	15
--------------------------	----

STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
DISTRICT I  
2016 AP 001742 CR

---

STATE OF WISCONSIN,  
Plaintiff-Respondent,  
  
DAMIEN SCOTT,  
Defendant-Appellant.

---

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION  
ENTERED ON MARCH 29, 2016, THE HONORABLE  
WILLIAM POCAN PRESIDING,  
ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

---

**BRIEF AND APPENDIX OF THE APPELLANT**

---

ISSUE PRESENTED

Whether or not the trial court had erred in finding that the West Allis Police had reasonable suspicion to stop and seize Defendant's vehicle when the police did not have a reasonable, articulable suspicion based upon information that they had about the vehicle.

Trial Court Answered: No.

#### POSITION ON ORAL ARGUMENT AND PUBLICATION

This Appeal involves issues of law which are not settled. Arguments need to be presented in more detail in oral argument. Therefore, oral argument and publication are requested.

#### STATEMENT OF THE CASE

In Milwaukee County Case 15 CF 4444, Mr. Damien Scott was charged in a three Count Criminal Complaint dated October 2, 2015. The Complaint also charged two codefendants, Cory Critton and Damiso Lee. All three Counts applied to Defendant Scott. Count One charged Defendant with Armed Robbery (Threat of Force), as a Party to a Crime, contrary to Wis. Stats. 943.32(1)(b) and (2), 939.50(3)c, and 939.05; Count Two charged Defendant with Disarming a Police Officer, contrary to Wis. Stats. 941.21, and 939.50(3)(h); Count Three charged Defendant with Resisting a Police Officer,

contrary to Wis. Stats. 946.41(1), and 939.51(3)(a). The charges allege that L.B. had called the police indicating that she and two others were attempting to leave a bar, the 6500 Bar, that she co-owned. The bar was located at 6500 W. Greenfield, West Allis. Defendant approached her and had robbed her of her bank bag while armed with a Glock pistol. Also, Defendant robbed the animal print purse of one of the other individuals, A.W.. Subsequently, the police conducted a perimeter stop of the area. The police stopped a vehicle containing the Defendant and co-Defendant Lee. Defendant was the passenger. Immediately after Scott had been removed from the vehicle, he began screaming and engaged in a struggle with the police. An officer took him to the ground at which time Defendant attempted to disarm the police officer of her firearm. He also disarmed another police officer of his rifle. Eventually, the police were able to take Defendant into custody. During a search of the vehicle, police found two Glock pistols as well as A.W.'s purse and the bank bag in question. All of this happened in West Allis, Wisconsin. (1:1-4).

A preliminary hearing occurred on October 12, 2015. Two individuals testified, a West Allis police detective and a West Allis police officer. After hearing this testimony, the Court Commissioner found probable cause and bound Defendant over for trial. (33:32-33).

On October 13, 2015, the State filed a Criminal Information

charging the same Counts One and Three against Defendant as indicated in the Criminal Complaint. However, Count Two had been changed to that of Attempt Disarm a Police Officer. Furthermore, on October 20, 2015, the State filed an Amended Information charging these same three Counts. (4:1-2; 5:1-2).

Arraignment in 15 CF 4444 occurred on October 20, 2015. At that time, Defendant entered pleas of Not Guilty to the three Counts in the Amended Information. (34:2).

On November 10, 2015, Defendant filed his Fourth Amendment Stop/Arrest Suppression Motion. He argued that the police stop of his vehicle on September 29, 2015 was illegal. He sought suppression of the evidence found during this search. (7:1-3). The State filed its Response. (9:1-2). Subsequently, Defendant filed his Amended Stop/Arrest Motion. He filed this on December 17, 2015. Defendant argued that the police did not have reasonable suspicion to stop his vehicle and that the subsequent arrest and search of his car lacked probable cause. Defendant sought suppression of the items found in the vehicle under a "fruit of the poisonous tree" argument. Defendant further argued that he had standing to challenge the stop and search because he was a passenger in the vehicle. (10:1-5).

Finally, the State filed its Response to this Amended Motion. In this Response, the State conceded that Defendant had standing to challenge the constitutionality of the stop. However, the State

disputed the remainder of Defendant's Stop/Arrest Motion. (11:1-5).

The trial court conducted an evidentiary motion hearing on February 4, 2016. This was a combined hearing involving both Defendant Scott and codefendant Damiso Lee. One witness testified. This was West Allis Police Officer Erin Luedtke. After taking testimony, the trial court ruled that what the police did was appropriate and did qualify as a valid Terry stop. Hence, the trial court denied the Fourth Amendment Suppression Motion. (37:71; A 106-113).

Four days later, on February 8, 2016, Defendant entered a guilty plea to Count One, Armed Robbery. In exchange, the State would dismiss outright Count Two, Attempt Disarm a Police Officer, and would dismiss and read in Count Three, Resisting an Officer. The State also agreed to recommend prison. (38:2-3).

On March 28, 2016, the trial court sentenced Defendant on Count One to four years of initial confinement plus three years of extended supervision. The trial court granted one hundred and eighty two days of sentence credit. (39:35; 24:1-2; A 101-102).

This Appeal has been filed within the schedule established by the Court of Appeals.

#### STATEMENT OF THE FACTS

In Milwaukee County Case 15 CF 4444, Mr. Damien Scott was



charged in a three Count Criminal Complaint dated October 2, 2015. The Complaint also charged two codefendants, Cory Critton and Damiso Lee. All three Counts applied to Defendant Scott. Count One charged Defendant with Armed Robbery (Threat of Force), as a Party to a Crime, contrary to Wis. Stats. 943.32(1)(b) and (2), 939.50(3)c, and 939.05; Count Two charged Defendant with Disarming a Police Officer, contrary to Wis. Stats. 941.21, and 939.50(3)(h); Count Three charged Defendant with Resisting a Police Officer, contrary to Wis. Stats. 946.41(1), and 939.51(3)(a). The charges allege that L.B. had called the police indicating that she and two others were attempting to leave a bar that she co-owned. The bar was the 6500 Bar located at 6500 W. Greenfield, West Allis, Milwaukee County, Wisconsin. Defendant approached her and had robbed her of her bank bag while armed with a Glock pistol. Also, Defendant robbed the animal print purse of one of the other individuals, A.W.. Subsequently, the police conducted a perimeter stop of the area. The police stopped a vehicle containing the Defendant and Defendant co-Defendant Damiso Lee. Defendant was the passenger. Immediately after Defendant Scott had been removed from the vehicle, he began screaming and engaged in a struggle with the police. An officer took him to the ground at which time Defendant attempted to disarm that police officer of her firearm. Defendant also disarmed another police officer of his rifle. Eventually, the police were able to take him into custody. During a search of the

vehicle, police found two Glock pistols as well as A.W.'s purse and the bank bag in question. All of this happened in West Allis, Wisconsin. (1:1-4).

A preliminary hearing occurred on October 12, 2015. Two individuals testified, a West Allis police detective and a West Allis police officer. After hearing this testimony, the Court Commissioner found probable cause and bound Defendant over for trial. (33:32-33).

On October 13, 2015, the State filed a Criminal Information charging the same Counts One and Three against Defendant as indicated in the Criminal Complaint. However, Count Two had been changed to that of Attempt Disarm a Police Officer. However, on October 20, 2015, the State filed an Amended Information charging these same three Counts. (4:1-2; 5:1-2).

Arraignment in 15 CF 4444 occurred on October 20, 2015. At that time, Defendant entered pleas of Not Guilty to the three Counts in the Amended Information. (34:2).

On November 10, 2015, Defendant filed his Fourth Amendment Stop/Arrest Suppression Motion. He argued that the police stop of his vehicle on September 29, 2015 was illegal. He sought suppression of the evidence found during this search. (7:1-3). The State filed its Response on December 4, 2015. (9:1-2). Subsequently, Defendant filed his Amended Stop/Arrest Motion on December 17, 2015. Defendant had argued that the police did not

have reasonable suspicion to stop his vehicle and that the subsequent arrest and search of his car lacked probable cause. Defendant sought suppression of the items found in the vehicle under a "fruit of the poisonous tree" argument. Defendant further argued that he had standing to challenge the stop and search because he was a passenger in the vehicle. (10:1-5).

Finally, the State filed its Response to this Amended Motion on January 26, 2016. In this Response, the State conceded that Defendant had standing to challenge the constitutionality of the stop. However, the State disputed the remainder of Defendant's Stop/Arrest Motion. (11:1-5).

The trial court conducted an evidentiary motion hearing on February 4, 2016. This was a combined hearing involving both Defendant Scott and codefendant Damiso Lee. One witness testified for the State. This was West Allis Police Officer Erin Luedtke. Neither side called any other witnesses.

Officer Luedtke testified that she was a West Allis police officer on duty on September 29, 2015 at 1:07 a.m.. An officer had called out that he had been stopped by a female who stated that she was just the victim of an armed robbery. The subject or offender was described simply as a black male wearing dark clothing possibly having white design on the sweatshirt, a black bandanna covering his face. He displayed a handgun. The armed robbery had occurred just minutes prior to Officer Luedtke having received the

broadcast. This description was the total description. The offender was last observed fleeing on foot eastbound from the location and then north through an alley which would be the alley north of Greenfield between 65 and 64. The offense occurred at 6500 W. Greenfield. (37:7-9).

Luedtke testified that she called out to other police that she was going to head to 65<sup>th</sup> and Madison which is about a block and a half north of the location of the armed robbery. They were setting up an initial perimeter to contain the area. She positioned her squad car on 65<sup>th</sup> street, with a straight view of Madison all of the way down Madison. She could see north and south on 65<sup>th</sup> Street. There was a large factory just west of her location. (37:12-14).

During her block of the streets, Officer Luedtke observed people getting out of a factory. She noticed three vehicles approaching from the north. The vehicles slowed down and the first vehicle stopped. The first vehicle contained two Hispanic occupants. She said okay and waved them through. (37:17-18). After that, another vehicle was behind that car. It slowed and also stopped. She approached from the passenger side. The vehicle contained two black males. The passenger had on dark clothing. She did not recall what the driver was wearing. The passenger's clothing was inside out, and he was sweating and appeared nervous. (37:18). When she got the initial description of the offender, she did not get a description that the offender was traveling in or

towards a vehicle. Furthermore, when she made physical contact and could observe Defendant in the passenger seat she was not confident at that point that she had found the person that she was looking for. (37:19-20).

Luedtke testified that another officer took statements from the victim. Luedtke never took any such statements. She admitted that a relevant written police report just indicated that the robber went east, with no indication of a turn to the north. (37:21-22). She did not receive any description of any facial features of the robber, except that he had a black bandanna covering his face. There was no facial description. There was no description of any sort of unique identifying features such as tattoos or anything like that. Luedtke testified that when she parked at the intersection of Madison and 65<sup>th</sup> street, she was parked completely blocking the southbound lane. One couldn't get around in the northbound lane on 65 and she was facing east with a view down Madison. She had her police lights flashing at this point. She could understand why the first car stopped because she was in the roadway. With respect to the first vehicle that had stopped, she testified that she might have stopped the vehicle if it had not slowed down at this point. She conceded that she did not have reasonable suspicion that this vehicle had been involved in the crime. (37:23-25).

Luedtke testified that her opinion was that the first car

stopped because she had her car in the middle of the intersection. She was parked there to contain the perimeter. She had put her car there as an exercise of police authority. An ordinary car that was not police would not be able to put their car in the middle of the intersection. An ordinary car that was not police would have been able to turn on their squad lights and stand outside of their car in the middle of the intersection and expect cars to stop for them. She was exercising her police authority to make stops. (37:25-26).

Luedtke continued to testify. She testified that the second car that had come along was a gold Buick. She did not have any information on a gold Buick being involved in a crime. She did not have any information that anyone that left the scene of the incident that was back on 65<sup>th</sup> and Greenfield had gotten into a gold Buick. She did not have any vehicle information, to include a license plate matching the gold Buick. She did not even know that there could potentially be two people in a car. She had information on one person. There were two people in that car. In this situation, she did not have a physical description of the armed robber who left the scene other than the fact that he was a black individual wearing dark clothing, except that there was possibly a white design on the sweatshirt. When she approached the vehicle after it had already stopped, she observed the passenger's sweatshirt was inside out, with a design on the sweatshirt. She could not tell if this design was white. When she stopped the car,

it was coming from her from 65<sup>th</sup> going south on 65<sup>th</sup> street. She admitted that she exercised her police authority to stop the car before it got to the intersection. (37:27-28).

Luedtke also admitted that before she had stopped the car, she didn't see the occupants until she walked up to it after it had already stopped. Before she stopped the car, she did not see the description of what the occupants were wearing. She stopped the car without even seeing the occupants. She could not see what the passenger was wearing while the vehicle was moving. Furthermore, she also admitted that, around 1:00 a.m., there were people going to the bars. Right across from the 6500 Bar where the robbery had occurred was another bar, the Spotlight. There were two, probably other bars in the area. When the gold Buick approached her, she did not see either A.W.'s leopard print bag or the bank deposit bag. She did not see the passenger sweating before she stopped that car. She had not run the plates on the car. She did not know if anyone in the vehicle had a warrant out for him. The car was not speeding, it did not go through a stop sign or stop light, and there was no seat belt violation. There was no connection with the specific vehicle and the armed robbery. There was no connection with the individuals in that particular car and that robbery. She did not observe any criminal activity by the people in the car. (37:28-31).

Luedtke continued to testify. She testified that she was containing the area stopping cars. The gold Buick that she had

stopped stopped in response to her standing out there with her flashing lights going, blocking the lane that it was traveling it. The car stopped and she approached it. She admitted that she had no reasonable suspicion that the car in particular was connected to this crime, the armed robbery. She only was looking for a vehicle as opposed to somebody on foot because she believed that people tend to use vehicles to leave the scene of a crime. However, this car was actually driving southbound towards the scene of the crime. Importantly, a car could actually go north away from the area. Also, if a vehicle goes east, that vehicle could also exit that area. (37:33-35).

Here, the trial court agreed with the Defendants that this situation was not a lawful checkpoint stop under Wis. Stats. 349.02. (37:59-60). However, the trial court found that a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behavior even though there's no probable cause to make an arrest. A police officer can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot. Here, the court found a "detailed description of the suspect and clothing," the very limited area, the time of day, and the direction of flight of the perpetrator. However, the court acknowledged that the police officer had admitted that she was not



confident that she had found the people she was looking for when she came upon the car that had the Defendant in it. In conclusion, the trial court ruled that what the police did was appropriate and did qualify as a valid Terry stop. Hence, the trial court denied the Fourth Amendment Suppression Motion. (37:67-71).

Four days later, on February 8, 2016, Defendant entered a guilty plea to Count One, that being Armed Robbery. In exchange, the State agreed to dismiss outright Count Two, Attempt Disarm a Police Officer, and also agreed to dismiss and read in Count Three, Resisting an Officer. The State also agreed to recommend prison. (38:2-3).

On March 28, 2016, the trial court sentenced Defendant on Count One to four years of initial confinement plus three years of extended supervision. The trial court granted one hundred and eighty two days of sentence credit. (39:35; 24:1-2).

This Appeal has been filed within the schedule established by the Court of Appeals.

#### ARGUMENT

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S SUPPRESSION MOTION. THE POLICE DID NOT HAVE REASONABLE SUSPICION TO STOP DEFENDANT'S VEHICLE.

Here, the issue of whether or not Defendant had standing to

object to the stop of the vehicle is not before this Court. The State agreed that Defendant had such standing. The trial court never disputed this conclusion.

Whether evidence should be suppressed is a question of constitutional fact. State vs. Knapp, 285 Wis.2d 86, 700 N.W.2d 899 (2005). A finding of constitutional fact consists of the circuit court's findings of historical fact, and its application of these historical facts to constitutional principles. A Court of Appeals reviews the former under the clearly erroneous standard, and the latter independently. State vs. Johnson, 299 Wis.2d 675, 729 N.W.2d 182 (2007). Whether the facts support constitutional principles is a question of law for the appellate courts to decide. The Court of Appeals is not bound by the trial court's decision on questions of law. State vs. Kyles, 269 Wis.2d 1, 675 N.W.2d 449 (2004).

After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such a person is committing, is about to commit, or has committed a crime. Wis. Stats. 968.24. Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment. An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances.

State vs. Harris, 206 Wis.2d 243, 557 N.W.2d 245 (1996) citing Whren vs. United States, 116 S.Ct. 1769 at 1772 (1996).

Under the Fourth Amendment, law enforcement officers may only infringe on an individuals interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime. This is an objective test. The State need not establish that the police had reasonable, articulable suspicion to seize the particular Defendant before the court, but only that the police possessed a reasonable, articulable suspicion to seize someone in the vehicle. State vs. Harris, 206 Wis.2d 243 at 259.

In evaluating whether an investigatory traffic stop is supported by reasonable suspicion, the officer must have more than an "inchoate and unparticularized suspicion or hunch." Rather, the officer "must be able to point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant" the traffic stop. The determination is based on "whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime." State vs. Anagnos, 341 Wis.2d 576, 815 N.W.2d 675 (2012). The traffic stop is unconstitutional if it was not based on probable cause or reasonable suspicion. State vs. Anagnos, 341

Wis.2d 576 at 595 citing Terry vs. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.E.d2d 889 (1968).

Evidence seized by law enforcement pursuant to an illegal search and/or seizure must be suppressed. Wong Sun vs. United States, 371 U.S. 471 (1963); State vs. Anderson, 165 Wis.2d 441, 477 N.W.2d 277 (1991).

Here, the trial court has misinterpreted the relevant and applicable case law pertaining to this situation. Here, clearly, the police officer in question admitted that she did not have reasonable suspicion to stop the vehicle containing Defendant. It was not violating any traffic laws, it had not been identified as having been involved in the armed robbery, she could not tell before stopping the vehicle any description of the persons inside of the vehicle. Before stopping the vehicle, she could not see any contraband or weapons inside of the vehicle. The vehicle was operating lawfully. Furthermore, this vehicle was one of three approaching Officer Luedtke's squad car. She stopped the first two vehicles. The third one did a u-turn and left. Here, Officer Luedtke could not identify any reasonable and articulable suspicion that the gold Buick containing the Defendant had been involved in the armed robbery. Hence, her admission that she did not have a reasonable and articulable suspicion that the gold Buick had committed the crime, she legally did not have a right to stop, and hence seize, that vehicle. She was simply stopping all vehicles

approaching her intersection, without a legal justification of reasonable and articulable suspicion as to each particular vehicle, as required under the relevant and applicable case law. She was stopping all cars approaching her. This, regardless of any car's specific relationship to the armed robbery in question. Officer Luedtke's conduct is illegal.

However, the trial court erroneously focused on the situation in the area, as opposed to applying the correct standard of analyzing the situation as to each specific vehicle. Here, the court focused on the relatively late hour, the direction that the offender had traveled on foot, and the detailed description of the clothing and personalty. However, the officer had admitted that she had not identified the clothing and personalty until after she had stopped the vehicle. Furthermore, although this was a late hour, there were other vehicles on the road, as well as open bars. Also, the victim had testified that the offender had traveled on foot. There was never a description or identification of any vehicle ever having been involved in this armed robbery. The officer was illegally stopping all vehicles without a reasonable and articulable suspicion as to each particular vehicle. This is legally incorrect. However, the trial court justified the conduct simply on the basis of the surrounding situation in the area, that being the late hour and the direction that the offender had traveled on foot. Unfortunately, the correct analysis is based upon

the specific individual or vehicle stopped, as outlined in the cited case law. The trial court materially erroneously analyzed the situation. The decision must be reversed.

Based upon the foregoing, and the evidence at the Motion hearing, the trial court erred in denying Defendant's Fourth Amendment Stop/Arrest Motion. This Court is not bound by the trial court's decision. This Court must overturn that decision.

#### CONCLUSION

The trial court erred in denying Defendant's Fourth Amendment Stop/Arrest Motion.

Based upon the foregoing, Defendant respectfully requests that this Court reverse the Judgment of Conviction, vacate Defendant's Guilty Plea, and enter all appropriate Decisions consistent with the issues that Defendant has raised in this Brief. This would include suppression of all evidence seized from the vehicle in question.

Respectfully Submitted, this \_\_\_\_\_ day of November, 2016.

---

Mark S. Rosen  
Attorney for Defendant  
State Bar No. 1019297

Rosen and Holzman, Ltd.  
ATTN: Mark S. Rosen  
400 W. Moreland Blvd., Ste. C  
Waukesha, WI 53188  
(262) 544-5804

INDEX TO APPENDIX

Judgment of Conviction, March 29, 2016.....	101-102
Appellate Court Record.....	103-105
Trial Court Decision on Defendant's Motions for Suppression of Evidence, February 4, 2016.....	106-113

CERTIFICATION

I hereby certify that the revised Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Damien Scott, 2016AP001742 CR conforms to the rules contained in Wis. Stats. 809.19 (8) (b) (c) for a Brief with a monospaced font and that the length of the Brief is nineteen (19) pages.

Dated this 15th day of November, 2016, in Waukesha, Wisconsin.

---

Mark S. Rosen  
Attorney for Defendant-  
Appellant



CERTIFICATION

I hereby certify that the text of the e-brief of the revised Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Damien Scott, Case No. 2016AP001742 CR is identical to the text of the paper brief in this same case.

Dated this 15th day of November, 2016, in Waukesha, Wisconsin.

---

Mark S. Rosen  
Attorney for Defendant-  
Appellant

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 Wis. Stats. 809.19(2)(a) and that contains:

- (1) a table of contents;
- (2) relevant trial court record entries;
- (3) the findings or opinion of the trial court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision showing the trial court's reasoning regarding those issues.

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 this 15<sup>th</sup> day of November, 2016, in Waukesha, Wisconsin.

---

Mark S. Rosen  
Attorney for Defendant-  
Appellant