STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2016AP1856-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JANAYA L. MOSS,

Defendant-Appellant.

On a Notice of Appeal from a Judgment of Conviction
Entered in the Circuit Court for Washburn County,
the Honorable Eugene D. Harrington, Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

Deputy Price received a call about an alleged argument between two women at a bar. He got to the bar and noticed a woman acting loud and belligerent. He also saw Ms. Moss, who was seated on a nearby bar stool and appeared intoxicated. Deputy Price arrested the loud and belligerent woman for disorderly conduct. He placed her in handcuffs and sat her in a chair that was a couple feet from a table with a wallet on it.

The deputy asked the woman her name, and she said "Jasmine." He tried to ask Jasmine if she owned the wallet on the table but she was not paying attention. Deputy Price then seized the wallet, opened it, and found cocaine. He got Jasmine's attention and asked her if the wallet was hers. Jasmine said it belonged to Ms. Moss.

1. Under these circumstances, was the deputy's warrantless search of the wallet permissible?

   The circuit court answered: Yes.

2. If the deputy's warrantless search of the wallet was not permissible, does the inevitable discovery doctrine render the fruits of the constitutionally unreasonable search admissible?

   The circuit court did not address this issue.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested but is welcomed if the court would find it helpful in resolving this case. Publication may be warranted pursuant to Wis. Stat. § 809.23(1)(a)1 or 2.

STATEMENT OF THE CASE AND FACTS

On November 21, 2015, at approximately 2:58 a.m., Deputy Price got a call about an alleged argument between two women at a bar in Trego, Wisconsin. (23:4). Specifically, dispatch reported that two women were arguing and it was appearing to become physical. (23:4). When Deputy Price arrived at the bar he saw a woman who was "very loud and belligerent." (23:5). He also saw Ms. Moss, who was seated on a nearby barstool and appeared intoxicated. (23:5-6).

Deputy Price talked to the bartender. (23:5). She said the two women had been arguing. (23:5). The loud and belligerent woman then started yelling at Deputy Price and other people at the bar. (23:5). Deputy Price arrested her for disorderly conduct. (23:6).

The deputy placed the woman in handcuffs and sat her in a nearby chair. (23:6, 9). The chair was a couple feet from a table with a wallet on it. (23:6, 9). The deputy asked the woman her name and she said "Jasmine." (23:6). He asked her if she had identification and she was not "very cooperative." (23:9). He tried to ask Jasmine if she owned the wallet on the table but she was not paying attention. (23:9). At the time, Ms. Moss was 10 to 15 feet from the table. (23:6).

The deputy did not ask anyone else who owned the wallet. (23:9). Instead, he seized the wallet, opened it, and searched its contents. (23:6). A bag of cocaine fell out of the wallet. (23:6-7).

At that point, Deputy Price again asked Jasmine if the wallet was hers. (23:7). Jasmine said it was Ms. Moss's wallet. (23:7). The deputy continued to look through the wallet and found marijuana. (23:7). He also found Ms. Moss's identification card. (23:7).

The state charged Ms. Moss with possession of cocaine and possession of THC, contrary to Wis. Stat. §§ 961.41(3g)(c) & (e), respectively. (1:2). Ms. Moss moved to suppress the evidence obtained as a result of the warrantless search. (5, 6).

The circuit court held an evidentiary hearing on January 25, 2016. (23). At the close of Deputy Price's testimony, the state argued that Ms. Moss did not have standing to challenge the warrantless search of her own wallet. (23:10). The court determined that Ms. Moss had standing. (23:14). As to whether suppression was warranted, the court requested briefing and set the matter over for an oral decision. (23:14).[1]

[1] In its brief, the state renewed its argument that Ms. Moss did not have standing to challenge the deputy's warrantless search of her wallet. (10). It also argued that the search was permissible as an "identification search." (10). In addition, the state contended that if the deputy's warrantless search of Ms. Moss's wallet was constitutionally unreasonable, suppression still was unwarranted due to the inevitable discovery doctrine. (10).

On February 22, 2016, the circuit court denied Ms. Moss's suppression motion. (26:3; App. 102). Specifically, the court ruled:

> [T]he officers were dispatched to a business establishment in Washburn County for a verbal argument and physical confrontation. . . . Two females were disagreeing about various things during the course of the investigation. One of the ladies was arrested. Shortly thereafter, the second one, that being Ms. Moss, the defendant, was arrested during the course of the investigation and the arrest.
>
> The officers had a need to look at the wallet that was there. It [was] identified to be Ms. Moss's wallet, and [it contained proof of] her identity, as well as a white substance [that] tested positive for cocaine. The court is satisfied there was reasonable suspicion for the arrest and probable cause for the arrest and the search was [incident] to the arrest.

(26:3; App. 102).

After the denial of the suppression motion, Ms. Moss pled no contest to the possession of cocaine charge. (26:5). The possession of THC charge was dismissed and read in. (26:5). The court withheld sentence and imposed a $500 fine. (26:6; App. 101).

ARGUMENT

I. No Exception to the Warrant Requirement Permitted the Warrantless Search of Ms. Moss's Wallet. Therefore, the Deputy's Search Was Constitutionally Unreasonable.

A. General legal principles and standard of review.

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution both guarantee freedom from unreasonable searches and seizures. ***State v. Parisi***, 2016 WI 10, ¶28, 367 Wis. 2d 1, 875 N.W.2d 619. Warrantless searches are per se unreasonable unless they fit within an exception to the warrant requirement. *Id*. Once the defendant offers some evidence to support a constitutional violation, it is the state's burden to show by a preponderance of the evidence that the facts of a particular case fall within an exception to the warrant requirement. ***State v. Noble***, 2002 WI 64, ¶19, 253 Wis. 2d 206, 646 N.W.2d 38; 6 Wayne R. LaFave, *Search and Seizure* § 11.2(b) at 54 (5th ed. 2012).

Whether a defendant's Fourth Amendment rights have been violated is a question of constitutional fact. ***Parisi***, 367 Wis. 2d 1, ¶26. An appellate court upholds the circuit court's findings of fact unless they are clearly erroneous. *Id*. However, it independently reviews whether the facts meet the constitutional standard of reasonableness. *Id*.

B. Ms. Moss has standing to challenge the warrantless search of her wallet.

"To have a claim under the Fourth Amendment, the person challenging the reasonableness of a search or seizure must have standing." ***State v. Fox***, 2008 WI App 136, ¶10,

314 Wis. 2d 84, 758 N.W.2d 790. In order to have standing to contest a warrantless search, one must show that he or she has a legitimate expectation of privacy in the item searched. *Id*. "Whether a person has a reasonable expectation of privacy depends on (1) whether the individual has exhibited an actual, subjective expectation of privacy in the area inspected and in the item seized; and (2) whether society is willing to recognize such an expectation of privacy as reasonable." ***State v. Orta***, 2003 WI App 93, ¶11, 264 Wis. 2d 765, 663 N.W.2d 358. It is the defendant's burden to show a reasonable expectation of privacy by a preponderance of the evidence. *Id*.

i. Ms. Moss exhibited a subjective expectation of privacy in her wallet.

A preponderance of the evidence establishes that Ms. Moss exhibited a subjective expectation of privacy in her wallet on the night in question.

First, Ms. Moss took steps to demonstrate her ownership of the wallet. The evidence shows that Ms. Moss kept her identification card in her wallet.[2] Also, Ms. Moss had apparently made clear to others that the wallet was hers, as her friend Jasmine told the deputy that it was Ms. Moss's property. Second, the evidence indicates that Ms. Moss did not abandon her wallet. She placed it on a table at which her friends had gathered that evening. Her friend Jasmine was within a couple feet of the table when the deputy began his investigation, and Ms. Moss was within 10 to 15 feet of the

[2] A court "may look to facts discovered after the intrusion to determine if a defendant has a reasonable expectation of privacy to confer standing to challenge a search." ***State v. Orta***, 2003 WI App 93, ¶7, 264 Wis. 2d 765, 663 N.W.2d 358.

table during the relevant time period. Third, the evidence shows that Ms. Moss took action to prevent the public from viewing the contents of her wallet (i.e., by keeping the wallet closed). The deputy testified that he needed to open the wallet in order to perform the warrantless search.

This evidence "'stack[s] up to proof by a preponderance of the evidence that [Ms. Moss] had a subjective expectation of privacy.'" ***Orta***, 264 Wis. 2d 765, ¶12 (quoted source omitted). While ownership alone does not establish a reasonable expectation of privacy, it is "clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated." ***United States v. Salvucci***, 448 U.S. 83, 91 (1980). Here, it is clear that Ms. Moss owned the property in question. But more importantly, she took steps to maintain the privacy of the property. Specifically, she: (1) placed her wallet on a table that was a couple feet from her friend; (2) was standing no more than 10 to 15 feet away from her wallet; and (3) shielded the contents of her wallet from public view by keeping it closed.

ii. Ms. Moss had an objectively reasonable expectation of privacy in her wallet.

Society is willing to recognize that Ms. Moss had a reasonable expectation of privacy in her wallet under the facts of this case. This situation presents an everyday occurrence: friends meet at a bar, gather at a table, and leave their personal effects at the table while they enjoy their evening. To say that a person no longer has a privacy interest in his or

her wallet when he or she drifts 10 to 15 feet from the table to get a drink (or play darts or talk to a friend) is patently unreasonable.[3]

Wisconsin courts have recognized the following factors as relevant when determining whether a person has an objectively reasonable expectation of privacy in a place or item:

> (1) whether the accused had a property interest in the premises; (2) whether the accused is legitimately (lawfully) on the premises; (3) whether the accused had complete dominion and control and the right to exclude others; (4) whether the accused took precautions customarily taken by those seeking privacy; (5) whether the property was put to some private use; (6) whether the claim of privacy is consistent with historical notions of privacy.

State v. Bruski, 2007 WI 25, ¶24, 299 Wis. 2d 177, 727 N.W. 2d 503. These factors support the conclusion that Ms. Moss had a reasonable expectation of privacy in her wallet.

First, it is clear that Ms. Moss had a property interest in the wallet. She owned it. Second, Ms. Moss was lawfully on the premises of the bar that evening. Third, Ms. Moss certainly had the right to exclude others from use of her wallet. She never had the opportunity to assert dominion and control over the wallet because the deputy never asked her if she owned it. *Compare with* ***State v. Whitrock***, 161 Wis. 2d 960, 989-90, 468 N.W.2d 696 (1991).

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[3] A patron who walks into a bar is "clothed with constitutional protection against an unreasonable search and seizure." ***Ybarra v. Illinois***, 444 U.S. 85, 91 (1979).

Fourth, Ms. Moss took precautions customarily taken by those seeking privacy. She kept her wallet on a table near her friend and remained within 10 to 15 feet of that table. Her friend informed police that the wallet was Ms. Moss's, so Ms. Moss had apparently made clear to others that the wallet was hers. *Compare with* ***Whitrock***, 161 Wis. 2d at 990. Moreover, the wallet was closed, so the public could not view its contents.

Fifth, Ms. Moss used the wallet for storing personal effects like her identification card. Finally, as to the sixth factor, society has historically recognized that a person has a privacy interest in "his or her private, closed containers." *See* ***United States v. Fultz***, 146 F.3d 1102, 1105 (9th Cir. 1998). In fact, "certain types of containers—suitcases, valises, purses, and footlockers, for instance—[] command high expectations of privacy. . . ." *Id*. A wallet, like a purse, contains much of a person's most valuable possessions—his or her money and all the information needed to access it. Other than a cell phone, a person typically does not carry around anything more private.

As applied to this case, the above factors demonstrate that Ms. Moss had an objectively reasonable expectation of privacy in her wallet on the night in question. She therefore has standing to assert a claim under the Fourth Amendment.

C. The deputy's warrantless search of Ms. Moss's wallet was unreasonable.

Having established that Ms. Moss has standing to challenge the warrantless search of her wallet, the question remains whether the deputy's action was reasonable under the Fourth Amendment. To be constitutionally reasonable, the facts of this case must fall within an exception to the warrant requirement. ***State v. Tullberg***, 2014 WI 134, ¶30,

359 Wis. 2d 421, 857 N.W.2d 120. No exception to the warrant requirement permitted the deputy's warrantless search.

i. Identification search.

Wisconsin is one of few states to recognize a so-called "identification search" exception to the warrant requirement. *See* 4 Wayne R. LaFave, *Search and Seizure* § 9.6(g) at 943 (5th ed. 2012). The seminal case is ***State v. Flynn***, 92 Wis. 2d 427, 285 N.W.2d 710 (1979). In ***Flynn***, an officer stopped the defendant because he was walking with a man who fit the description of a burglary suspect. ***State v. Flynn***, 92 Wis. 2d 427, 431, 285 N.W.2d 710 (1979). The officer asked the defendant for identification, but the defendant refused to provide it. *Id*. The officer explained the reason for the request and the defendant again refused. *Id*. However, the defendant acknowledged that he was carrying identification in his wallet. *Id*. The officer then frisked the defendant and seized the wallet. *Id*. at 431-32.

The Wisconsin Supreme Court held that the officer, who conducted a valid investigatory stop, was permitted to conduct a limited search for identification upon the suspect's refusal to provide such information. *Id*. at 446-48. The court reached this result by conducting a balancing test that weighed society's need for the particular search against the defendant's privacy interest. *Id*. at 446. It reasoned that the need for identification was high because of the public interest in quickly apprehending an armed burglar. *Id*. As for the defendant's privacy interest, the court determined that the intrusion was limited, as the officer simply removed the wallet from the defendant's person after the defendant admitted that it contained identification. *Id*. at 447-48.

The ***Flynn*** court stressed that its holding was a narrow one, limited to factual situations such as the one at issue in that case. *Id*. at 448-49. Accordingly, courts permitting a warrantless search for identification must do so under circumstances similar to those of ***Flynn***.

State v. Black, 2000 WI App 175, 238 Wis. 2d 203, 617 N.W.2d 210, is instructive. In ***Black***, the police were conducting a drug investigation when they saw the defendant approach a vehicle and exchange something with the driver. ***State v. Black***, 2000 WI App 175, ¶2, 238 Wis. 2d 203, 617 N.W.2d 210. An officer eventually approached the defendant and asked him for identification. *Id*., ¶4. The defendant provided a name and date of birth. *Id*. Dispatch informed the officer that the identity provided was not on file. *Id*. The defendant told the officer he did not have any identification on his person. *Id*. However, the officer noticed that the defendant's front pockets were "bulging." *Id*., ¶5. The officer then tapped the outside of the defendant's pockets to see if there was a wallet in there. *Id*. The officer felt what appeared to be film canisters, which later turned up drugs. *Id*., ¶¶6-7.

The court of appeals considered the reasonableness of the officer's search a "close call." *Id*., ¶19. The court recognized that the public interest in performing the search was not as compelling as it was in ***Flynn***. *Id*., ¶¶17-19. However, it reasoned that the intrusion into the defendant's privacy was more limited than in ***Flynn***, noting that the officer's "conduct was consistent with [Professor] LaFave's suggestion that if the precise location of the wallet is unknown, '*only* a frisk should be allowed as a means of discovering it.'" *Id*., ¶18 (quoted source omitted). Ultimately, what tipped the scales in favor of upholding the search was

the fact that the officer might have compromised the ongoing investigation if he was unable to search for identification in that situation. *Id*., ¶19.

Here, the identification search exception to the warrant requirement did not permit the deputy's warrantless search of Ms. Moss's wallet. This is not a factual scenario similar to that of ***Flynn*** or ***Black***. Unlike those cases, the deputy in this case was not in the midst of an investigation when he asked Jasmine[4] for her name and identification; he had already arrested Jasmine for disorderly conduct. Thus, the public interest in quickly apprehending the suspect of a serious crime—the compelling reason supporting the searches in ***Flynn*** and ***Black***—is simply not implicated in this case. And no other compelling reason for immediately identifying Jasmine comes to mind. Why was it necessary to obtain proof of the arrestee's identity prior to taking her to the police station, when she was already handcuffed and seated in a chair? Society's need for the particular search in this case was minimal.

By contrast, the privacy intrusion was significant. The scope of the deputy's search was broader than that of ***Flynn*** and ***Black*** in that the deputy did not confine his search to the suspect's person upon suspicion that the suspect was carrying identification. The evidence shows that the deputy had no idea whether Jasmine was carrying identification with her that evening. Instead of limiting the search to a frisk of Jasmine's

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[4] At the circuit court, the state argued that the deputy's warrantless action was permitted as an identification search of both Jasmine and Ms. Moss. (10). The evidence is clear that the deputy never performed an investigative stop on Ms. Moss. He never asked her for her name or identification. Thus, to the extent the identification search exception is implicated by the facts of this case, the proper focus is on the deputy's actions with respect to Jasmine.

person—which is what Professor LaFave suggests where the precise location of the wallet is unknown—the deputy took the additional step of picking up a wallet on a nearby table and opening it. He did so despite the fact that he was in a bar with other people in the area. He also knew that Jasmine was, at a minimum, in the company of Ms. Moss that evening. Thus, unlike the situations in ***Flynn*** and ***Black***, the intrusion in this case was not as limited as was reasonably possible to effectuate the purpose underlying it.

Society's need for the particular search in this case was minimal. On the other hand, the privacy intrusion was significant. Accordingly, the identification search exception to the warrant requirement did not permit the deputy's warrantless search of Ms. Moss's wallet.

ii. Search incident to arrest.

A search incident to a lawful arrest is another exception to the warrant requirement. ***United States v. Robinson***, 414 U.S. 218, 224 (1973). The scope of a search incident to arrest is limited to the suspect's person and the area immediately surrounding the arrestee. ***Arizona v. Gant***, 556 U.S. 332, 339 (2009). The "area immediately surrounding the arrestee" means "'the area from within which [the suspect] might gain possession of a weapon or destructible evidence.'" *Id.* (citing ***Chimel v. California***, 395 U.S. 752, 763 (1969)). "If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply." *Id.*

Here, the search incident to arrest exception to the warrant requirement did not permit the warrantless search of Ms. Moss's wallet. The search was outside the area of the

arrestee's immediate control. The evidence shows that upon arresting Jasmine for disorderly conduct, the deputy placed her in handcuffs and sat her in a chair a couple feet from the table with the wallet. While Jasmine may have been within reaching distance of the wallet, it is clear from the record that she was secured. It was not reasonably possible for her to grab the wallet and open it while she was handcuffed. ***Gant*** instructs that under these circumstances the search incident to arrest rule does not apply.[5]

The circuit court might have found that the deputy arrested Ms. Moss prior to the warrantless search as well. But that finding is contrary to the great weight and clear preponderance of the evidence. The evidence shows that the deputy neither performed an investigative stop nor arrested Ms. Moss for any purported offense prior to searching her wallet.

While a search may be incident to a subsequent arrest if the officer has probable cause to arrest before the search is conducted, ***Rawlings v. Kentucky***, 448 U.S. 98, 111 (1980), the deputy did not have probable cause to arrest Ms. Moss for any offense prior to searching the wallet. Probable cause must exist independent of the fruits of the warrantless search in

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[5] It is worth noting that ***Gant's*** instruction came in a vehicle case, where a defendant's expectation of privacy is reduced. ***Arizona v. Gant***, 556 U.S. 332, 345 (2009). Still, the Court held that the search incident to arrest exception "authorizes police to search a vehicle . . . only when the arrestee is *unsecured and within reaching distance* of the passenger compartment at the time of the search." *Id*. at 343 (emphasis added). Certainly this instruction applies with equal force to the warrantless search of a wallet that is not found on the suspect's person, as a wallet commands a higher expectation of privacy. *See* ***United States v. Fultz***, 146 F.3d 1102, 1105 (9th Cir. 1998).

order for the search incident to arrest exception to apply. ***Rawlings v. Kentucky***, 448 U.S. 98, 111 (1980). Here, before searching the wallet, the facts that inform the probable cause calculus with respect to Ms. Moss are simple: (1) the deputy got a call about an alleged argument between two women at a bar; (2) the deputy arrived at the bar and did not see anyone arguing; (3) the deputy saw a woman acting loud and belligerent; and (4) the deputy saw Ms. Moss seated on a barstool, apparently intoxicated. These facts do not rise to the level of probable cause for disorderly conduct or any other crime.

Moreover, even if the deputy had probable cause to arrest Ms. Moss prior to the search, the search incident to arrest exception still would not apply. Like the situation with Jasmine, the search would have been outside the area of the arrestee's immediate control. The evidence shows that Ms. Moss was 10 to 15 feet from the wallet. She was therefore not within reaching distance of the wallet. Per ***Gant***, the search incident to arrest rule is inapplicable under these circumstances.

In sum, the search incident to arrest exception, whether applied through the deputy's conduct toward Jasmine or Ms. Moss, did not permit the deputy's warrantless search. Since no valid exception to the warrant requirement applies to overcome the presumption of unreasonableness that attaches to a warrantless search, the search was constitutionally unreasonable.

II. The Inevitable Discovery Doctrine Does Not Render the Fruits of the Deputy's Constitutionally Unreasonable Search Admissible. Therefore, All Fruits of the Search Must Be Suppressed.

"Under the inevitable discovery doctrine, 'evidence obtained during a search which is tainted by some illegal act may be admissible if the tainted evidence would have been inevitably discovered by lawful means.'" ***State v. Jackson***, 2016 WI 56, ¶47, 369 Wis.2d 673, 882 N.W.2d 422 (quoted source omitted). While the Wisconsin Supreme Court has recognized important indicia of inevitably, *see* ***Jackson***, 369 Wis. 2d 673, ¶¶60-66, the ultimate question is whether the state can show by a preponderance of the evidence that it inevitably would have discovered the evidence sought to be suppressed. *Id*.

At the circuit court, the state argued that the contents of Ms. Moss's wallet inevitably would have been discovered by way of an inventory search following Jasmine's arrest. (10). An inventory search is another exception to the warrant requirement. ***Colorado v. Bertine***, 479 U.S. 367, 371 (1987). "[I]nventory procedures serve to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Id*. at 372.

A review of the evidence belies the state's assertion that the contents of Ms. Moss's wallet inevitably would have been inventoried following Jasmine's arrest. The state's argument unreasonably assumes that the deputy would have seized the wallet in the first place. The deputy had no idea whose property it was. The wallet was not in Jasmine's possession that night. It was not on her person. Rather, it sat on a table in a bar with other people in the area. And Jasmine

never claimed to own the wallet. In fact, the opposite is true: when the deputy finally got Jasmine's attention, she expressly disclaimed ownership of the property. This is not a situation where it would have been improper to leave the property behind. *Compare with* ***State v. Callaway***, 106 Wis. 2d 503, 512-13, 317 N.W.2d 428 (police not unreasonable in removing arrestee's car from street where car might have been vandalized or otherwise damaged); *see also* 3 Wayne R. LaFave, *Search and Seizure* § 5.5(b) at 297 (5th ed. 2012) (where arrestee carrying suitcase or like object, improper for police to leave container unattended at scene of arrest).

The above facts do not establish that the contents of Ms. Moss's wallet inevitably would have been discovered but for the deputy's warrantless action that night. Therefore, all fruits of the search must be suppressed.

CONCLUSION

For the reasons set forth above, Ms. Moss respectfully requests that the court reverse the judgment of conviction and remand to the circuit court with directions that all evidence derived from the search be suppressed.

Dated this 6th day of January, 2017.

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 4,246 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 this 6th day of January, 2017.

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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 s. 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 one or more initials or other appropriate pseudonym or designation 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.

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