STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 2016AP1933-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

-vs.-

THOMAS M. GIBSON,
Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF CONVICTION FILED ON JUNE 23, 2016, AND THE DECISION DENYING THE DEFENDANT'S MOTION TO SUPPRESS, IN THE WAUKESHA COUNTY CIRCUIT COURT, THE HONORABLE RALPH M. RAMIREZ, PRESIDING.
WAUKESHA COUNTY CASE NO. 2015CT1284

DEFENDANT-APPELLANT'S BRIEF AND SHORT APPENDIX

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STATEMENT OF THE ISSUE

Question presented

Whether it is constitutionally reasonable for a police officer to justify a traffic stop for speeding based on a radar gun that has not been calibrated or tested for accuracy at any time in the two decades preceding the stop?

Answer below

The circuit court answered that question affirmatively. It concluded that reasonable suspicion existed under those facts because the defense—in litigating a motion to suppress—had failed to prove that the radar gun was not working properly. Absent some indication that the radar gun was not accurate, reasoned the court, the officer's reliance on it as the predicate for Gibson's stop did not run afoul of the constitution.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Gibson would welcome oral argument if deemed appropriate by the Court.

Gibson does not believe the Court's opinion in the instant case will meet the criteria for publication because Gibson herein appeals from a misdemeanor conviction. He has not moved for a three-judge panel, and the case will most likely be decided by one judge. Thus, this case is likely not appropriate for publication and no such request is made.

STATEMENT OF THE CASE

Around 1:00 p.m. on August 15, 2015, Sergeant Bradley Bautz of the Village of Lac La Belle Police Department was on patrol. (R.34:5-6.) He was on the lookout for speeders. (*Id.*:7.) In 1999, Bautz had been

trained on visually estimating the speed of vehicles, but he had no subsequent training. (*Id.*:6.) Thus, as Bautz sat in his squad car in the Village Hall parking lot, he was sixteen years removed from any training purposed on visually identifying the speed of passing vehicles. (*Id.*:5-7.) But, he had with him the Village's radar gun. (*Id.*:7.)

Standard operating procedure required that the radar gun be tested for accuracy both before and after any traffic stop, which Bautz admitted knowing at the motion hearing in the instant case. (*Id.*:18) Such testing requires the use of a tuning fork. (*Id.*) In the world of radar guns, tuning forks are devices that, when struck, emit a signal that should cause the radar gun to register a specific speed.[1] If the gun clocks the fork at a different speed, then something's not working right.[2] The idea behind testing the device with the tuning forks is to ensure that when the officer points it at an oncoming vehicle, he or she can trust that the gun is accurately reporting the vehicle's speed.

However, in the instant case, Bautz admitted that he had not tested the radar gun with tuning forks when he was on the lookout for speeders. (R.34:13-14.) Instead, he had performed only the gun's own internal test. (*Id.*) Bautz provided no information at the hearing as to precisely what the internal test accomplished or showed. (*See id.*) The record is thus unclear what, if any, relevance the device's internal test was to determining its accuracy.[3] Bautz also admitted that he had no knowledge of any calibration

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[1] *See* John Jendzurski & Nicholas G. Paulter, *Calibration of Speed Enforcement Down-The-Road Radars*, 114 J. Research Nat'l Inst. Stds. & Tech. 137, 140-42 (2008).

[2] *See id.*

[3] The relevant user's manual would suggest that the internal test is *not* a measure of accuracy, but rather only a check on the functionality of the device's circuitry and lamp. Kustom Signals, Inc., *HR-12 Hand-Held Traffic Radar Operator's Manual* 8 (3rd Rev. 1992).

or service on the radar gun since 1994. (*Id.*:14-15.) The Village's records confirmed Bautz's testimony that the gun was in fact last calibrated twenty-one years before it served as the predicate for Gibson's traffic stop. (*Id.*, R.9:8-9, R.12.)

Nonetheless, armed with that long-ago-calibrated and not-tuning-fork tested radar gun, Bautz was on patrol. (R.34:7.) From his vantage point, he observed a red Jeep Wrangler driving towards him at what he estimated was 25 miles per hour. (*Id.*) The speed limit in that area was 15 miles per hour. (*Id.*:6.) Bautz then took up his radar gun and pointed it at the Jeep. (*Id.*:7.) The gun reported the Jeep's speed at 26 miles per hour, and Bautz decided to stop it for speeding. (*Id.*:7-8.) Gibson was driving. (*Id.*:9.)

During the ensuing traffic stop, Bautz observed that Gibson slurred his speech and had glassy, bloodshot eyes. (R.5:2.) Bautz therefore had Gibson perform some field sobriety tests. (*Id.*:3.) Those tests did not go Gibson's way, and Bautz then subjected him to a preliminary breath test. (*Id.*) Ultimately, Bautz cited Gibson for operating while intoxicated. (*Id.*) At some point after the stop, Bautz used the tuning forks on the radar gun to test its accuracy. (R.34:16.) However, at the subsequent motion hearing Bautz did not testify as to the results of those tests and whether the gun reported accurately. (*See id.*)

Gibson had a prior OWI, and the State prosecuted him for OWI second. (R.5.) During pretrial proceedings, Gibson challenged the validity of Bautz's stop, contending that it violated his state and federal constitutional rights. (R.9:1-2.) In short, Gibson argued that Bautz lacked reasonable suspicion to justify the stop. (*Id.*:3.) He said that Bautz's reliance on the radar gun was unreasonable because the gun itself had not been tested or calibrated in over 21 years. (*Id.*:3-4.) At the hearing on Gibson's motion, the State did not dispute that Bautz's radar gun had not

been calibrated. (*See id.*:24-25.) Instead, the State emphasized the officer's visual estimation as satisfying reasonable suspicion that Gibson was speeding. (*Id.*)

In its ruling, the circuit court found that Bautz's testimony that he could accurately estimate Gibson's speed as exceeding the limit without the radar gun was "not so reasonable." (*Id.*:32, A-Ap. 11.) With regard to the officer's testimony regarding his visual estimation, the court explained that "there's not much reliability" to it "even in that respect at that slow speed." (*Id.*:33, A-Ap. 12.) Thus, the court characterized the radar gun as the "linchpin" of the case and "really bas[ed] [it's conclusion] on what the radar gun said." (*Id.*:32-33, A-Ap. 11-12.)

As for the radar gun, the circuit court noted that the officer did an internal test of the machine and used tuning forks after the stop. (*Id.*:33-34, A-Ap. 12-13.) The court had "concerns" and was "disturbed" about the fact that the gun had not been calibrated or tested in over two decades. (*Id.*:34, A-Ap.13; R.36:5) Nonetheless, the court reasoned that "there isn't anything on this record that I can see or know that would tell me that that radar gun was not operating properly." (R.34:34, A-Ap. 13.) Consequently, the court concluded that—even though the officer's visual approximation of speed was unreliable—the officer had an appropriate and reasonable belief that Gibson was speeding based on the radar gun. (*Id.*)

At the conclusion of the motion hearing, the circuit court invited Gibson to provide it with anything that would assist in evaluating the standard for calibrating a radar gun. (*Id.*:34-35, A-Ap. 13-14.) Gibson thus filed a motion to reconsider, addressing that very issue. (R.13.) He reiterated that while Wisconsin did not have a set standard for when a radar gun had to be calibrated or tested in order to be reliable, the gun used by the officer in this case

certainly was not reliable given how long it had gone without being calibrated. (*Id.*:2-4.) The judge denied the motion. (R.36:7, A-Ap. 17.)

Gibson thereafter pleaded guilty to OWI second and was sentenced to ten days in jail and ordered to pay costs and fees. (R.37:6, 17-18, A-Ap. 1-2.) He appeals (R.31), limiting his argument to the propriety of his stop.

ARGUMENT

I. SUMMARY OF ARGUMENT.

Gibson herein asks this Court to agree with the unremarkable proposition that it is not reasonable for an officer to use a radar gun that has not been calibrated or tested in over 21 years as the predicate for a traffic stop for speeding. The circuit court's contrary conclusion in the instant case should be reversed because the record unequivocally shows that the State failed to meet its burden to prove that Bautz's reliance on the radar gun was reasonable.

Bautz knew that the radar gun had not been calibrated in over 21 years. He knew that standard procedure required testing the gun for accuracy with tuning forks before using it as a predicate for traffic stops. And, he knew how to perform those tests. Yet, he failed to perform them before stopping Gibson. In fact, there is no evidence in the record to show that Bautz's radar gun had been tested for accuracy at any time in the two decades preceding the stop. Bautz's failure to test the radar unit for accuracy and his knowledge that it had not been calibrated or tested in over two decades rendered his reliance on it as the predicate for Gibson's stop unreasonable. Gibson urges this Court to reach the same conclusion. He offers the following in support.

II. STANDARD OF REVIEW AND GOVERNING LAW.

Both the United States and Wisconsin Constitutions guarantee the right of person to be free from unreasonable searches and seizures. U.S. Const. Amend. IV; Wis. Const. Art. I, § 11. A traffic stop, even if it is brief and for a limited purpose, is a seizure subject to constitutional protections. *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569 (quoting *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 588 N.W.2d 696 (Ct. App. 1996)). Thus, an officer's decision to conduct a traffic stop is valid under the Constitution only if the officer has a reasonable suspicion that a traffic law has been violated. *State v. Houghton*, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 868 N.W.2d 143.

Whether the officer's suspicion is reasonable is an objective standard. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990). A court assesses whether a reasonable officer, in light of his or her training and experience, could suspect that the individual has committed a crime. *State v. Post*, 2007 W 60, ¶ 13, 301 Wis. 2d 1, 733 N.W.2d 634 (citations omitted). The officer must point to specific and articulable facts which, taken together with rational inferences from those facts, constitute reasonable suspicion sufficient to justify the stop. *Houghton*, 2015 WI 79, ¶ 21 (*citing Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The court considers the totality of the facts and circumstances when determining the propriety of an investigatory stop. *Id.* Even if the officer might be mistaken, in either fact or law, the question remains the same: was the officer's suspicion that a law was violated reasonable. *North Carolina v. Heien*, 574 U.S. __, 135 S.Ct. 530, 536 (2014); *Houghton*, 2015 WI 79, ¶ 52. Thus, so long as the officer is acting reasonably and in good faith, the search or seizure does not violate constitutional protections. *Heien*, 574 U.S. __, 135 S.Ct. at 536; *Houghton*, 2015 WI 79, ¶ 52.

When a defendant contends that his constitutional rights were violated by a seizure, the burden is on the government in the circuit court to show that it was reasonable. *Post*, 2007 WI 60, ¶ 12. On appeal, the appellate court determines whether the government met its burden with a dual standard of review. *State v. Phillips*, 218 Wis. 2d 180, 189, 577 N.W.2d 794 (1998). The circuit court's findings of fact are upheld unless they are clearly erroneous. *State v. Williams*, 2002 WI 94, ¶ 17, 255 Wis. 2d 1, 646 N.W.2d 834. But, the conclusion of whether a constitutional violation occurred under those facts is reviewed de novo. *Id.*

III. POLICE LACKED REASONABLE SUSPICION TO STOP GIBSON FOR SPEEDING; THE OFFICER WAS UNABLE TO RELIABLY ESTIMATE GIBSON'S SPEED AS OVER THE LIMIT AND HE UNREASONABLY RELIED ON A RADAR GUN THAT HAD NOT BEEN CALIBRATED OR TESTED IN TWO DECADES.

In this case, Bautz gave to two reasons as to why he suspected that Gibson was speeding. First, he said he visually estimated Gibson's speed as exceeding the limit. Second, he relied on the radar gun's report that Gibson was speeding.

Bautz's first reason—his visual estimation of Gibson's speed as over the limit—is not determinative of the outcome of this appeal because the circuit court found, as a matter of fact, that Bautz was not able to accurately estimate Gibson's speed. Specifically, the judge found that the Bautz's relevant testimony was "not so reasonable" and lacked "reliability" under the facts of this case. (R34:31-33, A-Ap. 12-13.) Matters of credibility are exclusively within the province of the factfinder and not to be disturbed on appeal. *State v. Kucharski*, 2015 WI 64, ¶ 24, 363 Wis. 2d 658, 866 N.W.2d 697. Here, the circuit court found that Bautz was unable to accurately estimate Gibson's speed as

exceeding the limit. Whereas the record does not show that finding to be clearly erroneous, it is owed deference on review. *See Williams*, 2002 WI 94, ¶ 17. Insofar as Bautz could not accurately estimate Gibson's speed as over the limit, his visual observation alone could not provide reasonable suspicion justifying the stop.

Thus, Bautz's second proffered reason for the stop—his reliance on the radar gun—was, as the judge stated below, the "linchpin" of reasonable suspicion in the instant case. (R.34:33, A-Ap. 12.) The historical facts associated with the radar gun are not disputed: it had not been calibrated or tested in over 21 years and Bautz did not test it for accuracy prior to the stop. No evidence exists in the record showing to the contrary. As the judge commented, the fact that the radar gun had not been calibrated or tested in such a long period of time was both "disturb[ing]" and "bothersome." (R.36:5-6, A-Ap. 15-16.) Gibson agrees.

But, Gibson's disputes the circuit court's legal analysis in light of those facts. As mentioned before, the State bears the burden of proving a stop constitutional in any Fourth Amendment challenge. *Post*, 2007 WI 60, ¶ 12. However, in the instant case, the circuit court incorrectly shifted that burden to Gibson by requiring him to show that the radar gun was not accurate, and thus that reasonable suspicion did not exist.

Under the relevant standard—where the State has the burden to show the officer's actions were reasonable—the circuit court should have considered whether it was reasonable for Bautz to rely on a radar gun that had not been calibrated or tested for accuracy in more than two decades. Whether the gun was in fact accurate is not determinative of reasonable suspicion. After all, the question is not whether the radar gun was actually working, but instead whether it was

reasonable for the officer to rely on something he knew had not been calibrated or tested in twenty-one years.

In light of the undisputed facts in this case, the record shows that it was unreasonable for Bautz to rely on the radar gun as the predicate for Gibson's stop. Bautz knew that the radar gun had not been calibrated since 1994. And, he admitted that standard operating procedure was to test the radar gun before using it to initiate traffic stops. Despite knowing that he should have checked the gun with the tuning forks before relying on it as a predicate for traffic stops, Bautz admitted that he did not do so in this case. Certainly, Bautz testified that he used the internal test on the radar gun before stopping Gibson, but he failed to offer any explanation as to the scope or purpose of such a test.

If the State wanted to rely on the gun's internal test as demonstrative of Bautz's reasonable belief in the gun's accuracy, it should have elicited relevant testimony from Bautz. It did not, and thus it is unclear whether Bautz even knew what, if anything, the internal test accomplished in terms of assessing the gun's accuracy. The owner's manual for the same make and model as Bautz's radar gun actually shows that the internal test does nothing more than check the functionality of the device's lamp and circuitry. *See* Kustom Signals, *HR-12 Manual* at 8. Thus, even if Bautz had detailed the limits of the gun's internal test, his testimony would not have furthered any claim to a reasonable belief in its accuracy, especially in light of his own knowledge that *the forks* should have been used to test the gun for accuracy.

It is true that Bautz used the tuning forks *after* the stop, but that is irrelevant when determining whether he acted reasonably in stopping Gibson. *State v. Young*, 2006 WI 98, ¶ 58, 294 Wis. 2d 1, 717 N.W.2d 729 (reviewing only those facts that preceded the stop). "The moment of 'seizure' is critical for two reasons: (1)

it determines when Fourth Amendment and Article I, Section 11 protections become applicable; and (2) it limits the facts [a reviewing court] may consider in evaluating whether [the detaining officer] had reasonable suspicion to stop [the suspect]." *Id.* ¶ 23. In the instant case, Gibson was seized before Bautz tested the gun with the tuning forks. Thus, the post-stop test does not contribute to the reasonable suspicion analysis.[4] If anything, the post-stop test illustrates the unreasonableness of Bautz's actions: he knew that he was supposed to test the gun before using it for traffic stops and he knew how to test it, but he simply failed to do so.

Thus, under the totality of those undisputed facts, the State failed to meet its burden to prove that it was reasonable for Bautz to rely on the radar gun as a predicate to Gibson's traffic stop.

But, the circuit court reached the contrary conclusion by shifting the burden from the State to Gibson. Instead of requiring the State to prove that Bautz's actions were reasonable, the court improperly looked to Gibson to show that Bautz's reliance on the gun was unreasonable. The circuit court looked to Gibson to prove that unreasonableness by showing Bautz's reliance was contrary to some established standard for determining the accuracy of radar guns. Even though that approach errantly puts the burden on Gibson to prove Bautz's actions unreasonable—instead of requiring the State to prove them reasonable, *contra Post*, 2007 WI 60, ¶ 12—he can still defeat reasonable suspicion under it.

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[4] It is worth noting that no testimony was taken or evidence introduced at the motion hearing demonstrating the results of Bautz's tuning fork test. In other words, the State never established whether Bautz's tuning fork test proved the radar gun was accurate.

The absence of a bright line rule in Wisconsin establishing when a radar gun loses its reliability does not render the Bautz's decision to use the particular radar gun in this case reasonable. In fact, the court of appeals long ago held that it is "common knowledge" that radar guns should tested and serviced to assure they are working properly. *Ozaukee County v. Flessas*, 140 Wis. 2d 122, 128, 409 N.W.2d 408 (Ct. App. 1987). In light of *Flessas*'s recognition that radar guns need to be routinely tested and serviced to ensure proper working order, it is simply unreasonable to assume that a device that has not been calibrated or tested in over two decades is working properly. *See id.* That proposition is supported by the case law in other jurisdictions, which have held that radar guns and their associated implements must be calibrated or tested reasonably close in time to the arrest lest reliance on their results be deemed unreasonable. *See City of St. Louis v. Boecker*, 370 S.W.2d 731, 737 (Mo. App. 1963), *People v. Walker*, 610 P.2d 496, 497 (Colo. 1980).

In *Boecker*, the defendant in challenged his conviction for speeding. 370 S.W.2d at 731-32. The officer relied on a radar gun's report that the defendant was speeding as the predicate for the traffic stop. *Id.* The officer in *Boecker* had actually tested the gun with tuning forks on the morning of the stop, but he did not explain the procedures that he had followed when later testing the gun at the location of the arrest. *Id.* at 734. The court recognized that the accuracy and proper functioning of a radar gun may easily be affected by its movements, and therefore that the gun should have been tested at each site. *Id.* at 736-37. In the end, *Boecker* held that before the gun's results could be admitted, the State had to show that the unit had been properly tested within a reasonable time from the arrest. *Id.* at 737. Otherwise, such evidence would have no probative force. *Id.*

Like in *Boeker*, the defendant in *Walker* challenged his conviction for speeding. *Walker*, 610 P.2d at 497. The officer was not certain of the driver's speed, but testified that his radar unit had indicated the driver was travelling 66 miles per hour in a 35-mile-per-hour zone. *Id*. The officer had tested the radar unit before and after the stop with only one tuning fork. *Id*. But, the officer did not know whether the tuning fork was properly calibrated. *Id*. The *Walker* court held that the use of a single uncalibrated tuning fork provided a legally insufficient foundation to support a reading taken from a radar device. *Id*. at 497. As an alternative to using two tuning forks, *Walker* held that the government could rely on a single tuning fork if it had been calibrated within one year of the stop. *Id.*

Walker and *Boecker* thus illustrate that Bautz's knowing use of a radar gun that had not been calibrated or tested in the two decades prior to Gibson's stop was objectively unreasonable. While the issues in *Walker* and *Boecker* involved a challenge to the admission of the radar gun's readout as evidence, their reasoning demonstrates a clear recognition that radar guns and their implements are not perfect and minimal assurances of reliability are required. Both *Walker* and *Boecker*, as well as the relevant technical manuals associated with radar guns, uniformly show that regular calibration with tuning forks is a basic requirement for assurance of reliable results. *See, e.g.,* Kustom Signals, Inc., *Talon Traffic Safety Radar: Owner's Manual* § 6.0 (2003) ("The internal test and tuning fork tests explained below should be conducted at the beginning and end of each patrol shift to ensure the accuracy and functionality of the unit.").

Accordingly, even when saddled with the burden to prove that Bautz's actions were unreasonable, Gibson can still succeed because he can show that Bautz knew that the gun had not been calibrated or tested in two decades and should have been tested

with tuning forks before being used to stop people for speeding. No bright line rule regarding how often a radar gun must be tested for accuracy is necessary for Gibson to succeed in this case. Instead, under the totality of the facts in this specific case and pursuant to the authority cited above, more than two decades was simply too long for Bautz's radar gun to go uncalibrated and untested and yet still be reasonably expected to produce accurate results.

The touchstone of the Fourth Amendment is reasonableness. *Heien*, 574 U.S. __, 135 S.Ct. at 536 (quotations omitted). The law will not suppress the actions of an officer that are made in good faith, even if they are erroneous. *Houghton*, 2015 WI 79, ¶¶ 52, 75 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 183-86 (1990)). However, Bautz's actions in the instant case were not in good faith. He knew that the radar gun that he was using to conduct traffic stops should have been calibrated and tested *before* he used it as a predicate for traffic stops. He had no good reason for not following standard procedure and ensuring the radar gun's accuracy, especially where he knew that it had not been calibrated or tested since 1994. Ignoring standard policy and utilizing an untested piece of equipment in contradiction to that policy are not actions taken in good faith. Any mistake that may exist in the instant case therefore cannot be overcome by any suggestion of good faith; it was both reckless to use the radar gun and objectively unreasonable to pull Gibson over based solely on its report that he was speeding.

The circuit court should therefore have granted Gibson's motion and suppressed the evidence.

CONCLUSION

As the State contended below, it doesn't matter if Gibson was actually speeding. It also doesn't matter if the radar unit was operating correctly when Bautz pointed it at Gibson's car.

What matters is that Bautz knew that the gun had not been calibrated or tested in over two decades and he didn't bother to ensure it was operating correctly before using it as a predicate for Gibson's stop. The relevant constitutional question is whether it was reasonable for Bautz to suspect that Gibson was speeding when he was knowingly using a radar gun that had not been calibrated or tested in over two decades. The authority of this State and Bautz's own knowledge that the gun should have been tested with tuning forks before its use, along with the persuasive authority from other jurisdictions, show that the Bautz's reliance on the radar gun was not objectively reasonable in the instant case. Thus, where the sole foundation for the officer's suspicion was his reliance on the radar gun, and that suspicion was not reasonable, the circuit court should have granted Gibson's motion to suppress the evidence flowing from that unjustified stop.

For the aforementioned reasons, Gibson asks this Court to reverse the denial of his motion to suppress and to remand for further proceedings consistent with so holding.

Dated this 13th day of December, 2016.

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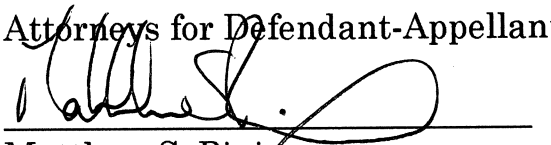

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CERTIFICATION

I certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) for a brief produced using a 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, maximum of 60 characters per full line of body text. The length of this brief is 4,062 words, as counted by the commercially available word processor Microsoft Word.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Section 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated this 13th day of December, 2016.

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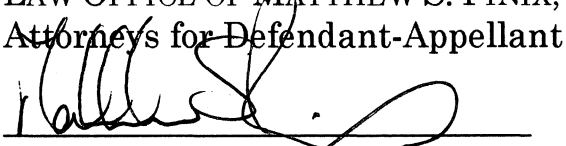

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CERTIFICATION OF APPENDIX CONTENT

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 Section 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) 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 this 13th day of December, 2016.

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CERTIFICATION OF FILING BY THIRD-PARTY COMMERCIAL CARRIER

I hereby certify, pursuant to Rule 809.80(4)(a), Rules of Appellate Procedure, that this Appellant's Brief and Short Appendix will be delivered to a FedEx, a third-party commercial carrier, on December 13, 2016, for delivery to the Clerk of the Court of Appeals, 110 East Main Street, Suite 215, Madison, Wisconsin 53703, within three calendar days. I further certify that the brief will be correctly addressed and delivery charges prepaid. Copies will be served on the parties by the same method.

Dated this 13th day of December, 2016.

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