STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 17 AP 280-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

KAITLIN C. SUMNICHT,

Defendant-Appellant

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED ON
DECEMBER 19, 2016, IN THE CIRCUIT COURT
FOR WINNEBAGO COUNTY, BRANCH I,
THE HONORABLE THOMAS J. GRITTON PRESIDING.

Respectfully submitted,

KAITLIN C. SUMNICHT,
Defendant-Appellant
TRACEY WOOD & ASSOCIATES
Attorneys for the Defendant-Appellant
One South Pinckney Street, Suite 950
Madison, Wisconsin 53703
(608) 661-6300

BY: ADAM M. WELCH
State Bar No.: 1064835

BY: TRACEY A. WOOD
State Bar No.: 1020766

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STATEMENT ON PUBLICATION

Defendant-appellant recognizes that this appeal, as a one-judge appeal, does not qualify under this Court's operating procedures for publication. Hence, publication is not sought.

STATEMENT ON ORAL ARGUMENT

Oral argument would be appropriate in this case only if the Court concludes that the briefs have not fully presented the issues being raised on appeal.

STATEMENT OF THE CASE AND FACTS

In the early morning hours of July 9, 2016, Kaitlin C. Sumnicht (Sumnicht) was operating a motor vehicle, when she was pulled over by Deputy Shawn Glasel of the Winnebago County Sheriff's Department (Glasel). (43:4.) Glasel suspected that Sumnicht was intoxicated, and after administering field sobriety tests, he arrested Sumnicht for Operating While Intoxicated. (43:6.) He handcuffed Sumnicht and transported her to Aurora Hospital for a blood draw. (2:16.)

After arriving at the hospital, and with Sumnicht still in handcuffs, Glasel read Sumnicht a document titled "Informing the Accused" verbatim, ending with the question printed on the form: "Will you submit to an evidentiary chemical test of your blood?" (21:1; 43:9.) After receiving what he considered to be Sumnicht's submission to the test, he escorted her inside and the blood draw was completed. (2:17.)

On July 12, 2016, Sumnicht, through her attorneys, wrote a letter to the Wisconsin State Laboratory of Hygiene. (18:1.) The letter stated, in part:

> It is my understanding that as of this date a sample has been received but has not yet been analyzed. Kaitlin C. Sumnicht is asserting her right to privacy in her blood and requests that no analysis be run without a warrant authorizing so, signed by a neutral and detached magistrate upon a showing of probable cause and specifying the goal of the analysis…A copy of this letter is

> directed to the Winnebago County District Attorney's Office. We request that you consult with that office prior to any analysis of the blood sample. (Id.)

The Wisconsin State Laboratory of Hygiene received Sumnicht's blood sample on July 18, 2016, and conducted an ethanol analysis on July 20, 2016, which returned a result of 0.154 grams of ethanol per 100 milliliters of blood. (12:4.)

Sumnicht was charged with two criminal offenses—Operating While Intoxicated, Second Offense, contrary to Wis. Stat. § 346.63(1)(a), and Operating with a Prohibited Alcohol Concentration, Second Offense, contrary to Wis. Stat. § 346.63(1)(b). (12:1.) On August 10, 2016, Sumnicht filed two suppression motions—one challenging whether she provided voluntary consent to the collection and analysis of her blood, and a second challenging the analysis of her blood after she had clearly and unequivocally revoked any consent to the analysis of her blood. (17:1–2; 20:1–3.)

A hearing was held on Sumnicht's motions on October 7, 2016 before the Honorable Thomas J. Gritton. (43:1.) At that hearing, Glasel testified that he read the Informing the Accused form to Sumnicht verbatim. (43:7.) He further testified that, after reading the form to Sumnicht, he checked a box marked "yes" on the form. (43:8.) However, when questioned about the details of this conversation, he was unable to recall what Sumnicht's exact response was. (43:9.)

Glasel did not recall whether Sumnicht had any questions about what she was being asked to submit to. (43:8.) He testified that it was possible that she did have some questions about her decision. (43:10.) Although Glasel checked the "yes" box on the form, he did not recall Sumnicht's actual answer and could merely state that "[s]he didn't say no." (43:9.)

At the hearing, the State stipulated that the Court could receive as evidence Sumnicht's July 12, 2016, letter, as well as a letter from the State Laboratory of Hygiene dated July 28, 2016, which documented that Sumnicht's blood was received and analyzed by the laboratory after it had received Sumnicht's July 12 letter. (18:1; 19.1; 43:11–12.) The Court ordered briefing, and an oral ruling was issued on November 18, 2016. (43:25; 44:1.) The Court first found that Sumnicht freely and voluntarily consented "to the taking of her blood." (44:3.) The Court then held that "in the State of Wisconsin…the consent goes to the withdrawal of the blood."[1] (Id.) The Court reasoned that once Sumnicht had given consent to the taking of her blood, "the right to test the blood follows," and consent

[1] In the Court's oral ruling, it uses the word "withdraw" to refer both to the process of physically extracting the blood and to the concept of the defendant rescinding her consent; in this context, it seems that the Court is referring to the physical extraction of blood.

cannot subsequently be withdrawn. (Id.) The Court denied both of Sumnicht's motions. (44:4.)

On December 19, 2016, Sumnicht entered a no contest plea to Operating While Intoxicated, Second Offense. (45:3.) The Operating with a Prohibited Alcohol Concentration charge was dismissed pursuant to a plea agreement. (45:6.) Sumnicht was sentenced, and the penalties were stayed pending appeal. (45:7–9.)

Sumnicht now appeals the circuit court's order denying her two suppression motions. (39.)

ARGUMENT

Sumnicht respectfully requests that this Court reverse the circuit court's order as to each of her motions, reverse her conviction, and remand for further proceedings.

Standard of review.

This Court must examine the circuit court's findings of fact under the clearly erroneous standard. ***State v. Padley***, 2014 WI App 65, ¶ 65, 354 Wis. 2d 545, 849 N.W.2d 867. However, this Court owes no deference to the lower court's legal conclusions. ***Id***. The issue of whether voluntary consent was given, as well as the issue of whether consent was withdrawn, involve the application of facts to constitutional principles and are, thus, questions of law subject to independent review. ***State v. Xiong***, 178 Wis. 2d 525, 531, 504 N.W.2d 428 (Ct. App. 1993).

I.

THE STATE FAILED TO PRESENT CLEAR AND CONVINCING EVIDENCE THAT SUMNICHT PROVIDED VOLUNTARY CONSENT TO AN EVIDENTIARY CHEMICAL TEST OF HER BLOOD.

The Fourth Amendment to the United States Constitution and Article 1, sec. 11 of the Wisconsin Constitution guarantee "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures." The essential purpose of

the prohibition against unreasonable searches and seizures is "to safeguard the privacy and security of individuals against arbitrary invasions by government officials." ***State v. Boggess***, 115 Wis. 2d 443, 448–49, 340 N.W.2d 516 (1983). A blood draw conducted at the direction of the police is a search subject to these constitutional reasonableness standards. ***Schmerber v. California***, 384 U.S. 757, 767, 86 S. Ct. 1826, 16 L.Ed.2d 908 (1966). Warrantless searches are *per se* unreasonable and therefore unlawful, subject to a few "well-delineated" exceptions. ***State v. Williams***, 2002 WI 94, ¶ 18, 255 Wis.2d 1, 646 N.W.2d 834 (internal citation omitted). One of the "jealously and carefully drawn" exceptions to the warrant requirement of the Fourth Amendment is the search pursuant to voluntary consent. ***State v. Johnston***, 184 Wis. 2d 794, 806, 518 N.W.2d 759 (1994) (citing ***Schneckloth v. Bustamonte***, 412 U.S. 218, 219, 93 S. Ct. 2041, 2044, 36 L. Ed. 2d 854 (1973)).

If the State relies upon voluntary consent to justify a warrantless search, it has the burden of proving by clear and convincing evidence "that consent to the blood draw was 'given in fact by words, gestures, or conduct' and that the consent was 'voluntary.'" ***State v. Blackman***, 2017 WI 77, ¶54, *citing* ***State v. Artic***, 2010 WI 83, ¶30, 327 Wis. 2d 392, 786 N.W.2d 430 (emphasis added in ***Blackman***). The State must first meet its burden to show

consent-in-fact by the presentation of "positive evidence" of the defendant's choice. ***Gautreaux v. State***, 52 Wis. 2d 489, 492, 190 N.W.2d 542 (1971). If it has met this initial burden, it must then also present evidence that the defendant's consent-in-fact was "an essentially free and unconstrained choice, not the product of duress or coercion, express or implied." ***State v. Blackman***, 2017 WI 77, ¶56 (internal citations and punctuation omitted).

Whether consent to search is voluntary requires an evaluation of the totality of the circumstances. ***State v. Artic***, 2010 WI 83, ¶32. It cannot be determined by bright-line rules. ***Id.*** The Wisconsin Supreme Court has noted that the State's burden to show voluntary consent is "more difficult" when the defendant is in custody at the time that consent is given. ***Gautreaux v. State***, 52 Wis. 2d at 492.

Although Wisconsin's implied consent law[2] indicates that Wisconsin drivers "are deemed to have given consent" to evidentiary chemical testing, this "implied consent" cannot be read as a *per se* method of satisfying the constitutional requirement of "voluntary consent." Rather, the implied consent law serves to "provide[] an incentive for voluntary chemical testing, *i.e.*, not facing civil refusal procedures and automatic revocation[.]" ***State v. Marshall***, 2002 WI

[2] Wis. Stat. § 343.305.

App 73, ¶13, 251 Wis. 2d 408, 642 N.W.2d 571. In ***State v. Padley***, the Court of Appeals clearly explained the distinction between "implied consent" and "voluntary consent":

> There are two consent issues in play when an officer relies on the implied consent law. The first begins with the "implied consent" to a blood draw that all persons accept as a condition of being licensed to drive a vehicle on Wisconsin public road ways. The existence of this "implied consent" does not mean that police may require a driver to submit to a blood draw. Rather, it means that, in situations specified by the legislature, if a driver chooses not to consent to a blood draw (effectively declining to comply with the implied consent law), the driver may be penalized. This penalty scenario for "refusals" created by the implied consent law sets the scene for the second consent issue.
>
> The State's power to penalize a refusal via the implied consent law, under circumstances specified by the legislature, gives law enforcement the right to force a driver to make what is for many drivers a difficult choice. The officer offers the following choices: (1) give consent to the blood draw, or (2) refuse the request for a blood draw and suffer the penalty specified in the implied consent law. When this choice is offered under statutorily specified circumstances that pass constitutional muster, choosing the first option is voluntary consent.
>
> 2014 WI App 65, ¶¶26–27.

More recently, Wisconsin Supreme Court Justice Kelly explained that the implied consent law is "part of a mechanism designed to obtain indirectly what it cannot (and does not) create directly—consent to a blood test." ***State v. Brar***, 2017 WI 73, ¶56 (Kelly, J., concurring). The statutory mechanism exists to "cajole drivers into giving … real consent" and "punishes a driver by revoking his operating privileges if he refuses an officer's request for a blood sample." ***Id.***

Perhaps because the implied consent law is "not a model of clarity," ***Id***., ¶49 (Kelly, J., concurring), it has been argued that choosing to travel on a Wisconsin highway is itself voluntary, constitutional consent to a blood draw. *See, e.g.*, ***State v. Howes***, 373 Wis. 2d 468, 893 N.W.2d 812, 2017 WI 18, ¶85 (Gableman, J., concurring). Yet this theory is not supported by the current state of Wisconsin caselaw. In ***State v. Blackman***, the State argued that ***Padley***'s discussion of voluntary consent was erroneous and that the defendant had voluntarily consented simply by driving on the highway. ***State v. Blackman***, 2017 WI 77, ¶54, n.20. The majority in ***Blackman*** acknowledged the State's argument in a footnote and proceeded to thoroughly analyze the voluntariness of the defendant's consent at the time of his conversation with the police, rather than simply deeming the consent to have occurred because he travelled on the highway. ***Id***., ¶¶54–67. Although a concurring opinion was filed suggesting that two of the justices might have been sympathetic to the State's argument, the four-justice majority as well as the one-justice dissent conducted the analyses consistently with the framework set forth in ***Padley***. ***Id***., ¶89 (Ziegler, J., concurring), ¶¶54–67. It is clear, therefore, that the ***Padley*** framework continues to be binding precedent, and any voluntariness analysis must center on the

interactions between the defendant and law enforcement at the time that consent is requested.

In this case, the State has presented insufficient evidence from which a Court might reasonably determine that Sumnicht provided voluntary consent. Sumnicht had been placed under arrest and was handcuffed in the back seat of a police vehicle. (2:16.) This Court's analysis must focus on the interaction between Sumnicht and Glasel at the time that the blood draw was requested, but the State has made essentially no effort to develop the factual record concerning this interaction. No testimony was presented on Sumnicht's demeanor, on whether she was confused or understood the information conveyed to her, or even on what she said in response to Glasel's ultimate question. (43:7–10.) The State failed to elicit any facts establishing whether her response was a simple affirmative, a conditional affirmative, or even a non-responsive answer. All Glasel could state with confidence was that Sumnicht "did not say no." (43:9.)

Even if Sumnicht's response was the word "yes," this answer alone would be insufficient to establish voluntary consent, because Sumnicht was not even asked to "consent" to the blood draw. The question put to Sumnicht was not "will you consent" but "will you *submit*." (21:1.) The common definition of "submit" is to "yield oneself to the authority or will of another…surrender…to permit

oneself to be subjected to something." (Webster's Third New International Dictionary (1993), http://www.mirriam-webster.com/dictionary/submit.). This word choice, suggesting a submission to the authority of the police, did not adequately convey to Sumnicht that she was free to make the "difficult, but permissible, choice" between providing or withholding her consent to a warrantless search. ***Padley***, 2014 WI App 65, ¶28.

The law is well established that the "orderly submission" of a citizen to a police officer's request does not, standing alone, establish voluntary consent to search. *See* ***Amos v. United States***, 255 U.S. 313, 41 S. Ct. 266, 65 L.Ed. 654 (1921); ***Johnson v. United States***, 333 U.S. 10, 68 S. Ct. 367, 92 L.Ed. 436 (1948); ***Bumper v. North Carolina***, 391 U.S. 543, 88 S. Ct. 1788, 20 L.Ed.2d 797 (1968); ***State v. Geibel***, 2006 WI App 239, 297 Wis. 2d 446, 724 N.W.2d 402. For example, in ***State v. Johnson***, the defendant's response "I don't have a problem with that" in response to a law enforcement officer's stated intention to search his vehicle was found to not be voluntary consent to search but a mere acquiescence or submission to authority. 2007 WI 32, ¶18–19, 299 Wis. 2d 675, 729 N.W.2d 182.

Because Sumnicht was asked to "submit" rather than to "consent" to a blood draw, and because of the paucity of the evidence that the State presented regarding the conversation between Sumnicht

and Glasel, there is nothing in the record from which a Court can find that the State met its difficult burden to prove that Sumnicht provided voluntary consent rather than "orderly submission" to police authority. "To preserve the protection of the Bill of Rights for hard pressed defendants, we indulge every reasonable presumption against the waiver of fundamental rights." ***Glasser v. United States***, 315 U.S. 60, 70 (1942).

To hold, as the circuit court did, that Sumnicht's unknown answer to a request to submit to police authority is sufficient evidence to establish voluntary consent is to reverse the burden of proof and to ignore the presumption against waiver. The circuit court's holding that Sumnicht provided voluntary consent to the chemical testing of her blood must therefore be reversed. Without the blood test evidence, there would have been insufficient evidence to convict Ms. Sumnicht at trial, and she would not have entered no contest pleas to the charge.

II.

SUMNICHT CLEARLY AND UNEQUIVOCALLY WITHDREW ANY CONSENT TO THE ANALYSIS OF HER BLOOD, RENDERING THE ENSUING ANALYSIS A WARRANTLESS AND UNCONSTITUTIONAL SEARCH.

A. The analysis of a blood sample implicates legitimate privacy concerns.

The Fourth Amendment protects incursions by the government into an individual's "reasonable expectation of privacy." ***Katz v. United States***, 389 U.S. 347, 360–61 (1967) (Harlan, J., concurring). "The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State." ***Schmerber***, 384 U.S. at 767.

"[A] blood test … places in the hands of law enforcement authorities a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading." ***Birchfield v. North Dakota,*** 579 U.S. ___, 136 S. Ct. 2160, 2178 (2016). A staggering amount of personal information can be acquired by the analysis of a sample of blood. The presence of alcohol, drugs, or other chemicals can be detected, as well as genetic information about ancestry, family connections, medical conditions, pregnancy, and genetic profiles suitable for identification purposes. The ***Birchfield*** court recognized that the mere potential for information to be extracted from a blood sample can be a source of anxiety for the subject. ***Id.*** For these reasons, the Supreme Court has long recognized that the chemical analysis of a blood sample is an invasion of an individual's privacy. ***Skinner v. Railway Labor Executive's Association***, 489 U.S. 602, 616, 109 S. Ct. 1402 (1989).

The piercing of the skin to collect a blood sample is an invasion of privacy that must be justifiable under the Fourth Amendment. The analysis of a collected blood sample is a further invasion of that person's privacy that must also be justifiable under the Fourth Amendment—in other words, the blood analysis is a Fourth Amendment "search." Sometimes—perhaps frequently—the justification proffered for the collection of the blood will also serve as a justification for its analysis. Yet because there are distinct privacy interests at stake, there are occasions where one invasion of privacy will be justified but the other will not.

B. It does not matter for this appeal whether blood analysis is a part of the initial search or a second search.

There is a legitimate question as to whether the analysis of blood is properly understood as a "second search" or as a continuation of the same search that is initiated by the collection of the blood. On the one hand, ***State v. Riedel*** held that "the examination of evidence seized pursuant to the warrant requirement or an exception to the warrant requirement is an essential part of the seizure and does not require a judicially authorized warrant." 259 Wis. 2d 921, 656 N.W.2d 789, 2003 WI App 18, ¶16 (internal citations and punctuation omitted). On the other hand, the United States Supreme Court, in ***Riley v. California***, has more recently held that the examination of

evidence seized pursuant to an exception to the warrant requirement *does* require a judicially authorized warrant. 134 S. Ct. 2473, 2493–95 (2014).

For the purposes of this case, it does not matter whether the analysis of Sumnicht's blood is understood as a second search or as a continuation of the initial search. If the Court reaches this issue by finding that Sumnicht provided voluntary consent, then, by the explicit terms of the Informing the Accused form, she would have consented to an "evidentiary chemical test" of her blood. (21:1, emphasis supplied.) Sumnicht's consent, if valid, would cover both the collection and analysis of her blood.[3]

If the analysis is a "second search," then Sumnicht's position can be framed as "Sumnicht consented to the future analysis of her blood, but withdrew her consent before that analysis commenced." If the analysis is merely a continuation or an "essential part" of the same seizure that encompassed the blood draw, then Sumnicht's position can be framed as "Sumnicht consented to a process encompassing the collection and analysis of her blood, but withdrew her consent before

[3] The circuit court, in its ruling, relied heavily on the theory that "as a result of [Sumnicht's] original consent, the right to test the blood follows[.]" (44:3.) The defense, for purposes of this appeal, agrees that, if Sumnicht did originally provide valid consent, then she consented to both the extraction and the testing of her blood. The actual question, which the circuit court failed to address, is why, assuming Sumnicht did consent, she would not retain the well-recognized right under the Fourth Amendment to limit or withdraw her consent.

that process was completed." Under either framework, Sumnicht's legitimate privacy interests are implicated by the analysis of her blood, and, as set forth below, that she retains the ability to limit or withdraw her consent until such time as the search is completed.

C. Sumnicht unequivocally withdrew her consent to the analysis of her blood.

"One who consents to a search 'may of course delimit as he chooses the scope of the search to which he consents.'" ***State v. Matejka***, 2001 WI 5, ¶37, 241 Wis.2d 52, 621 N.W.2d 891 (*quoting* ***Florida v. Jimeno***, 500 U.S. 248, 252, 111 S. Ct. 1801 (1991)). When consent, previously given, is modified, limited, or withdrawn, this must be done by an unequivocal act or statement. ***State v. Wantland***, 355 Wis. 2d 135, 152, 848 N.W.2d 810 (2014). "Withdrawal of consent need not be effectuated through particular 'magic words,' but an intent to withdraw consent must be made by unequivocal act or statement." ***United States v. Sanders***, 424 F.3d 768, 774 (8th Cir. 2005) (*quoting* ***United States v. Gray***, 369 F.3d 1024, 1026 (8th Cir. 2004)); *see also* ***United States v. Alfaro***, 935 F.2d 64, 67 (5th Cir. 1991); ***Payton v. Commonwealth***, 327 S.W.3d 468, 478 (Ky. 2010).

Here, Sumnicht initially consented to the analysis of her blood, and her blood sample was duly submitted to the Wisconsin State Laboratory of Hygiene for analysis. (12:4–5.) Then, before that

analysis occurred, Sumnicht withdrew her consent by the sending of a letter explicitly stating that she was "asserting her right to privacy in her blood and request[ing] that no analysis be run without a warrant[.]" (18:1.) This letter was clear and direct. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" ***Jimeno***, 500 U.S. at 251, (*citing* ***Illinois v. Rodriguez***, 497 U.S. 177, 183–89, 110 S. Ct. 2793; ***Florida v. Royer***, 460 U.S. 491, 501–02, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983)). Any reasonable person reading this letter would understand that Sumnicht had withdrawn her consent to any warrantless blood analysis and had asserted her right to privacy. Yet the Wisconsin State Laboratory of Hygiene disregarded this letter and conducted an ethanol analysis of Sumnicht's blood sample. (12:4.)

The fact that this case involves consent to search a blood sample does not mean that a different analysis applies than in any other Fourth Amendment withdrawal-of-consent case. For example, a person might consent to the search of a house but withdraw that consent before the search is completed. It would clearly be unacceptable for law enforcement officers to ignore the withdrawal of consent and remain in the house solely because of the initial consent.

See e.g. ***United States v. Buckingham***, 433 F.3d 508, 513 (6th. Cir. 2006), ***Painter v. Robertson***, 185 F.3d 557, 567 (6th Cir. 1999) (holding that upon a revocation of consent the search should be terminated instantly, and the officers should promptly depart the premises).

When the search at issue is the scientific analysis of blood, the duration of the search is typically stretched over days or weeks rather than the minutes or hours that would typically be involved in the search of a home or automobile. But the relevant time period being longer or shorter does not change the basic legal principles. *See* ***United States v. Casellas-Toro***, 807 F.3d 380 (1st. Cir. 2015) (where, when the defendant's automobile was searched 21 days after he provided consent, it was held that the search was still justified by the defendant's initial and un-retracted consent). If consent is withdrawn before the search is completed—whether that is several minutes or several days after consent is initially provided—any search must immediately cease.

Once she withdrew her consent, Sumnicht was entitled to rely on the privacy of the information contained in the blood sample. The analysis of the blood—without consent, without a warrant, and without any other exception to the warrant requirement—was an unreasonable search in violation of the Fourth Amendment to the

United States Constitution and article I, section 11 of the Wisconsin Constitution. Without that evidence, there was insufficient evidence to convict at trial, and Sumnicht would not have entered a no contest plea. The circuit court's order denying Sumnicht's motion to suppress the results of the blood analysis must, therefore, be reversed.

CONCLUSION

For the reasons stated above, Sumnicht respectfully requests that this Court reverse the circuit court's orders denying both suppression motions and remand the matter for further proceedings.

Dated at Madison, Wisconsin, August 3, 2017.

Respectfully submitted,

KAITLIN C. SUMNICHT,
Defendant-Appellant

TRACEY WOOD & ASSOCIATES
Attorneys for the Defendant-Appellant
One South Pinckney Street, Suite 950
Madison, Wisconsin 53703
(608) 661-6300

BY: _____
ADAM M. WELCH
State Bar No.: 1064835

BY: _____
TRACEY A. WOOD
State Bar No.: 1020766

CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced using the following font:

Proportional serif font: Min. printing resolution of 200 dots per inch, 13-point body text, 11 points for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4187 words.

I further certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated: August 3, 2017.

Signed,

BY: _____
ADAM M. WELCH
State Bar No.: 1064835

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

Dated: August 3, 2017

Signed,

BY: _____
ADAM M. WELCH
State Bar No. 1064835

CERTIFICATION

I certify that this appendix conforms to the rules contained in s. 809.19(13) for an appendix, and the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

Dated: August 3, 2017.

Signed,

_____

ADAM M. WELCH
State Bar No. 1064835

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