STATE OF WISCONSIN COURT OF APPEALS DISTRICT I

STATE OF WISCONSIN,
Plaintiff- Respondent

vs.

Appeal No. 2017AP000943 CR

Case No. 2015CF000403

ROMAN D. LOVELACE,
Defendant- Appellant

ON APPEAL FROM A JUDGMENT OF CONVICTION, ENTERED IN THE CIRCUIT COURT OF MILWAUKEE COUNTY, THE HON. STEPHANIE G. ROTHSTEIN, PRESIDING, AND AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN THE CIRCUIT COURT OF MILWAUKEE COUNTY, THE HON. STEPHANIE G. ROTHSTEIN, PRESIDING

BRIEF OF DEFENDANT- APPELLANT

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STATEMENT OF ISSUES PRESENTED

1. Q. Did the Circuit Court's written communication with the jurors during their deliberations in answering their questions, as to the relationship between Burglary and party to a crime and whether they were separate charges, violate the defendant's statutory right to be present during all stages of the trial and his constitutional right to counsel during the time of those communications and, therefore, was he entitled to a new trial?

   A. The Circuit Court answered no.

STATEMENT OF ORAL ARGUMENT AND PUBLICATION

It is not requested that this appeal be published and oral arguments are not necessary because the issues in this matter may be decided on established principles of law in the State of Wisconsin.

STATEMENT OF THE CASE- PROCEDURAL

1. This case commenced with the filing of a Criminal Complaint against the defendant and co-defendant, Matthew L. Appleton, charging them with Burglary (building or dwelling), PTAC, and Obstructing an Officer. (Record, pp. 1-2; Appendix, pp. A1- A2). Burglary is a Class F felony with a maximum sentence of 12.5 years. Obstructing or Resisting an Officer is a Class A misdemeanor, with a maximum sentence of 9 months.

2. The initial appearance for the defendant was held on January 24, 2015. (R58, pp. 1-9). The Preliminary Hearing was held in regard to both defendants on February 4, 2015. (R59, pp. 1-21). At the close of the hearing, the Court found probable cause to believe that a felony had been committed by both defendants and bound them over for trial.

3. After the Preliminary Hearing on February 4, 2015, an Information was filed charging both defendants with the same crimes that had been charged in the Criminal Complaint. (R4, App. A3). The defendant was arraigned on the Information at that time and entered a plea of not guilty. On May 20, 2015, the co-defendant, Matthew L. Appleton, pled guilty to Burglary and was sentenced on December 16, 2015 to 36 months, with 18 months of initial confinement and 18 months of extended supervision. The defendant, however, requested a jury trial.

4. On January 11, 2016, the jury trial in regard to the defendant commenced in the Circuit Court of Milwaukee County, the Hon. Stephanie G. Rothstein, presiding. The state was represented by Alex T. Mueller, Assistant District Attorney of Milwaukee County. The defendant was represented by Parker C. Mathers. The trial continued until January 13, 2016, at which time the jury rendered its verdict. (R71. pp. 3-4; App. pp. A16- A17). The jury found the defendant guilty of both charges. (R33, pp. 1-2, App. pp. A22- A23).

5. On February 17, 2016, the defendant appeared in the Circuit Court of Milwaukee County, the Hon. Stephanie G. Rothstein, presiding, for sentencing. (72, pp. 1-32). At that time, the Court sentenced him in regard to Count 1, Burglary, to 5 years with 2 years of initial confinement and 3 years of extended supervision. In regard to Count 2, Obstructing an Officer, he was sentenced to 6 months, consecutive to the sentence under Count 1.

6. A Written Explanation of Determinate Sentencing, noting these sentences, was filed on February 17, 2016. (R35, App. p. A24). On February 18, 2016, a Judgment of Conviction for Burglary was filed. (R38, pp. 1-2: App. pp. A25- A26). Also, a Judgment of Conviction for Obstructing an Officer was filed. (R39, p.1; App. p. A39).

7. On March 7, 2016, a Notice of Intent to pursue Postconviction Relief was filed on behalf of the defendant. (R40, App. p. A28). An Order Appointing Counsel was filed on April 11, 2016, appointing Esther Cohen Lee as appellate counsel to represent the defendant in regard to his appeal of this matter.

8. On February 13, 2017, a Postconviction Motion and Exhibits were filed on behalf of the defendant in the Circuit Court of Milwaukee County. (R47, pp. 1-12; App. pp. A29-A40). The state filed a Response to the Postconviction Motion on April 5, 2017. (R48, pp. 1-4; App. pp. A41- A44). A Reply to that Response was filed on behalf of the defendant on April 19, 2017. (R52, pp. 5; App. pp. A45- A49).

9. On April 26, 2017, a Decision and Order denying the Postconviction Motion was issued by the Circuit Court of Milwaukee County, the Hon. Stephanie G. Rothstein, presiding. (R53, pp. 1-3; App. pp. A50- A52). A Notice of Appeal was filed on May 16, 2017. (R55; App. p. A53. On May 16, 2017, an Order Appointing Counsel was issued, assigning Esther Cohen Lee as appellate counsel to represent the defendant in the Court of Appeals. (R54; App. p. A54).

STATEMENT OF THE CASE- FACTUAL

A. The Burglary at 4339 N. 29TH Street in Milwaukee and Resisting an Officer

On January 19, 2015, a female caller, named Angela, called 911 and said that she had seen two black men enter a vacant house at 4339 N. 29th Street in Milwaukee by breaking down the front door. (R70, p. 49). Although she had given a description of their clothing to the 911 caller that one of the men was wearing a multi-colored lightweight jacket and blue jeans and that the other man was wearing a black hooded sweatshirt. (R70, p. 49), she later told the police that one of the men was wearing a black and red sweatshirt and that the other man was wearing a gray sweatshirt. (R70, p. 56).

The caller said that she had seen one of them jump over a fence from the backyard to the front yard and then jump onto the front porch. She also told the 911 operator that the two men were still inside the house as she was making the 911 call. (R70, p. 49).

Following the 911 call, two officers were dispatched to that address. Officer Michael Gasser said that he and his partner, Officer Damon Wilcox, who were both wearing police uniforms, drove in their marked police car to that address. (R69, p. 63). They parked in front of the house and saw fresh footsteps in the snow leading to the front door. The front door was ajar about an inch and they found wood chips on the ground in front of the door. They also found that there was damage to the door frame. (R69, p. 64). When Gasser attempted to open the door, he found that there was a barricade behind the door. (R69, p. 65).

Gasser said that he told Wilcox that he believed someone was inside the house and Wilcox then went to the side door on the south side of the house. Gasser then walked to the north side of the house but did not see anyone. (R69, p. 66). When he walked over to the south side of the house to join Wilcox, he said, he heard glass breaking on the north side so he ran back

over there. (R69, p. 66). At that point, he saw a set of hands trying to push out a window on the first floor. He drew his gun and pointed it towards the window, yelling, "Stop, show me your hands." The person who had been trying to push out the window, whose face had not been seen by Gasser, pulled his hands back into the house. (R69, p. 67).

Gasser then called for backup and as he did so, he heard glass breaking on the rear south side where Wilcox was standing. Wilcox said he saw a man, who he later identified as Matthew Appleton, the co-defendant in this case, come to the rear door and begin to open it. Wilcox said tht he saw the man holding a screwdriver in his left hand. (R69, p. 25). He immediately yelled to Appleton, "police, drop the screwdriver" and "show me your hands". (R69, p. 25).

Appleton then slammed the door and went back inside the house. He went upstairs and looked out a second story window directly above the rear door. Wilcox yelled to him to come out of the residence. Upon hearing Wilcox say that, Appleton broke the glass of that window and kicked out the entire window, with the window frame falling onto the ground right next to Wilcox. (R69, p. 26).

Then Wilcox said, he heard more glass breaking and he went to the backyard. While he was in the backyard, he saw the man he later identified as the defendant, Roman Lovelace, running west towards the alley in the rear of the house. (R69, p. 27). Wilcox said the defendant was wearing a gray sweatshirt and black sweatpants. He said he yelled, "police, stop" but the defendant continued to run. (R69, p. 28). Wilcox said that he had not seen the defendant inside the house or actually leave the house. (R69, p. 34).

However, when Gasser heard that same glass breaking, he ran over to the northeast corner of the house and saw someone trying to push out a window on the first floor. Although, at first, he said that he saw the defendant jump out that window and run west (R69, p. 71), upon

cross-examination, he said that actually he had seen the defendant directly below the window and it appeared that he had just come out it. (R70, p. 19).

Gasser said he took his gun out and pointed it at him, yelling for him to stop, after identifying himself as a police officer. (R69, p. 73). He said the defendant was wearing a gray sweatshirt and dark pants, and had long hair. (R69, p. 72). Gasser said that he chased after him until he saw Wilcox chasing right behind him. At that point, Gasser left that scene and went back towards the house to find the other man who had been in the house. (R69, p. 74).

Wilcox said that he chased the defendant into the alley behind the house and into the back yard of another house. Wilcox was right behind him and he continued to chase him as the defendant ran between two houses and then onto a sidewalk heading north on 30th Street. (R69, p. 29). Wilcox also continued to chase him down four houses, through the yard of a house, and over a fence at another house at 4364 N. 30th Street. After that, the defendant ran into the back yard of that house and fell down. At that point, Wilcox ran up to him and placed handcuffs on him. (R60, p, 29). Altogether, Wilcox said, he had chased the defendant about 100 yards. (R69, p. 32).

When Gasser ran back towards the house, he saw Appleton come out of a window from the second floor, walk out onto a ledge outside the window, and then go back inside the house. (R70.p. 6). A short time later, he heard even more glass breaking and when he ran over to the north side of the house, he saw Appleton running away from the house. Gasser said he yelled for Appleton to stop but he kept running. Appleton ran across an alley and then ran south, when the officers in another police car saw him. They existed their car and subdued and arrested him. (R70, p. 7).

B. The Testimony of the Brother of the Owner of the House

Thomas C. testified that his sister, J.C., was the owner of the house at 4339 N. 29th Street in Milwaukee. (R69, p. 32). He said that since she lived out of the state, he was the caretaker of the property. At times, he said, he rented out the property but on January 10, 2015, no one was living there. Nevertheless, he said, he went there every day to check on the property. (R69, p. 32).

He said that he had gone there on January 19, 2015 with the police to examine the property. He found that everything was strewn around and that several windows and doors had been broken. (R69, p. 34). Among other things, he found that a flat screen TV and air conditioner had been moved to the first floor. He testified that he had never given anyone permission to enter that house on January 19, 2015. (R69, p. 39).

POINT I

THE CIRCUIT COURT'S WRITTEN COMMUNICATION WITH THE JURORS DURING THEIR DELIBERATIONS IN ANSWERING THEIR QUESTIONS, AS TO THE RELATIONSHIP BETWEEN BURGLARY AND PARTY TO A CRIME AND WHETHER THEY WERE SEPARATE CHARGES, VIOLATED THE DEFENDANT'S STATUTORY RIGHT TO BE PRESENT DURING ALL STAGES OF THE TRIAL AND HIS CONSTITUTIONAL RIGHT TO COUNSEL DURING THE TIME OF THOSE COMMUNICATIONS AND, THEREFORE, HE IS ENTITLED TO A NEW TRIAL.

After both parties had rested at the jury trial in this matter on January 12, 2016, the Court instructed the jury as to the legal principles involved in a criminal trial and as to the elements of the two crimes with which the defendant had been charged. Among other things, the Court charged the jury as to the elements of the crime of Burglary (building or dwelling) and the definition of party to a crime. (R70, pp. 1, 67-70; App. pp. A4- A8).

Specifically, in regard to the definition of party to a crime, the Court instructed the jury as follows:

> Now, the Criminal Code of Wisconsin provides that whoever is concerned in the commission of a crime is a party to that crime and may be convicted of that crime although that person did not directly commit it. The State contends that the defendant was concerned in the commission of the crime of burglary by either directly committing it or by intentionally aiding and abetting the person who directly committed it. If a person intentionally aids and abets the commission of a crime, then that person is guilty of the crime as well as the person who directly committed it. (R70, p. 67; pp. p. A5).

The Court then discussed the definition of aiding and abetting the commission of a crime and the definition of acting intentionally. (R70, pp. 67- 68; App. pp. A5- A6). It concluded that portion of the jury instructions by stating, "All 12 jurors do not have to agree whether the defendant directly committed the crime or aided and abetted the commission of the crime;

however, each juror must be convinced beyond a reasonable doubt that the defendant was concerned in the commission of the crime in one of those ways." (R70, p. 68; App. p. A6).

The Court also instructed the jury as to the elements of the crime of Burglary. The Court stated:

> Burglary, as defined by the Criminal Code of Wisconsin, is committed by one who intentionally enters a building without the consent of the person in lawful possession and with intent to steal.
>
> Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present: One, the defendant intentionally entered a building. Two, the defendant entered the building without the consent of the person in lawful possession. Three, the defendant knew that the entry was without consent. And, four, the defendant entered the building with the intent to steal. (R70, pp. 68- 69; App. pp. A6- A7).

The Court continued by explaining the meaning of the element of stealing and the element of intent. It concluded this portion of the instructions by stating that, "If you are satisfied beyond a reasonable doubt that the defendant directly committed all four elements of the crime of burglary or that the defendant intentionally aided and abetted to commission of that crime, you should find the defendant guilty." (R70, p. 70; app. p. A8).

After the jurors had been excused to begin their deliberations, a conference was held with the Court at which the attorneys and the defendant were present. (R70, pp. 92- 96; App. pp. A9- A13). At that conference, the Court discussed with the attorneys the procedures it would use if the jurors asked to see certain exhibits. The Court, with the approval of the attorneys, made a determination as to which exhibits it would send back to the jurors to see if they requested them. At that conference, the Court also discussed the procedures it would use if the jurors asked to hear the testimony of certain witnesses read back to them. The Court, again with the approval of

the attorneys, made a determination that in that event, it would simply ask the jurors to "use their collective memory" about that testimony.

The jurors continued their deliberations on January 12, 2016 and eventually sent back four notes. The first note simply asked if they could take a lunch break. The second note, which had been sent out at 4:04 p.m., asked: "Please explain how Burglary and party to a crime relate and are they two separate charges or one and the same?" (R----; App. p. A19). At 4:17 p.m., without consulting with the attorneys and without the defendant being present, the Court wrote on the bottom of the note, "Please review the instructions in the notebook for the answers you need." (R----; App. p. A19).

The third note, which had been sent out at 4:25 p.m., asked, "Is it possible to see the photos of the house, specifically the south side?" The Court wrote on the bottom of the note, "Re'd.' (R-----; App. p. A20). The jurors were sent home at the end of that day and returned to continue their deliberations on January 13, 2016. During their deliberations on that day, the jurors sent out a fourth note. The jurors asked, "Can we confirm Torez Cruz testified to a description of defendant during Angela's second call, not the initial 911 call." (R---: App. p. A21). The Court wrote on the bottom of that note, "Please rely on your collective memory." (R---; App. p. A21).

The Postconviction Motion noted that the issue in this case only deals with the second note, involving the jurors' questions regarding the law involved in making their determination of whether the defendant was guilty of the crime of Burglary as party to a crime. In the Postconviction Motion, it was argued that there were two constitutional arguments that were involved with that issue.

The first argument is that the defendant had a constitutional right to be present when the Court communicated with the jury about a question of law that the jury had asked. It was argued in the Postconviction Motion that, in accordance with *State v. Anderson,* 2006 WI 77, 291 Wis. 2d 673, 695-696, 717 N.W. 2d 74, a defendant has the constitutional right to be present at every stage of his trial. This right is guaranteed by the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. It is also guaranteed by Article I, §7 of the Wisconsin Constitution. See also, *State v. Burton*, 112 Wis.2d 560, 564-565, 334 N.W. 2d 263 (1983).

It was also noted in the Postconviction Motion that the right to be present at every stage of his trial pursuant to §971.04 Wis. Stats. That statute provides that, "the defendant shall be present… at trial…". It has been held that, "A trial runs from the commencement of the jury selection through the final discharge of the jury and at any time an action is taken affecting the accused." *Anderson,* at 697.

And further, according to *Anderson*, "A substantive step in a trial for which an accused has the right to be present includes the circuit court's communications with the jury during deliberations." Id. at 698.

The second constitutional argument that was raised in the Postconviction Motion was that the defendant also has the right to have counsel present at every critical stage of the trial, pursuant to the Sixth Amendment and the Fourteenth Amendment to the United States Constitution and Article I, §7 of the Wisconsin Constitution. *Anderson, at 707.* A critical stage of the trial includes the communications between the Court and the jurors because, "The assistance of counsel when a court communicates with the jury during deliberations may be necessary to a meaningful defense." Id. at 708.

With counsel present during the communication, it has been held, counsel could "potentially convince the court to address the jury communication in a manner that would support the defendant's interests." Id. at 708-709. Also, it has been held that, "Defense counsel and defendant must be present to have the opportunity to observe the judge's demeanor, first-hand, to object to statements or request curative statements in the event that the communication may be improper in any way." *Burton,* at 569.

The issue regarding the defendant's right to counsel during the communication between the Court and the jurors may not be waived unless the defendant has waived it himself. *Anderson,* p. 710. Further, the absence of counsel at a critical stage of the trial, including communications between the Court and the jurors, is not subject to harmless error analysis. Id. at 710.

There is a further rule that was noted in the Postconviction Motion which is relevant to this case and that is the rule that was enacted by the legislature that is important in cases involving communications between the Court and the jurors. In order to protect the rights of the defendant to be present and to have counsel present during these communications, the legislature enacted §805.13(1) Wis. Stats. which requires that all statements or comments by the Court to the jurors be on the record. Id. at 713. The statute provides that, "After the trial jury is sworn, all statements or comments by the judge to the jury or in their presence relating to the case shall be on the record."

In its Response to the Postconviction Motion, the state argued that *State v. Alexander,* 2013 WI 70, 349 Wis. 2d 327, 344- 345, 833 N.W. 2d 126, 135 entirely overruled both *Anderson* and *Burton.* In the Reply that was filed on behalf of the defendant, it was noted that *Alexander*

had not completely overruled *Anderson* and that under the holdings in *Alexander*, the defendant was still entitled to have his conviction reversed and a new trial ordered.

First, *Alexander* dealt with the issue as to whether the defendant had been entitled to a reversal of his convictions because he had not been present during two separate conferences that the Court had had with two jurors, even though his defense attorneys had been present during both the conferences and even though they had consulted with the defendant about those conferences. While the Court in *Alexander* held that the defendant did not have a constitutional right to be present at the particular conferences in that case, he definitely had the right to have his attorneys present.

The facts in *Alexander* involved a conference that the Court had with a juror about the fact that she had recognized a woman named Monique in the courtroom who was the mother of the defendant's child. The Court also had a conference with another juror who had recognized one of the defense witnesses. *Alexander*, at 331. The Court held that even though the defendant had not been present at either conference, he had not been deprived of his constitutional rights. In making that ruling, however, the Court held that, "Additionally, both of Alexander's attorneys were present at the in-chamber meetings." Id. at 332.

Also, the Court pointed out that at the outset of the conference with the first juror, the Court had asked defense counsel if he would be willing "to waive the appearance of Mr. Alexander for purposes of this?" The attorney replied, "we do". Id. at 333. Further, the Court pointed out that the Circuit Court then "ordered Alexander's attorneys to talk to their client about his relationship with Monique and his knowledge of Juror 10's connection with Monique." After conferring with their client, defense counsel informed the Court that Monique was the mother of the defendant's child. Id. at 333.

Also, in regard to the other juror, who said that he knew a defense witness, a conference was held at which defense counsel was present but at which the defendant was not present. After the conference had been completed, the Court asked defense counsel whether the juror should be dismissed. Id. at 334. Defense counsel objected to both jurors being dismissed but over that objection, the Court dismissed both jurors. Id. at 336- 337.

The specific issue in *Alexander* was stated by the Court as follows: "This case requires us to determine whether Alexander had a constitutional or statutory right to be present during the court's in-chambers discussions with two jurors." Id. at 337. The Court held that he did not. Id. at 337. In *dicta*, the Court then discussed cases involving whether a defendant was constitutionally entitled to be present during a communication between the Court and the jurors during jury deliberation.

The Court noted that it was adopting the rule set forth in *May v. State*, 97 Wis. 2d 175, 293 N.W.2d 478 (1980). The Court said that in *May*, in which the trial court had answered a jury question asked during its deliberations about a question of law, without first notifying counsel of the defendant, there were two issues involved:

> (1) did the circuit court err in answering the question in absence of counsel"; and
> (2) did the circuit court err in answering the question in the absence of the defendant? Id. at 341.

The Court in *Alexander*, quoting from *May*, specifically held that since there had been no waiver by the defendant, "counsel should have been given the opportunity to confer with the court about the appropriate response to be given to the jury's question. It was error for the trial court to answer the question without notifying counsel." Id. at 341. And although the Court in *Alexander*, again quoting from *May*, held that the defendant had not been denied "a fair and just trial" because he had been absent when the Court had communicated with the jurors, the Court

held that, "All that due process… required was that the defendant's attorney be present." Id. at 341. The Court further held that, "All that is required when the court communicates with members of the jury is that the defendant's attorney be present." Id. at 342.

In this case, when the Court wrote its note to the jury on the bottom of the jury's note, not only was the defendant not present, his attorney was not present. The state argued that a notation on the CCAP report of this case stated, on January 13, 2016, that, "Jury deliberations resumed at 9:32 a.m. Three jury questions received and filed. Parties notified. Written response to each question returned to jury room." The state argued that that notification satisfied the constitutional requirement set forth in *Alexander* and *May* that counsel be present during the Court's communication with the jurors.

However, it was argued in the defense's Reply that that notation does not at all satisfy the requirement that all communications with the jury by the judge be recorded. That notation does not indicate that defense counsel had ever been given the opportunity to argue against the Court's response to the jury or whether counsel had made an objection to the Court's response. Nor is there any indication that counsel had communicated with his client about the juror's note. In fact, there is no indication on the record that the defendant ever knew anything about that note or the Court's response to it.

In its Decision denying the Postconviction Motion, the Court did not accept the state's argument that the CCAP notation had shown that counsel had been notified. And it certainly did not show that counsel had been present when the communication had been made. Nevertheless, the Court held that "… even if the court did not consult the parties before responding to the jury's question, such action was not prejudicial or harmful to the defendant's case." The Court continued, "The defendant could not have gained anything by being present when the court

fashioned its written response to the jury's question, nor could he have meaningfully participated in formulating the court's response, which merely directed the jury to review the instructions that had already been given in his presence." (R53, p. 3; App. p. A52).

The Court, however, failed to apply the constitutional principles set forth in *Alexander* and *May*, and in *Anderson*, for that matter. That is, the defendant was entitled to have counsel present when the Court communicated with the jurors. The communication involved in the juror's note directly involved the jurors' determination as to whether the defendant should be found guilty of the crime of Burglary. As it was argued in the Postconviction Motion, the note showed that the jurors were very confused about the elements of the crime of Burglary and how the additional element of a party to a crime related to the crime of Burglary. Even if the defendant was not present, he was entitled to have the input of his counsel as to how the Court should respond to the jury's question.

And in this case, the Court's response had been inadequate because it completely failed to give the jurors the information that they had requested and that had been important in making their decision in the case. Had defense counsel been made aware of the jurors' note, he would have had an opportunity to make arguments to the Court as to how the Court should have responded to their question.

Further, the finding in *Anderson* that the absence of counsel at a critical stage of the trial, including communications between the Court and the jurors during their deliberations, is not subject to harmless error analysis has not been overruled.

The defendant's constitutional right to counsel – and, indeed, his right to be present during this critical stage of the trial- had not been fulfilled in this case. For that reason, the defendant is entitled to have his convictions vacated and a new trial ordered.

CONCLUSION

The defendant respectfully requests that this Court reverse the denial of the Postconviction Motion by the Circuit Court of Milwaukee County, reverse his convictions and order a new trial.

Dated: July 11, 2017
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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) Wis. Stats. for a brief produced with a proportional serif font.

The brief contains 3,045 words.

Dated: July 11, 2017

_____

Esther Cohen Lee
Attorney for Defendant-Appellant

CERTIFICATION AS TO 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) Wis. Stats. 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 paper copies of this brief filed with the court and served on all opposing parties.

Dated: July 11, 2017

_____

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