STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2017AP1206-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

EMMANUEL EARL TRAMMELL,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE JEFFREY A. WAGNER, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF THE PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Emmanuel Trammell's trial counsel did not object to the circuit court giving Wis. JI–Criminal 140[1] on the burden of proof either at the jury instruction conference or the next day when the court instructed the jury on the burden of proof. Must this Court decline to review Trammell's claim that Wis. JI–Criminal 140 denies him due process because he did not object to the instruction?

The circuit court did not address this issue. The circuit court addressed the merits in deciding Trammell's postconviction motion.

This Court lacks the power to review jury instructions absent an objection. It should, therefore, decline to address Trammell's claim directly.

2. Two exceptions exist to the absence of this Court's power to review instructions to which a defendant has not objected at trial: ineffective assistance of counsel and a new trial in the interest of justice. Having expressly waived ineffective assistance of counsel, is Trammell entitled to a new trial in the interest of justice?

The circuit court held Trammell was not entitled to a new trial in the interest of justice.

This Court should hold Trammell was and is not entitled to a new trial in the interest of justice.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument. This case does not meet the criteria for publication.

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[1] All references to Wis. JI–Criminal 140 are to the 2016 version unless otherwise noted.

INTRODUCTION

The Circuit Court for Milwaukee County convicted Emmanuel Trammel of armed robbery and operating a motor vehicle without the owner's consent after a jury found him guilty. He did not challenge below and does not challenge here, the circuit court's admission of any of the State's evidence nor does he claim the evidence to be insufficient to support his convictions. Trammell's trial counsel did not object to the burden of proof instruction at the jury instruction conference or the next day when the circuit court gave Wis. JI–Criminal 140, the standard burden of proof instruction.

Trammell filed a postconviction motion claiming that Wis. JI–Criminal 140 denied him due process by misstating the law, misleading the jury and lowering the State's burden of proof. He also claimed he was entitled to a new trial in the interest of justice. The circuit court denied his motion without a hearing.

This Court should affirm the judgment of conviction and the circuit court's denial of Trammell's postconviction motion. This Court lacks the power to review a jury instruction to which a defendant does not object at the jury instruction conference or when the circuit court instructs the jury. This lack of power extends to plain error.

Only two exceptions exist to this rule: ineffective assistance of counsel and a new trial in the interest of justice. Trammell disavows any ineffective assistance of counsel claim. Any claim would fail in any event because Wis. JI–Criminal 140, a standard instruction, has been approved by the Wisconsin Supreme Court and this Court. Trammell's counsel cannot perform deficiently for failure to raise a meritless issue or for failing to pursue an unsettled one.

Trammell argues he is entitled to a new trial in the interest of justice, but he does not meet the criteria under either aspect of that doctrine. The burden of proof instruction did not mislead the jury and correctly stated the law, so his case was fully tried. He also cannot establish a miscarriage of justice because he cannot show a substantial probability that a different result would be likely on retrial.

STATEMENT OF THE CASE

The State charged Emmanuel Trammell with one count of armed robbery and one count of operating a motor vehicle without the owner's consent. (R. 1:1.) At trial the State presented the following evidence.

The victim testified that on July 8, 2015, he and his girlfriend drove to Jad Foods in his mother's 2011 Buick Regal. (R. 55:4–5.) The victim went into the store while his girlfriend waited in the car. (R. 55:5.) The victim identified Trammell in court. (R. 55:5–6.) Trammell approached him and during a conversation, Trammell snatched $20 out of the victim's hand. (R. 55:5–6.) Trammell left the store and got into the 2011 Buick Regal. (R. 55:7.) When the victim attempted to stop him, Trammell displayed a gun and told the girlfriend to get out of the car. (R. 55:7.) Trammell then drove away in the 2011 Buick Regal. (R. 55:7.) Someone else drove away in Trammell's car. (R. 55:7.) The victim did not give Trammell permission to operate the 2011 Buick Regal. (R. 55:7.) The victim identified Trammell from a photo array after the incident. (R. 55:9–10.)

The girlfriend testified she was riding around with the victim on July 8, 2015. (R. 55:24.) They stopped at Jad Foods. (R. 55:24.) The girlfriend saw Trammell follow the victim into the store. (R. 55:24–25.) She knew Trammell because they had gone to middle school together. (R. 55:25.) In court, she identified Trammell as the individual she saw that day. (R. 55:24–25.) Trammell came out of Jad Foods, got into the

2011 Buick Regal, and told her to get out of the car. (R. 55:26.) The victim came out of Jad Foods and began arguing with Trammell. (R. 55:26.) Trammell took out a gun and pointed it at the victim. (R. 55:27.) The victim then told the girlfriend to get out of the car, which she did. (R. 55:27.) Trammell drove off in the Buick. (R. 55:27–28.) The girlfriend identified Trammell from a photo array after the incident. (R. 55:29–30.)

The 2011 Buick Regal was equipped with OnStar. (R. 55:8.) Stephen Strasser, a Milwaukee Police Department officer, testified that on July 8, 2015, he heard a dispatch that OnStar had located the 2011 Buick Regal at 34th Street and Clark in Milwaukee. (R. 55:40.) Radio broadcasts informed Strasser of the police pursuit of the 2011 Buick Regal. (R. 55:41.) He joined the pursuit after activating his emergency lights and siren. (R. 55:41.) The Buick did not stop. (R. 55:41–42.) Police eventually requested OnStar to cut the ignition of the Buick. (R. 55:41–42.) As the Buick slowed to a stop, two occupants and the driver fled on foot. (R. 55:42.) Police eventually arrested all three. (R. 55:42.) The driver was identified as Gabarie Silas. (R. 55:42.) Police later lifted fingerprints from the Buick. (R. 55:43.)

Gabarie Silas agreed to a plea bargain with the State, entered a plea of guilty in connection with the incident and testified for the State. (R. 55:45–46, 50–51.) He identified Trammell and indicated he had known Trammell for about five years. (R. 55:45–46.) On July 8, 2015, he went to Jad Foods with Trammell and another man named Reese. (R. 55:47.) They drove to Jad Foods in Trammell's Dodge. (R. 55:47–48.) In the store, Silas saw Trammell and the victim talking and Trammell snatched some money from the victim. (R. 55:48.) Trammell then left the store. (R. 55:48.) When Silas left the store, Trammell was in the 2011 Buick Regal. (R. 55:49.) Trammell and the victim were arguing. (R. 55:49.) The victim told the girlfriend to get out of the car. (R. 55:49.) Trammell threw Silas the keys to the Dodge and Silas drove

off in the Dodge. (R. 55:50.) Trammell and Silas met later and switched cars. (R. 55:50.) Police arrested Silas in the Buick and he confessed. (R. 55:51.)

Eric Draeger, a Milwaukee Police Department officer, testified he was familiar with Trammell. (R. 55:70.) Draeger monitors all jail calls. (R. 55:71–72.) He described how the police go about identifying inmates who make jail calls. (R. 55:72–74.) On January 6, 2016, a jail call occurred on Trammell's account. (R. 55:74–75.) Britney Nunn received the call. (R. 55:76.) Nunn referred to the caller as Emmanuel. (R. 55:75.) Draeger testified he recognized Trammell's voice. (R. 55:72.) In that call, Trammell attempted to have Nunn present false testimony at his trial. (R. 55:80–82.)

Trammell's counsel and the State agreed to a stipulation: forensic examiners identified two fingerprints lifted from the 2011 Buick Regal as Trammell's left index finger and Silas's left middle finger. (R. 55:90.)

Trammell did not testify. (R. 55:93–94.)

During the instruction conference, the circuit court indicated it intended to give the burden of proof instruction. (R. 55:95.) Trammell's counsel did not object. (R. 55:95.) The court instructed the jury at the end of the day on the substantive crimes. (R. 55:97–109.) The following morning, the court gave Wis. JI–Criminal 140. (R. 56:3–5.) Again, Trammell's counsel did not object. (R. 56:5.)

The jury convicted Trammell of both counts. (R. 23.) The court sentenced Trammell to a 20-year term of imprisonment on the armed robbery bifurcated into 12 years of initial confinement and eight years of extended supervision. (R. 57:25.) The court sentence Trammell to a concurrent 30-month term of imprisonment bifurcated into 15 months of initial confinement and 15 months of extended supervision on the conviction for operating a motor vehicle without the owner's consent. (R. 57:25.)

Trammell filed a postconviction motion claiming that the circuit court denied him due process by giving Wis. JI–Criminal 140. (R. 39.) The circuit court denied the motion without a hearing. (R. 40.)

STANDARD OF REVIEW

The question of whether Trammell forfeited his claim of instruction error requires this Court to apply undisputed facts to a legal standard. This presents a question of law this Court reviews de novo. *Johnson v. Rogers Mem'l Hosp., Inc.*, 2005 WI 114, ¶ 31, 283 Wis. 2d 384, 700 N.W.2d 27.

Where a circuit court grants or denies a new trial in the interest of justice, this Court reviews that decision for an erroneous exercise of discretion. *State v. Hurley*, 2015 WI 35, ¶ 30, 361 Wis. 2d 529, 861 N.W.2d 174.

ARGUMENT

I. This Court lacks the power to review Trammell's claim of instructional error because he did not object to the instruction in the circuit court.

Wisconsin Stat. § 805.13(3)[2] provides that a failure to object to instructions or verdict questions at the instruction conference constitutes a waiver[3] of any error in the proposed

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[2] Wisconsin Stat. § 972.11(1) makes section 805.13(3) applicable to criminal proceedings. *See State v. Schumacher*, 144 Wis. 2d 388, 402 n.11, 424 N.W.2d 672 (1988).

[3] In *State v. Ndina*, 2009 WI 21, 315 Wis. 2d 653, 761 N.W.2d 612, the Wisconsin Supreme Court distinguished between the terms "forfeiture" and "waiver." Although cases sometimes use the words "forfeiture" and "waiver" interchangeably, the two words embody very different legal concepts. A failure to make a timely assertion of a right forfeits the right. An intentional relinquishment or abandonment of a known right waives the right. *Id.* ¶ 29. "Forfeiture" is the better term in this context, but, consistent with Wis. Stat. § 805.13(3), the State will use "waiver."

instructions or verdict. In *State v. Schumacher*, 144 Wis. 2d 388, 409, 424 N.W.2d 672 (1988), the Wisconsin Supreme Court held that this Court does not have the power to review unobjected-to errors in instructions except in two instances, which the State will address in point II. Such power would be "incompatible with [this Court's] error-correcting function. Further, . . . such an exception to the waiver rule of sec. 805.13(3) would amount to a repudiation of the idea underlying sec. 805.13(3)." *Id.* This Court has acknowledged it lacks power to review unobjected-to instructions directly. *State v. Tulley*, 2001 WI App 236, ¶ 14, 248 Wis. 2d 505, 635 N.W.2d 807; *State v. Shea*, 221 Wis. 2d 418, 430, 585 N.W.2d 662 (Ct. App. 1998).

In a three point attack, Trammell argues that the standard instruction on the State's burden of proof, Wis. JI–Criminal 140, denied him due process by reducing the State's burden of proof below a reasonable doubt (Trammell's Br. 14–25), confused the jury (Trammell's Br. 25–29), and misstated the law (Trammell's Br. 30–33). Trammell concedes his attorney did not object to Wis. JI–Criminal 140. (Trammell's Br. 10 n.6; 25 n.11.) He does not cite *Schumacher*. Instead, he relies on *State v. Hatch*, 144 Wis. 2d 810, 824, 425 N.W.2d 27 (Ct. App. 1988). (Trammell's Br. 25.)

Hatch was decided a few months before *Schumacher*.[4] The *Hatch* court's reasoning mirrors this Court's reasoning in *Schumacher*. *Compare Hatch*, 144 Wis. 2d at 824 ("We have the discretionary power to review a waived instructional error if the error goes to the 'integrity of the fact-finding process.'" (citing *State v. Shah*, 134 Wis. 2d 246, 254, 397 N.W.2d 492 (1986)) *with Schumacher*, 144 Wis. 2d at 396 ("The court of appeals stated that the failure to instruct went to the

[4] The decision in *Hatch* was filed April 28, 1988. *State v. Hatch*, 144 Wis. 2d 810, 425 N.W.2d 27 (1988). *Schumacher* was decided on June 9, 1988. *Schumacher*, 144 Wis. 2d at 388.

'integrity of the fact-finding process,' a standard which the court of appeals understood this court to have laid out in *State v. Shah*, 134 Wis. 2d 246, 254, 397 N.W.2d 492 (1986).").

The supreme court explained that the line of cases culminating in *Shah* was a "broad discretionary power of review [ ] appropriate to [the supreme] court." *Schumacher*, 144 Wis. 2d at 407. However, "unlike the supreme court, the court of appeals does not have a law-developing or law-declaring function." *Id.* "Given this difference in function, it would be incompatible to give the court of appeals a broad discretionary power of review." *Id.* at 408. The court concluded, "[I]t is apparent that the court of appeals in this case exceeded its discretionary authority in [addressing unobjected to instructional error] under its conception of *Shah*'s integrity of the fact-finding process test." *Id.* at 409. Trammell's reliance on *Hatch* is, in view of *Schumacher*, misplaced. *Schumacher* controls the result here. This Court lacks the power to address Trammell's three merits arguments directly.

Trammell also argues that the circuit court giving Wis. JI–Criminal 140 constituted plain error entitling him to a new trial. (Trammell's Br. 39–42.) *Schumacher* forecloses this argument also. The *Schumacher* court referred to the plain-error doctrine as "[a]nother doctrine in effect before the adoption of sec. 805.13(3)." *Schumacher*, 144 Wis. 2d at 402. The court concluded that the plain-error doctrine "was superseded [as] to . . . claimed instructional error by sec. 805.13(3)3." *Id.*

Since Trammell did not object to the instruction, he placed this case beyond this Court's power to consider his claims. Therefore, the case does not warrant an in-depth analysis of the law review articles upon which Trammell relies. But, contrary to Trammell's claim, the law review articles upon which he relies do not "prove" that Wis. JI–

Criminal 140 lessens the State's burden of proof. At best they create an incentive to review the wording of the burden of proof instruction. The jury instruction committee addressed one of the articles in 2016 and "after careful consideration" decided not to change the text. *See* note 5 to Wis. JI–Criminal 140 (2017).

This Court lacks power to review Trammell's claim of instruction error either directly or as plain error because he did not object to the instruction in the circuit court.

II. Trammell is not entitled to a new trial in the interest of justice.

Schumacher recognized an exception to Wis. Stat. § 805.13(3)'s waiver rule: this Court's statutory power to reverse in the interest of justice. *Schumacher*, 144 Wis. 2d at 408. This Court has also recognized it can review instructional error under a claim of ineffective assistance of counsel. *State v. Tulley*, 2001 WI App 236, ¶ 14, 248 Wis. 2d 505, 635 N.W.2d 807; *State v. Shea*, 221 Wis. 2d 418, 430, 585 N.W.2d 662 (Ct. App. 1998).

Trammell disavows any claim of ineffective assistance of counsel. He relies on the fact that studies that he relies upon were published after his trial. (Trammell's Br. 10 n.6.) While that may be true, an ineffective-assistance claim would not succeed in any event. The Supreme Court has approved Wis. JI–Criminal 140 in its current form. *State v. Avila*, 192 Wis. 2d 870, 887–890, 532 N.W.2d 423 (1995).[5] And what is more, this Court has rejected a virtually identical ineffective-assistance claim albeit in an unpublished decision. *State v. Hawthorne*, Nos. 2014AP1566, 2014AP1567, 2015 WL

[5] The supreme court overruled *Avila* but only to the extent that it established a rule of automatic reversal where a jury instruction omits an element of the offense. *State v. Gordon*, 2003 WI 69, ¶ 40, 262 Wis. 2d 380, 663 N.W.2d 765.

2192981, ¶¶ 32–34 (Ct. App. May 12, 2015) (unpublished) (Brennan, J.), R-App. 113. At best, Trammell can establish only that his law review articles raise some doubt as to whether Wis. JI–Criminal 140 lessens the State's burden or misleads or confuses the jury. But to succeed on his ineffective-assistance claim, Trammell had "to demonstrate that counsel failed to raise an issue of settled law." *State v. Breitzman*, 2017 WI 100, ¶ 49, ___ Wis. 2d ___, ___ N.W.2d ___ (citing *State v. Lemberger*, 2017 WI 39, ¶ 33, 374 Wis. 2d 617, 893 N.W.2d 232). To the extent that the law is settled, it weighs against Trammell. Any objection to Wis. JI–Criminal 140 would likely not have been successful. Trammell's attorney did not render ineffective assistance by failing to raise an objection that would have been denied. *State v. Luedtke*, 2014 WI App 79, ¶ 28, 355 Wis. 2d 436, 851 N.W.2d 837 (citing *State v. Maloney*, 2005 WI 74, ¶ 37, 281 Wis. 2d 595, 698 N.W.2d 583).

This Court has authority to reverse in the interest of justice. Wis. Stat. § 752.35. "[A] new trial may be ordered on either of two grounds: (1) whenever the real controversy has not been fully tried or (2) whenever it is probable that justice has for any reason been miscarried." *See State v. Maloney*, 2006 WI 15, ¶ 14 n.4, 288 Wis. 2d 551, 709 N.W.2d 436 (citation omitted).

Under the first aspect of the interest of justice analysis, the real controversy has not been tried when the jury was erroneously prevented from hearing testimony that bore on an important issue of the case or when the jury had before it improperly admitted evidence, which so clouded a crucial issue that it may be fairly said that the real controversy was not fully tried. *State v. Hicks*, 202 Wis. 2d 150, 160, 549 N.W.2d 435 (1996).

In order to grant a discretionary reversal because it is probable that justice has for any reason miscarried, there must be a substantial probability of a different result on retrial. *Schumacher*, 144 Wis. 2d at 401 (citing *State v. Wyss*, 124 Wis. 2d 681, 741, 370 N.W.2d 745 (1985)). *See also State v. D'Acquisto*, 124 Wis. 2d 758, 765, 370 N.W.2d 781 (1985) (quoting *Lock v. State*, 31 Wis. 2d 110, 118, 142 N.W.2d 183 (1966)). Thus, the defendant must meet a higher threshold under the miscarriage of justice aspect than the not fully tried aspect to receive a new trial. *Maloney*, 288 Wis. 2d 551, ¶ 14 n.4.

The discretionary authority under either aspect of Wis. Stat. § 752.35 to order a new trial in the interest of justice is, the case law cautions, a power to be used only "infrequently and judiciously." *State v. Ray*, 166 Wis. 2d 855, 874, 481 N.W.2d 288 (Ct. App. 1992). "[C]ourt[s] approach[ ] a request for a new trial with great caution. We are reluctant to grant a new trial in the interest of justice, and thus we exercise our discretion only in exceptional cases." *State v. Armstrong*, 2005 WI 119, ¶ 114, 283 Wis. 2d 639, 700 N.W.2d 98 (quoting *Morden v. Continental AG*, 2000 WI 51, ¶ 87, 235 Wis. 2d 325, 611 N.W.2d 659). The Wisconsin Supreme Court has emphasized that the discretionary reversal power should be used "only in *exceptional* cases." *State v. McKellips*, 2016 WI 51, ¶ 52, 369 Wis. 2d 437, 881 N.W.2d 258 (emphasis the court's). The power may be exercised only "*after all other claims are weighed and determined to be unsuccessful*" and the court must "engage in an analysis setting forth the reasons that the case may be characterized as exceptional." *Id.* (emphasis the court's) (citation omitted).

Trammell claims he is entitled to a new trial in the interest of justice under the first aspect, the real controversy has not been fully tried.[6] Trammell relies on *State v. Austin*, 2013 WI App 96, 349 Wis. 2d 744, 836 N.W.2d 833. In *Austin*, this Court reversed Austin's conviction in the interest of justice under the first aspect because the instructions on self-defense and defense of others interacting with second-degree recklessly endangering safety instructions did not clearly describe the State's burden of proof. The *Austin* court found the jury instructions in that case erroneous. *Id.* ¶ 20. *Austin* pre-dated *McKellips*, so the *Austin* court did not set forth reasons why that case was exceptional. One can speculate the exceptional nature stemmed from obscuring the State's burden of proof in the complex interplay of the various instructions at issue. But *Austin* appears to be inconsistent with the supreme court's long standing definition of when the real controversy was not fully tried.

In contrast, this case presents a very straightforward set of instructions. In addition, the *Avila* court held, "In the context of the entire instruction, we conclude that Wis. JI–Criminal 140 (1991), which was read to the jury, did not dilute the State's burden of proving guilt beyond a reasonable doubt." *Avila*, 192 Wis. 2d at 890. And in *Hawthorne*, this Court held that Wis. JI–Criminal 140, "did not improperly

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[6] Instructional error does not involve evidence so it is difficult to see how Trammell can satisfy either component of the not fully tried prong of interest of justice. As Justice Abrahamson observed in her concurring opinion in *Schumacher*, "only the second ground [of the reversal in the interest of justice] is available because this case [involving only instructional error] does not involve erroneous exclusion or inclusion of evidence." *Schumacher*, 144 Wis. 2d at 418. In a footnote Justice Abrahamson further observed that as a result of *Schumacher*, it is probably incorrect to reverse a judgment on the "real controversy was not fully tried" aspect based on error related to the instructions, not to the inclusion or exclusion of evidence. *Id.* at 418 n.1. To be consistent with *Schumacher*, instructional error falls under the miscarriage of justice aspect.

instruct the jury on the [State's] burden of proof." *Hawthorne*, 2015 WL 2192981, ¶ 34, R-App. 113. So the instructions in this case were not erroneous.

Trammell's reliance on the interest of justice exception is an attempt to persuade this Court to engage in an exercise for which it lacks power. Absent the interest of justice exception, this Court cannot reach Trammell's claim that Wis. JI–Criminal 140 violates due process. His reliance on the not fully tried aspect of the interest of justice also evades the requirement of demonstrating a substantial probability of a different result on retrial which must be met for a miscarriage of justice. Most probably, he chooses this approach because he cannot demonstrate a substantial probability that a different result is likely on retrial. Two eyewitnesses testified that Trammell stole a Buick from the victim at gunpoint. (R. 55:7, 26–28.) Both eyewitnesses identified Trammell as the person who stole the Buick. (R. 55:9–10, 29–30.) One of the eyewitnesses had known Trammell since middle school. (R. 55:25.) Trammell's accomplice, Silas, testified that Trammell stole the Buick. (R. 49–50.) Silas also testified he and Trammell switched cars, (R. 55:50), and Silas was later arrested while driving the Buick. (R. 55:42, 51.) Police found a fingerprint of both Trammell and Silas on the Buick. (R. 55:43, 90.) Lastly, Trammell evidenced his consciousness of guilt by attempting to convince Nunn to falsely testify for him. (R. 55:75–76, 80–82.) A reversal in the interest of justice is not intended to put the reviewing court in the shoes of the trier of fact in a way that is otherwise not permitted. *State v. Kucharski*, 2015 WI 64, ¶ 36, 363 Wis. 2d 658, 866 N.W.2d 697. The State's proof of Trammell's guilt was overwhelming.

Trammell cannot establish a miscarriage of justice warranting this Court's exercise of discretion to grant a new trial. It follows that the circuit court did not misuse its discretion in denying Trammell's postconviction motion.

CONCLUSION

For the reasons given above, this Court should affirm Trammell's judgment of conviction and the order denying his motion for postconviction relief.

Dated at Madison, Wisconsin, this 11th day of December, 2017.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,114 words.

Dated this 11th day of December, 2017.

_____
WARREN D. WEINSTEIN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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 11th day of December, 2017.

_____
WARREN D. WEINSTEIN
Assistant Attorney General

SUPPLEMENTAL APPENDIX TO
BRIEF OF PLAINTIFF-RESPONDENT

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is a supplemental appendix that complies with the content requirements of Wis. Stat. § (Rule) 809.19(2)(a); that is, the record documents contained in the respondent's supplemental appendix fall into one of the categories specified in sub. (2)(a).

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 11th day of December, 2017.

_____

WARREN D. WEINSTEIN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(13)

I hereby certify that I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. § (Rule) 809.19(13).

I further certify that this electronic appendix is identical in content to the printed form of the appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 11th day of December, 2017.

_____
WARREN D. WEINSTEIN
Assistant Attorney General