STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2017AP001811

State of Wisconsin,

Plaintiff-Appellant

vs.

Blake Lee Harrison,

Defendant-Respondent

Appeal From the Circuit Court of St. Croix County
Circuit Court Case No. 2015TR005230
Honorable ERIC J. LUNDELL Presiding

BRIEF AND APPENDIX OF DEFENDANT-RESPONDENT BLAKE LEE HARRISON

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The briefs submitted by each party will adequately address the issue presented, and oral argument will not significantly assist the Court in deciding this appeal.

The Court's opinion is not eligible for publication under Wis. Stat. § 809.23(1)(b)4 because the decision will be by one court of appeals judge under Wis. Stat. § 752.31(2) and (3).

STATEMENT OF FACTS AND PROCEDURE BELOW

This case comes to the Court after a curious path through the circuit court. The parties and the circuit court expected all along that the circuit court would decide whether Wis. Stat. § 346.63(1)(am), which prohibits operating under the influence of drugs, was unconstitutionally vague when it prohibited driving with a "detectable amount" of THC[1] in the bloodstream because a person cannot know what a "*detectable* amount" will mean and, therefore, what conduct is prohibited. Approaching this case as a test case, the parties

[1] THC is the principal psychoactive constituent of marijuana.

expected this appeal from the outset. (R. 28 at 3:8-11; D-App. at 12:8-11("it is currently set for a motion hearing. This was operating with a controlled substance. And we had previously discussed the Court ruling on the constitutionality of that statute so that it can go up.").) After a hearing, the State filed its response brief *before* Harrison's trial counsel filed his principal brief. The parties then proceeded on a stipulated record. (R. 25 at 6:3-7:3; D-App. at 6:3-7:3) The stipulated facts, not challenged on appeal, are set forth in the parties' trial briefs.

The State describes Harrison's arrest in its opening appellate brief. (Br. at 2-4.) Ultimately, the dispositive issue in this case does not turn on those facts, but instead on the text of the statute. After Harrison was charged with a violation of Wis. Stat. § 346.63(1)(am)—his blood test indicated a level of 3.0 ng/mL for Delta-9-THC (R. 36 at 1; P-App. at 14)—the circuit court held a motion hearing, on January 23, 2017, during which it requested briefing regarding the constitutionality of Wis. Stat. § 346.63(1)(am). (R. 28 at 3:7-4:4; 4:19-20; D-App. at 12:7-13:4; 13:19-20.) The State filed its Brief in Opposition to Defendant's

Challenge to Wis. Stat. § 346.63(1)(am) on January 23, 2017. R. 4; P-App. at 26-29.) A month later, on February 24, 2017, Harrison filed his motion and brief arguing that Wisconsin Statute §346.63(1)(am) is unconstitutional on its face and as applied ("Harrison Motion"). (R. 5; P-App. at 15-25.)

The record is bare and the parties proceeded on the stipulated facts set forth in Harrison's Motion, including that:

- The Wisconsin legislature has not codified the level of "THC" that would be illegal to have in your system.
- Secondary marijuana smoke can result in THC being absorbed into a bystander's blood - no scientific testing has been done to connect with level in the blood.
- The National Academy of Science studied forensic evidence nationwide per a congressional mandate and found that legal testimony and conclusions were without scientific basis, leading to wrongful convictions.
- Tissues and organs in the body keep THC around 30 days.
- Medical marijuana has been legalized in several states (for cancer, eating disorders, etc.)
- The Wisconsin legislature has not directed anyone (crime lab, hygiene lab, independent lab) to find out the level of THC which corresponds with impairment.

(R. 5 at 1-2; P-App at 15-16.)

On March 16, 2017, Circuit Judge Lundell granted Harrison's motion challenging the constitutionality of Wis. Stat. § 346.63(1)(am) because the statute "can lead to absurd results because of the lack of definition of 'detectable amounts' and has the potential to result in egregious levels of error." (R. 7 at 6; P-App. at 6.) The court explained that "[u]nlike the alcohol OWI statute which defines the level of intoxication required to be .08ng/l, the controlled substances statute has no such definition." (R. 7 at 4; P-App. at 4.) Furthermore, "what levels of controlled substances will be considered 'detectable' will vary between testing labs and testing equipment because of a lack of a set standard." (R. 7 at 5; P-App. at 5.) As such, "different results in their cases [may occur for individuals with the same amount of THC in their blood] simply because a decision made in a testing lab or due to the equipment used or error produced." (R. 7 at 5-6; P-App. at 5-6.)

On August 3, 2017, Judge Lundell dismissed 2015TR005230 with prejudice. (R. 8; P-App. at 7.) The State appeals, but it does not challenge any of the facts underlying Judge Lundell's decision.

STANDARD OF REVIEW

Whether a statute is constitutional presents an issue of law reviewed *de novo*. *State v. Pittman*, 174 Wis. 2d 255, 276, 496 N.W.2d 74 (1993). The Court must "indulge every presumption to sustain the constitutionality of a statute" because the statute must be shown "beyond a reasonable doubt that the statute is unconstitutional." *Id.* (internal citations and quotation marks omitted).

ARGUMENT

WIS. STAT. § 346.63(1)(AM) IS UNCONSTITUTIONAL BECAUSE IT VIOLATES DUE PROCESS UNDER THE FORTEENTH AMENDMENT

"The prohibition of vagueness in criminal statutes . . . is an essential of due process, required by both ordinary notions of fair play and the settled rules of law. The void for vagueness doctrine . . . guarantees that ordinary people have fair notice of the conduct a statute proscribes." *Sessions v. Dimaya*, __ U.S. __, 138 S. Ct. 1204, 1212 (2018) (Kagan, J.) (internal citations and quotation marks omitted). Therefore, to guard against "arbitrary or discriminatory law enforcement [courts insist] that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges. In

that sense, the doctrine is a corollary of the separation of powers—requiring that Congress, rather than the executive or judicial branch, define what conduct is sanctionable and what is not." *Id.* (Kagan, J.) (citations omitted).

Under these constitutional principles, Wis. Stat. § 346.63(1)(am) is unconstitutional because the term "detectable amount" is vague. A citizen has no way of knowing what amount of a restricted controlled substance will be "detectable" because standards for detectability are undefined. Therefore, he cannot know when his conduct has violated this statute.

For example, imagine a diligent citizen who, after breathing second-hand smoke[2] at a music festival that might have included marijuana smoke, in an effort to not run afoul of Wis. Stat. § 346.63(1)(am), submits a blood sample to a lab

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[2] As discussed, *infra*, a person could violate the statute by unwittingly breathing secondhand smoke then driving. *State v. Luedtke*, 2015 WI 42, ¶ 80, 362 Wis. 2d 1, 46–47, 863 N.W.2d 592, 615 ("operating a motor vehicle with a detectable. amount of a restricted controlled substance in the blood under Wis. Stat. § 346.63(1)(am) is a strict liability offense that does not require scienter").

to find out if he has a "detectable amount" of THC in his blood. The lab detects no THC, so this citizen believes he will not violate Wis. Stat. § 346.63(1)(am) if he goes for a drive. However, if this person is pulled over, and his blood is tested by a police-selected lab with more sensitive equipment that detects THC, this diligent citizen has, in fact, run afoul of Wis. Stat. § 346.63(1)(am). (*See* R. 7 at 6; P-App. at 6 ("Wis. Stat. § 346.63(1)(am) can lead to absurd results because of the lack of definition of 'detectable amounts.'")

Perhaps it is far-fetched to imagine a person testing his blood before driving to determine whether he can legally drive. After all, who goes to such extraordinary lengths to ensure compliance with the law? But that reality, thereby, proves the point: even with extraordinary efforts, a person cannot know whether he will or will not be in compliance with the law when he drives. Due to the inherent ambiguity of the undefined "detectable amount," this scenario illustrates that Wis. Stat. § 346.63(1)(am) is unconstitutional because it is void for vagueness.

Wisconsin Statute § 346.63(1)(am) provides that: "No person may drive or operate a motor vehicle while: [t]he

person has a ***detectable amount*** of a restricted controlled substance in his or her blood." Wis. Stat. § 346.63(1)(am) (emphasis added). The Legislature has not provided any definition for "detectable amount" or any standards under which a person's blood will be tested for a "detectable amount of a restricted controlled substance."

To determine the meaning of a statute, the court "look[s] at the text of the statute. The statutory language is examined within the context in which it is used. Words are ordinarily interpreted according to their common and approved usage . . . [and s]tatutes are interpreted to give effect to each word and to avoid surplusage." *State v. Matasek*, 2014 WI 27, ¶ 12, 353 Wis. 2d 601, 609, 846 N.W.2d 811, 815; *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124 ("Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.").

The Legislature's choice of words is important. The Legislature could have prohibited a person from driving with more than 0.0 nanograms/mL of THC in his blood—the

Legislature certainly knew how to say this and did so in the very same section of the statutes, *see* Wis. Stat. § 346.63(7). But the Legislature chose, instead, to prohibit driving with "detectable" amounts of THC in the blood. Therefore, under accepted canons of statutory interpretation, a person may legally drive with sub-detectable amounts of a restricted controlled substance in his blood.

The circuit court held that Wis. Stat. § 346.63(1)(am) is unconstitutional in that it can "lead to absurd results because of the lack of definition of 'detectable amounts' and has the potential to result in egregious levels of error. . . [it] has no rational basis, and, as applied, violates due process." (R. 7 at 6; P-App. at 6.) The circuit court was correct that the statute was unconstitutional, and this Court should affirm.

A. UNDER THE VOID FOR VAGUENESS DOCTRINE, WIS. STAT. § 346.63(1)(AM) IS UNCONSTITUTIONAL.

"Vague laws invite arbitrary power." *Dimaya*, __ U.S. __, 138 S. Ct. at 1223 (Gorsuch, J. concurring). Vague laws thus directly conflict with the promise of the Fourteenth Amendment to the United States Constitution that declares no

state may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV.

Courts protect the constitutional guarantee of the Fourteenth Amendment by invalidating statutes that violate an individual's procedural due process. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). "[T]he void-for-vagueness doctrine requires a penal statute to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Id*. Thus, through applying the void-for-vagueness doctrine, courts have a duty to invalidate unconstitutional statutes. *Id.*

The Wisconsin Supreme Court applies a two-part test for the void-for-vagueness doctrine: whether the statute: (1) is "sufficiently definite to give persons of ordinary intelligence who seek to avoid its penalties fair notice of the conduct required or prohibited" and (2) "provide[s] standards for those who enforce the laws and adjudicate guilt" to allow the Courts and police to consistently apply the statute. *State v. McManus*, 152 Wis. 2d 113, 135, 447 N.W.2d 654 (1989). If

either of these standards is not met, the statute is void. As the diligent citizen's predicament after attending a smoke-filled music festival illustrates, the statute fails under both prongs of the void-for-vagueness test and is doubly unconstitutional.

As to the first prong of the test: people must merely guess what "detectable" means. *City of Oak Creek v. King*, 148 Wis. 2d 532, 546, 436 N.W.2d 285 (1989) ("If the statute is so obscure that people of common intelligence must necessarily guess at its meaning and differ as to its applicability, it is unconstitutional."). That is because—and also relevant to the second prong of the test—what detectable means is left to police on an ad hoc basis. *Dog Fed'n of Wis., Inc. v. City of So. Milwaukee*, 178 Wis. 2d 353, 359-60, 504 N.W.2d 375 (1993) (A statute is unconstitutional, if the statute does not provide adequate notice of what is prohibited, causing "basic policy matters [being left] to policemen, judges, and juries for resolution on an ad hoc and subjective basis." (citations omitted)); *see also Dimaya*, __ U.S. __, 138 S. Ct. at 1233 (Gorsuch, J. concurring) (the "[v]agueness doctrine represents a procedural, not a substantive, demand.

It does not forbid the legislature from acting toward any end it wishes, but only requires it to act with enough clarity that reasonable people can know what is required of them and judges can apply the law consistent with their limited office.").

Harrison does not argue that the Wisconsin Legislature's legitimate concern with combating drugged driving and the safety concerns associated with drugged driving are unreasonable. Rather, Harrison argues that the statute is unconstitutional because "detectable amount" is impermissibly vague. Wis. Stat. § 346.63(1)(am).

The circuit court was particularly troubled by the ambiguity inherent in the undefined term "detectable amount." "[W]hat levels of controlled substances will be considered 'detectable' will vary between testing labs and testing equipment because of the lack of a set standard." (R. 7 at 5; P-App. at 5.) As shown in our diligent-citizen example, one lab may detect THC while another lab may not. The circuit court further noted that because of vagueness inherent in the term "detectable amount," "[i]ndividuals with the same amounts of substance in their blood, but charged in

different parts of the state may come to different results in their cases simply because of a decision made in a testing lab or due to the equipment used or the error produced." (*Id.* at 5-6.)

The decision by this Court in *State v. Muehlenberg* provides a roadmap for the analysis. *State v. Muehlenberg*, 118 Wis. 2d 502 (Ct. App. 1984.) That map leads to the inevitable conclusion that Wis. Stat. § 346.63(1)(am) is unconstitutional. In *Muehlenberg*, the constitutionality of then statute Section 346.63(1)(b), "prohibit[ing] the operation of a motor vehicle if the driver has a blood alcohol concentration of .10% or more" was challenged as "void for vagueness because it is not possible for a person to determine by his own senses whether his blood alcohol concentration is a 'legal' .09% or an 'illegal' .10%." *Muehlenberg*, 118 Wis. 2d at 503. The trial court had found the statute unconstitutional. *Id.* at 503-504.

The *Muehlenberg* court performed the two prong analysis, found the statute met both prongs, and that the statute was constitutional, reversing the lower court's decision. *Id.* at 504. While the statute there met these two

standards, the reasoning in *Muehlenberg* shows that the statute here is unsalvageable because Wis. Stat. § 346.63(1)(am) satisfies neither of these prongs.

1. WIS. STAT. § 346.63(1)(AM) DOES NOT MEET THE VOID FOR VAGUENESS DOCTRINE'S FIRST PRONG

The first prong is that "a statute will be held to be vague in the constitutional sense only if it is so obscure that persons of common intelligence must necessarily guess at its meaning and differ as to its applicability." *State v. Tronca*, 84 Wis. 2d 68, 86, 267 N.W.2d 216, 224 (1978). As discussed above, a diligent citizen or persons of common intelligence can only guess what is the meaning of "detectable amount" required by Wis. Stat. § 346.63(1)(am) as there are no standards set by the Legislature as to how a "detectable amount" is determined.

In *Muehlenberg*, the court found that the first prong was met. The court took judicial notice that "[t]hose who drink a substantial amount of alcohol within a relatively short period of time are given clear warning that to avoid possible criminal behavior they must refrain from driving." *Muehlenberg*, 118 Wis. 2d at 508 (quotes omitted).

Therefore, "[a] person of common intelligence, can with a fair degree of definiteness, believe himself or herself to be in jeopardy of violating the statute if a significant quantity of alcohol has been consumed." *Id*.

However, in this case, when a person consumes marijuana, or is just exposed to marijuana, it is unclear what amount consumed during a period of time would constitute a clear warning that they must refrain from driving until there is no longer a "detectable amount" in their blood. Thus, the first prong of the void-for-vagueness doctrine is not met as a person of common intelligence must necessarily guess whether he has "detectable amount" of THC in his blood. *See State v. Tronca,* 84 Wis. 2d 68, 86, 267 N.W.2d 216, 224 (1978).

2. WIS. STAT. § 346.63(1)(AM) DOES NOT MEET THE VOID FOR VAGUENESS DOCTRINE'S SECOND PRONG

Regarding the second prong for the void-for-vagueness, in *Muehlenberg,* the court found that "[t]he '10%' offense easily comports with the second prong of this analysis. The statute could not be more precise as a standard of law enforcement. Because ***no discretion*** is given to the

police, those officials charged with enforcing the law can objectively ascertain whether a defendant's conduct meets the terms of the law without having to create or apply their own standards." *Muehlenberg*, 118 Wis. 2d at 507 (emphasis added).

Wis. Stat. § 346.63(1)(am)'s undefined "detectable amount" is the opposite of precision. Police use their discretion determining where to send the blood for analysis to identify a "detectable amount." Next, an additional layer of discretion is employed by the laboratory employee as to what is considered "detectable," and what precision the laboratory is capable of and chooses to apply. (*See* R. 7 at 5-6; P-App. at 5-6.) The statue in its current form fails the second prong as well. As the circuit court notes, other states have set a level that must be present, such as Washington and Colorado which establishes a 5 ng/mL level of THC for their under the influence statutes. (R. 7 at 5; P-App. at 5 (citing Wash. Rev. Code § 46.61.502(1)(b); Colo. Rev. Stat. § 42-4-1301(1)).) As a result, a defined threshold eliminates discretion by the police or the court to determine whether a person is in violation of the statute.

The State notes, there are "eleven other states that have per se [zero tolerance] prohibitions on driving with THC in one's blood."[3] (Br. at 6.) However, none of the other states use the word "detectable amount." (*See* Ariz. Rev. Stat. Ann. § 28-1381(A)(3); Del. Code Ann. tit. 21, § 4177(a)(6); Ga. Code Ann. § 40-6-391(a)(6); Ind. Code Ann. § 9-30-5-1(c); Iowa Code Ann. § 321J.2(1)(c); Mich. Comp. Laws Ann. § 257.625(8); Okla. Stat. Ann. tit. 47, § 11-902; 31 R.I. Gen. Laws Ann. § 31-27-2(b)(2); S.D. Codified Laws § 32-23-1(2-5); Utah Code Ann. § 41-6a-517.)[4] Indeed, other legislatures have avoided using the term "detectable" in under-the-influence statutes *for this very reason*. The Nevada

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[3] The State cites to https://www.ghsa.org/sites/default/files/2018-01/marijuanalaws_jan2018.pdf in support of its statement. However a review of that source indicates Wisconsin is one of twelve states with **zero tolerance** laws regarding THC and driving. There are five more states with per se laws that set limits for the amount of THC in a driver's blood.

[4] Illinois was incorrectly listed as having a zero tolerance law regarding THC and driving. On July 29, 2016, Illinois revised its OWI statute to inserting a limit of 5 ng/ml or more of THC is required to violate the statute. 625 Ill. Comp. Stat. Ann. 5/11-501(a)(7); 5/11-501.2

legislature specifically rejected the proposed term "detectable" and replaced it with the specific amount of 2ng/ml. *See Williams v. State*, 118 Nev. 536, 541 (2002) ("The original draft of the bill provided that driving or being in control of a vehicle with 'a ***detectable amount*** of a controlled substance' constituted a DUI violation. . . . ***In response to concerns over the absence of a defined level of drugs required for a conviction***, the bill was amended, where possible, to include the federal standards set by the Substance Abuse and Mental Health Services Administration.") (emphasis added).

Thus, the second prong of the void-for-vagueness statute is not met. Wis. Stat. § 346.63(1)(am) does not "provide standards for those who enforce the laws and those who adjudicate guilt" because there is no precise standard for "detectable amount" or for the laboratory process that determines if a restricted substance is detected. *See State v. Popanz*, 112 Wis. 2d 166, 173, 332 N.W.2d 750, 754 (1983). As the circuit court states "[i]ndividuals with the same amounts of substance in their blood but charged in different parts of the state may come to different results in their cases

simply because of a decision made in a testing lab or due to the equipment used or the error produced." (R. 7 at 5-6; P-App. at 5-6.)

This Court should find that Wis. Stat. § 346.63(1)(am) unconstitutional under the void-for-vagueness doctrine.

B. *LUEDTKE* AND *SMET* ARE NOT CONTROLLING.

The State makes no argument and provides no reasoning to support its bare bones conclusory statement that "Harrison has not met his burden of proving Wis. Stat. 346.63(1)(am) unconstitutional beyond a reasonable doubt" because of the decisions made in *Luedtke* and *Smet.* (Br. at 7.) Nor has the State challenged any of the facts set forth in Harrison's Motion and Brief. (R. 5 at 1-2; P-App. at 15-16.)

The State does not offer any authority that a statute that survives a constitutional challenge on one ground cannot be challenged on other grounds. It offers no authority because that is not the law. The State correctly observes that previous constitutional challenges to the restricted substance provision in Wis. Stat. § 346.63(1)(am) were rejected in *Smet* and *Luedtke.* However, neither case addressed the constitutionality challenges raised here. The circuit court

agreed that Harrison persuasively distinguished *Smet* or *Luedtke* when the circuit court struck the statute. (R. 7 at 3, 6; P-App. at 3, 6.)

In *Smet,* the court rejected the argument that Wis. Stat.§ 346.63(1)(am) violated defendant's "rights to due process and fundamental fairness" by allowing conviction without proof of impairment. *State v. Smet,* 2005 WI App 263, ¶¶ 12–29, 288 Wis. 2d 525, 534-41, 709 N.W.2d 474, 479-82. Harrison is not challenging the statute under a proof of impairment argument such that there needs to be proof that the person charged was impaired. (Harrison, of course, could not raise such a challenge in this Court.) Rather, Harrison challenges Wis. Stat. § 346.63(1)(am) on the same basis that it was struck below: the "lack of definition of 'detectable amounts' is vague and "can lead to absurd results." (R. 7 at 6; P-App. at 6.)

As discussed above, the issue is not with discerning what level of THC should be considered per se impaired, but the problem is that "detectable amount" is undefined and can lead to inconsistent results depending on how the blood tests are performed due to variance between laboratories. (R. 7 at

6-7; P-App. at 5-6.) Harrison does not contend that the Legislature could not have enacted a "zero tolerance" law that prohibited people from driving with 0.0 ng/mL of a restricted controlled substance. But that is not what the Legislature did. The Legislature banned driving with a "detectable amount." Tying liability to detectability is the problem. *Smet* simply said nothing on this issue.

Luedtke, likewise, is not controlling. There, the defendant challenged the constitutionality of Wis. Stat. § 346.63(1)(am) by contending that the statute must be construed to include a threshold scienter requirement so that a person must *knowingly* ingest a restricted substance. Luedtke had claimed that he had not known he had ingested a restricted substance. The Court rejected Luedtke's constitutional challenge that § 346.63(1)(am) violates a defendant's substantive due process rights because it establishes a strict liability offense of drugged driving. *Luedtke*, 2015 WI 42, ¶¶ 74–78, 362 Wis. 2d 1, 43-46, 863 N.W.2d 592, 613-14.

Luedtke simply cites *Smet* for the proposition that the Legislature was justified in its decision to approach drugged

driving with a zero-tolerance statute. (Again, Harrison does not contend that a clearly drafted zero-tolerance statute could not be constitutional.) *Luedtke* offers no new analysis. As with *Smet*, *Luedtke* does not address the constitutional issue raised by Harrison, that the vagueness of the term "detectable amount" does not provide ordinary people fair notice of the conduct Wis. Stat. § 346.63(1)(am) proscribes. *Dimaya*, __ U.S. __, 138 S. Ct. at 1212 (Kagan, J.).

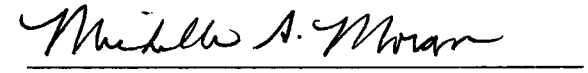
While this Court and our Supreme Court have decided that Wis. Stat. § 346.63(1)(am) is constitutional even though it does not require proof of impairment, *Smet*, or scienter, *Luedtke*, this Court has not considered the unconstitutionality of the statute under the void-for-vagueness doctrine. As such, *Smet* and *Luedtke* are not controlling.

CONCLUSION

For the reasons set forth above, the Court should affirm the circuit court's ruling finding Wis. Stat. § 346.63(1)(am) per se unconstitutional and dismissing 2015TR5230.

Dated: May 17, 2018

Respectfully submitted,



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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4,127 words.

Dated: May 17, 2018

MICHELLE A. MORAN

ELECTRONIC BRIEF CERTIFICATION

I hereby certify that I have submitted an electronic copy of this brief, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date, except for the signature.

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: May 17, 2018

MICHELLE A. MORAN

CERTIFICATE OF MAILING

I hereby certify that on May 17, 2018 I caused 10 copies of the foregoing brief and attached appendix to be sent by Federal Express for delivery to the clerk, and therefore, it is filed on this date, pursuant to Wis. Stat. § 809.80(3)(b)(2).

Dated: May 17, 2018

MICHELLE A. MORAN