STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2018AP258-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOHN S. FINLEY,

Defendant-Appellant.

APPEAL FROM THE JUDGMENT OF CONVICTION AND ORDER DENYING POSTCONVICTION MOTION, BOTH ENTERED IN THE CIRCUIT COURT FOR WALWORTH COUNTY, THE HONORABLE KRISTINE E. DRETTWAN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Did John Finley voluntarily make his statements to the police?

At both the suppression motion and the post-conviction motion hearings, the circuit court answered yes.

This Court should answer yes.

2. If Finley's statements to the police were erroneously admitted into evidence at trial, did this mistake constitute harmless error?

The circuit court did not consider this issue holding that Finley's statements were voluntary.

This Court should also not address this issue as Finley's statements were voluntary and properly admitted at trial. But if this Court should find that the circuit court mistakenly admitted Finley's statements, it should find that this constituted harmless error.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case can be resolved by applying well established law to the facts.

INTRODUCTION

On May 14, 2014, nine-year-old C.P. was interviewed at the Walworth County Child Advocacy Center, by Paula Hocking, the Center's manager and a trained and experienced forensic interviewer of children. C.P. told Ms. Hocking that her uncle, John Finley, had sexually assaulted her on several occasions. C.P. explained that when they were alone, Finley would place his hands under her clothes, on her breasts, and on her vagina, and that these assaults took place on her

mom's bed, floor, her mattress, and in her grandmother's home.

On May 20, the police interviewed Finley at his kitchen table, and he admitted that on one occasion, for about five to ten seconds, he touched C.P.'s vagina to warn her as to what other boys might try to do to her. During this one hour non-custodial interview, the police did not threaten Finley, did not show weapons, made no promises, provided him with water, and expressed concern about his health.

A jury, after a hour-and-a-half deliberation, found Finley guilty of repeated sexual assault of a child.

Finley's appeal is based on the admission of his taped statements at trial. He contends that his statements were involuntary because his limited intellectual abilities made him highly susceptible to police interviewing techniques. But, the interview shows Finley minimalizing his culpability, denying any sexual satisfaction, and limiting the touching to one isolated act. Finley did not act as a man unable to resist police pressures but rather as one trying to rationalize and diminish the import of his actions. And even without Finley's testimony, there was ample proof to support the verdict based on C.P.'s taped interview. Twenty minutes into deliberation, the jury asked only to see her statement again, and then after re-watching C.P.'s video, they soon returned with a guilty verdict.

STATEMENT OF THE CASE

On May 8, 2014, C.P. disclosed to her therapist, Jennifer Chellevold, that her uncle, Finley, had touched her many times, under her clothes, in her breast and vaginal areas. (R. 110:19–24.) On May 14, 2014, C.P. was interviewed by Paula Hocking, a trained and experienced forensic interviewer of children, and the director of the Walworth County Child Advocacy Center. (R. 109:192–193, 207.)

In the taped interview with Ms. Hocking, C.P. disclosed Finley's repeated sexual contact with her. (R. 58.) C.P. stated that Finley would touch her and rub her vagina and her breasts and ask if it felt "comfy." (R. 59:6–7.) C.P. informed that Finley touched her in this way on about five or six separate occasions, on her mom's bed, on the floor, on her mattress, and at Grandmother Finley's home. (R. 59:8–12.)

On May 20, Whitewater Police officers, Saul Valadez and Adam Vander Steeg went to Finley's home, which he shared with his mother. (R. 62:1; 100:9.) Finley's mother let the two police officers into the apartment and told them that Finley was in the bathroom. (R. 100:12.) A minute or so after the police arrival, Finley came out of the bathroom crawling, and then he rose to a standing position and walked to the kitchen area. (R. 100:12–13.) Finley advised that he did not feel too well but that he did not need an ambulance. Finley then went to the kitchen table and sat down to talk to the two officers. (R. 62:1; 100:13–14.)[1]

Finley advised that he saw his niece, C.P., about once or twice a week. (R. 62:4.) Finley engaged occasionally in roughhousing with C.P. including playing tackle football as he wanted to toughen her up so that she would not be bullied. (R. 62:6.) Finley admitted that one time while wrestling with C.P. he might have accidentally touched her vagina. (R. 62:8, 16–17.) Finley claimed that he rubbed C.P.'s vagina and slipped his finger in it on only one occasion, for five to ten seconds. (R. 62:11, 26.) Finley denied any sexual motivation for his contact with C.P., and claimed that he touched her vagina only to show her what guys might try to do to her. (R. 62:24–25.)

[1] The interview with Finley was recorded but as the interview was also accurately transcribed (R. 62), the State will reference the transcript for facts, and only point to the video for general observations.

During the interview the police did not threaten Finley, make promises, or use or show force. (R. 100:16–17; 101:5–6.) Finley was not moved against his will, was not handcuffed, was not under arrest, but was told that he could ask the police to stop questioning and could leave at any time. (R. 99:13; 101:5–6.) During the interview Finley asked for and received water. (R. 62:8, 25.) After the interview was completed and Finley was placed in the ambulance, the police arrested him and read him his *Miranda*[2] rights. (R. 62:31.) Finley then told the police that he did not wish to talk to them. (R. 62:32.)

At the time of the police interview Finley was 36 years old. (R. 62:1.) Finley has an IQ of 72, but his intellectual limitations were described as not disabling. (R. 102: 6, 16, 18.) Finley graduated from Lakeland School, a special education school, in 1996. (R. 74:9.) Finley had a prior criminal record, an April 2, 2004 conviction for third-degree sexual assault and a February 3, 2000 conviction for sex with a child 16 or over. (R. 74:4.)

While Finley complained about not feeling well, he never sought to stop the interview, and denied needing an ambulance when the police offered to get one. (R. 62:1, 15, 22.) After Finley admitted to putting his finger in C.P.'s vagina he complained of not feeling his left arm and the police then called for an ambulance. (R. 62:29.)

Finley's motion to suppress his statements to the police was heard on November 24, 2014 (R. 99), January 8, 2015 (R. 100), January 15, 2015 (R. 101), and March 27, 2015 (R. 102).[3] Finley argued, inter alia, that his statements to the police should be suppressed because they were involuntary. Finley's core argument was that the police exploited his lack

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[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[3] The motion hearing was split up because of time and witness availability issues.

of intelligence, and thus he was unable to withstand the pressure of their questioning. (R. 102:42–43.)

At the motion hearing the State presented testimony from Officers Valadez and Vander Steeg. The State also placed into evidence the video of the interview and its transcript. (R. 61; 62:1–32.)

Finley's aunt, Linda Reed, a retired social worker from Waukesha County Health and Human Service, testified on his behalf. Reed advised that Finley had short term memory problems, and had been bullied a lot in his life. (R. 101:63–64.) Reed also testified that Finley had the intellectual functioning ability of an 11- or 12- year-old. (R. 101:61.) Dr. Roland Manos testified that he had performed a psychological examination of Finley on December 1, 2014. (R. 102:3.) Manos found Findley to have significant but not disabling intellectual limitations, and opined that Finley would be able to answer accurately simple, short and concrete questions, but might struggle with complex ones. (R. 102:6, 17.)

In an oral ruling, the Honorable David Reddy denied Finley's suppression motion and ruled that Finley's statements to the police were admissible. (R. 102:52.) Judge Reddy found that the police used proper questioning tactics, that the time of the interview was not too long, and that no threats had been made. (R. 102:50.) Judge Reddy also noted that the interview took place in Finley's own home, that his mother was present, that he was provided with water, and that he had prior police contacts. (R. 102:50–52.)

Finley's jury trial commenced on October 3, 2016. (R. 109:1.) At trial the State played C.P.'s interview with Hocking to the jury. (R. 109:212.) Also, C.P. appeared at trial and testified. (R. 109:251–267.) C.P. was not questioned about the specifics of what she had disclosed in the recorded interview. But she said that she originally came forward as to Finley's behavior because she "just couldn't hold it in

anymore," and that not talking about it made her feel "bottled up." (R. 109:257.)

C.P.'s mother, father, therapist, and Ms. Hocking, also testified for the State. And Dr. Lynn Sheets, a board-certified child abuse pediatrician, testified as to why child abuse cases such as C.P.'s often do not involve physical injury, and why it is not uncommon for a child abuse victim to not come forward right away. (R. 111:6, 28–30.)

Lieutenant Vander Steeg also testified for the State as to his contact with Finley on the day Finley made his taped statements. And the State played the videotape of Finley's statements to the jury. (R. 110:125–26.)

Finley did not testify but did call Dr. David Thompson, a self-employed clinical and forensic psychologist, as a witness. Dr. Thompson questioned the reliability of both C.P.'s videotaped statements to Hocking and Finley's statements to the police. Dr. Thompson, who never met or examined C.P., expressed serious concerns about the reliability of her memories. (R. 111:95.) And Dr. Thompson, who did examine Finley, testified that Finley was more compliant than 95% of the population and thus more suggestible to police questioning techniques than a normal person his age. (R. 111:56, 60–61.) Dr. Thompson did concede that he could not tell the jury that C.P. was mistaken when she reported the sexual contact or that Finley gave false information to the police. (R. 111:166.)

The jury retired for deliberations on October 5, 2016 at 4:03 p.m. (R. 111:251.) At 4:29 p.m., the jury asked to re-watch C.P.'s videotaped statement to Hocking. (R. 111:254.) After listening to the videotape in the courtroom, the jury returned to their deliberations and at 5:45 p.m. they found Finley guilty of repeated sexual assault of a child. (R. 111:256–257.)

Finley filed post-conviction motions, and they were heard on February 2, 2018. (R. 113.) At this hearing Finley argued, inter alia, that the court should vacate the judgment and order a new trial because his statements to the police should have been suppressed as involuntary. Judge Drettwan advised that she had reviewed the transcripts of the pretrial motions relevant to the voluntariness issue, and as the trial's presiding judge, she had heard the testimony of Dr. Thompson, who did not testify at the pretrial motions. (R. 113:35–38.) Judge Drettwan adopted the findings of Judge Reddy, described earlier above, as correct, and also independently determined that the State met its burden in showing that Finley's statements to the police were voluntary. (R. 113:38.) The court found that the police tactics did not exceed Finley's ability to resist and further noted that the bulk of Dr. Thompson's trial testimony dealt with the reliability of the statements and not their voluntariness. (R. 113:39.) The post-conviction motion for suppression was denied. (R. 113:40.)

STANDARD OF REVIEW

The standard of review as to the voluntariness of statements to the police involves the application of constitutional principles to historical facts; the findings of historical facts are to be upheld unless clearly erroneous, while the application of these facts to constitutional principles is independently reviewed. *State v. Ward*, 2009 WI 60, ¶ 17, 318 Wis. 2d 301, 767 N.W.2d 236.

ARGUMENT

I. Finley's statements to the police were voluntary.

A. Controlling legal principles.

The reviewing court examines the totality of the circumstances to determine if the defendant's statements

were voluntarily given or the product of improper pressures exercised by the police. *State v. Clappes*, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987). A defendant's custodial statements are voluntary if they are the product of a free and unconstrained will reflecting a deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressure brought to bear on the defendant by the police exceeds the defendant's ability to resist. *State v. Ward*, 2009 WI 60, ¶ 18, 318 Wis. 2d 301, 767 N.W.2d 236. The State bears the burden of proving by a preponderance of the evidence that a confession is voluntary. *State v. Moore*, 2015 WI 54, ¶ 55, 363 Wis. 2d 376, 864 N.W.2d 827.

In order for a court to find a statement involuntary, there must be some evidence of improper police practices deliberately used to procure a confession. *Moore*, 363 Wis. 2d 376, ¶ 56. A suspect's personal characteristics alone cannot form the basis for finding a confession involuntary. *Id.* If the defendant fails to establish that the police engaged in coercive conduct to elicit the confession, the inquiry ends without considering the defendant's characteristics. *State v. Markwardt*, 2007 WI App 242, ¶ 29, 306 Wis. 2d 420, 742 N.W.2d 546. In evaluating the police conduct, the court looks at the length of questioning, general conditions or circumstances in which the statement was taken, whether any excessive physical or mental pressures were used, and whether any inducements, threats, methods, or strategies were used to elicit a statement from the defendant. *Ward*, 318 Wis. 2d 301, ¶ 20.

If there is coercive conduct by the police, the totality of circumstances in a voluntariness analysis balances the characteristics of the suspect against the police tactics used to obtain the statement. *State v. Hoppe*, 2003 WI 43, ¶¶ 38–39, 261 Wis. 2d 294, 661 N.W.2d 407. In evaluating a suspect's characteristics courts look at the suspect's age, education, intelligence, physical or emotional condition, and prior

experience with law enforcement. *Ward*, 318 Wis. 2d 301, ¶ 19.

B. Under the totality of the circumstances, Finley's statements to the police were voluntary.

1. The police did not improperly elicit Finley's statements.

In determining the voluntariness of Finley's statements, the police conduct must first be examined. If this Court concludes the police acted properly, the voluntariness inquiry ends without consideration of Finley's characteristics.

The videotape of Finley's May 20, 2014, police interview reveals that the police, without exception, were cordial, respectful, and non-threatening to Finley. Finley was frequently asked if he was feeling all right, if he wanted an ambulance, and was given water upon his request. Finley was advised that he was not under arrest and that he could end the interview and tell the police to go anytime he wished. The kitchen table interview took only 57 minutes. Neither of the two police officers threatened Finley, made any show of force, or made any promises to him. There was nothing coercive about the interview environment.

Finley points to four police interview strategies, that he claims improperly coerced him to make incriminating statements. First, Finley alleges that the police improperly showed confidence in his guilt when they told him that they knew that the assault had occurred. But this strategy has been validated by this Court. "An officer may express dissatisfaction with a defendant's responses during an interrogation. The officer need not sit by and say nothing when the person provides answers of which the officer is skeptical." *State v. Deets*, 187 Wis. 2d 630, 636, 523 N.W.2d 180 (Ct. App. 1994). Accusing a suspect of lying is not an

improper police tactic. *State v. Owen*, 202 Wis. 2d 620, 642, 551 N.W.2d 50 (Ct. App. 1996). The same is true for expressing a belief that a victim has been truthful in reporting the abuse.

Second, Finley argues that the police wrongfully tried to deceive him with false information. Finley points to the police telling him that C.P. had disclosed that he had placed his finger in her vagina. Putting aside the relevant truth of this assertion, C.P. did claim that on several occasions Finley had rubbed her vagina, police misrepresentations during an interrogation do not make an otherwise voluntary statement involuntary. *State v. Triggs*, 2003 WI App 91, ¶ 1, 264 Wis. 2d 861, 663 N.W.2d 396. And a misrepresentation that relates to a suspect's connection to a crime is the least likely to render a confession involuntary. *Id.* ¶ 19.

Third, Finley claims that the police engaged in improper minimization by attempting to make sexual touching appear normal and suggesting that the inappropriate contact must have been accidental. But the purpose of a police interview is to get information, and it is common sense that this goal is typically more easily achieved by soft pedaling the import of the information sought. This is particularly so when seeking information about adult sexual activity with a nine-year-old girl. Finley points to no case holding that the use of this technique makes a confession involuntary. And, as mentioned above, the police made no promises of leniency to Finley to induce his statements.

Finally, Finley argues that the police coerced him through the use of complex questions. Finley points to no case where alleged complex questions render a confession involuntary, and his argument is unsupported as a factual matter. Both the videotape and the transcript show the police, in a clear manner, attempting to question Finley about his activities with C.P. Finley never expressed confusion over the questions or the reasons for them. And his answers were

responsive, if not always forthcoming. Finley offered the following exchange to prove his point that his confusion was evidenced by his responses.

> Q. Ok. So John [Finley] ah, tell me about um, tell me about you accident[ally] touching her ah, on her private, I know, I mean you, you and I both know that it happened and I know it was a complete accident, that stuff like that happens man, alright so tell tell [sic] me about a time recently when that when that happened.
>
> A. She wanted me to pick her up and there was no way that could get a hold of her you know so I put one arm up like this, you know and then I

(Finley's Br. 14, R. 62:7.)

This excerpt does not show Finley being tricked by complex questioning. The police asked Finley how he might have accidentally touched C.P.'s private parts and he tried to provide an answer. Finley understood the question and his answer was responsive. Finley provides no examples of where he and the police could not communicate effectively.

Neither the interview environment nor the questioning was coercive. Thus, in order to show police misconduct Finley asserts that the questioning methods, while appropriate for some, were improper for him because he has the mental capabilities of a twelve year old, an IQ of 72. In other words Finley is asking this Court to find that the police knowingly exploited his lack of intellect by asking questions that applied pressures he could not resist. This contention is wrong on three counts.

First, Finley is suggesting that the police should have a different set of interview techniques for every subject, depending on their IQ. It is both illogical and impractical for the police to desist employment of time-honored and court-tested interview methodologies for intellectually slower

subjects. And it would be impossible to set a clear line of demarcation where reasonable questioning techniques morph into unreasonable coercion, based on the defendant's acumen.

Second, Finley improperly conflates a personal characteristic, his intelligence, into the police misconduct analysis. Finley's intellectual limitations in dealing with police questioning only comes into play in a voluntariness analysis if the police were improperly coercive. Here, there was nothing in the interview that was improper, nothing coercively designed to break Finley's will to resist. Finley's intellectual limitations might be fair game in a reliability analysis, but not in a voluntariness one, when there is no police misconduct. And reliability, as the trial court aptly noted, is "something for the -- ultimately the jury to decide." (R. 102:52.)

Third, and most significantly, Finley's core claim is untrue. He was able to resist police questioning, and did so on several occasions. The police first suggested that the sexual conduct might have been accidental, but when they later sought to move the narrative from accidental to intentional, Finley resisted. (R. 62:19–20.) When the police suggested that Finley might have had some sexual satisfaction over the contact, he denied it. (R. 62:17–18.) Indeed, even after agreeing that he did touch her vagina, Finley claimed he did so to show her what she should not allow boys to do. (R. 62:28.) When the police suggested that he kissed C.P., Finley said no. (R. 62:28–29.) When the police suggested that the sexual contact might have taken about a minute, Finley claimed it was only for five to ten seconds. (R. 62:27.) And Finley only admitted to one contact, though the police were aware that C.P. had disclosed that there had been several assaults. (R. 62:25.) The police did not apply improper pressure as was clearly evidenced by Finley's frequent resistance to their attempts to garner more incriminating information.

2. Finley's personal characteristics did not make him unfairly vulnerable to the police questioning.

The totality of circumstances show that the police did not engage in improper or coercive methods to elicit Finley's statements. Thus, the voluntariness inquiry should end in the State's favor without consideration of Finley's characteristics. But if this Court has any question about the police interrogation methods, an examination of Finley's personal characteristics reinforces the validity of his admissions.

While Finley has intellectual limitations, his 72 IQ says nothing about his will to resist questioning or what pressures would overbear his will. As discussed above, Finley was quite capable of holding his ground with the police on several points: the amount of sexual contacts, and the extent, duration, and motivation for the contact. And when the police arrested Finley and read him his rights, he had the ability to exercise his right to refuse to talk to the police. (R. 62:31–32.) Despite his IQ, Finley had a driver's license, had lived on his own, once had a live-in girlfriend, and had held jobs. (R. 109:279–281.) Though he is not bright, Finley's intellect did not prevent him from resisting police pressures.

Finley had previous experience with the criminal justice system. While the record is silent as to whether Finley had ever been interviewed by the police before, his prior convictions show that he had familiarity with being accused of criminal activity. And the convictions were for similar activity as what is at issue here: conviction for third-degree sexual assault, and a conviction for sex with a child 16 or over. (R. 74:4.)

Finley was 36 years old at the time of the interview. He complained occasionally of not feeling well but never asked for the interview to stop or the police to leave, though he was advised that he could do so. Only after making his admission

did Finley's physical complaints reach the point where the interview was halted and an ambulance called. There is nothing in the record showing what was exactly wrong with Finley and no medical testimony as to his being too ill to be interviewed. And there is no evidence during the interview that illness prevented him from effectively communicating with the police.

The police engaged in no improper coercive actions in dealing with Finley. And Finley was qualified to handle police questioning without yielding to pressure. Indeed, he frequently resisted police attempts to expand on his admissions, acting as a man trying to minimize his actions. Under the totality of the circumstances the State has showed by a preponderance of the evidence that Finley's statements were voluntary.

II. If improper, the admission of Finley's statements to the police was harmless error.

The circuit court did not err in holding that Finley's statements were voluntarily rendered and properly admitted at trial. But, assuming arguendo that the statement should not have been admitted, any error was harmless.

A. Applicable law.

The State, as the beneficiary of an error, bears the burden of proving beyond a reasonable doubt that the error was harmless. *State v. Agnello*, 226 Wis. 2d 164, ¶ 22, 593 N.W.2d 427 (1999). The harmless error doctrine is applicable to the admission of an involuntary confession at trial. *State v. Childs*, 146 Wis. 2d 116, 125–26, 430 N.W.2d 353 (Ct. App. 1988).

"The test for harmless error is whether there is a reasonable possibility that the error contributed to the conviction." *State v. Thoms*, 228 Wis. 2d 868, 873, 599 N.W.2d 84 (Ct. App. 1999). An otherwise valid conviction should not

be set aside if a reviewing court can confidently find that, on the whole record, the error was harmless beyond a reasonable doubt. *State v. Nelson*, 2014 WI 70, ¶ 28, 355 Wis. 2d 722, 849 N.W.2d 317.

B. Even without Finley's statements, there is no reasonable doubt that the jury would have reached a different verdict.

At trial, the jury was presented with substantial evidence pointing to Finley's guilt, without consideration of his statements. The jury saw C.P.'s videotaped forensic interview with Ms. Hocking. And C.P. also appeared in person at the trial for Finley's cross examination. Hocking testified as to C.P.'s interview, the techniques employed and her professional impressions.

Finley argues that C.P.'s testimony, both through her taped interview and personal appearance at trial, would have been insufficient to support a conviction. Finley argues that the jury could have been potentially bothered by C.P.'s lack of injury, and the fact that she did not immediately report the abuse. But Finley ignores the fact that Dr. Lynn Sheets, an experienced board-certified child abuse pediatrician testified as to why it is not uncommon for a sexual assault victim not to have any injuries or to delay coming forward with her disclosure. (R. 111:28–30.)

Finley did not testify at trial. Dr. Thompson did testify for the defense and opined that he had reservations about the reliability of both C.P.'s forensic interview and Finley's statements to the police. One presumes that if Finley's statements had not been admitted, Dr. Thompson would still have testified as to C.P.'s reliability. It is clear that the jury was not too terribly impressed with Dr. Thompson's opinions as it returned a guilty verdict in less than two hours, and some of that time was spent re-watching C.P.'s taped interview.

To be sure, it beggars belief to suggest that Finley's taped statement was not probative. But that is not the harmless error test. Here, guilt beyond a reasonable doubt was proven without Finley's statements. That it is proven even more beyond a reasonable doubt with Finley's statements is not a basis for setting aside the conviction. And it is clear that the jury was not too preoccupied with Finley's statements. During deliberation, they asked only to see C.P.'s statement, and they ultimately convicted Finley of repeated sexual assaults, when in his statement he only admitted to one five to ten second contact, without any sexual motivation.

C.P. testified that Finley had perpetrated several sexual assaults in several locations. She appeared at trial, and did not in any way retreat from these disclosures. She testified that she had to come forward as it hurt her to keep things bottled inside. Highly trained and experienced professionals in the child abuse field described to the jury their contacts with C.P. and their understanding of child sexual abuse dynamics. Against this evidence, Finley had the testimony of Dr. Thompson, who never met C.P., questioning the reliability of the forensic examination. And Dr. Thompson did concede that he could not tell the jury that C.P. was mistaken when she reported the sexual contact. (R. 111:166.)

Without Finley's statements, there is no reasonable possibility that the jury would have reached a different verdict. If it was error to admit Finley's statements in evidence, it was harmless error.

CONCLUSION

For all the foregoing reasons, the State asks this Court to affirm the trial court's judgment of conviction.

Dated this 9th day of August, 2018.

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 4,743 words.

Dated this 9th day of August, 2018.

_____
DAVID H. PERLMAN
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 9th day of August, 2018.

_____
DAVID H. PERLMAN
Assistant Attorney General