STATE OF WISCONSIN

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

DISTRICT III

Case No. 2018AP000858-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

BRIAN L. HALVERSON,

Defendant-Respondent.

On Appeal from Orders Entered in the
Chippewa County Circuit Court,
the Honorable Steven R. Cray, Presiding.

RESPONSE BRIEF AND SUPPLEMENTAL APPENDIX OF DEFENDANT-RESPONDENT

MEGAN SANDERS-DRAZEN
Assistant State Public Defender
State Bar No. 1097296

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 266-8383
sandersdrazenm@opd.wi.gov

Attorney for Defendant-Respondent

TABLE OF CONTENTS

CASES CITED

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

ISSUE PRESENTED

Brian L. Halverson was incarcerated in a county jail when a police officer called to speak with him. Halverson was put on the phone and interrogated just a short time later. During this interrogation, Halverson made incriminating statements but wasn't read his *Miranda* rights. He later moved to suppress his statements, arguing they were obtained in violation of his right against compelled self-incrimination.

The circuit court granted suppression. The state concedes that the circuit court's reasoning was sound on all but one point: whether Halverson was in custody during his interrogation, triggering the officer's duty to provide him with *Miranda* warnings. **The sole issue presented is whether the state has met its burden of proving that Halverson was *not* in custody for *Miranda* purposes when he was interrogated.**

The circuit court held that Halverson was in custody during his interrogation—i.e., that the state did not prove otherwise.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested but would be welcomed if this court would find it helpful in resolving the issue presented. Publication, however, is warranted: this case will likely result in the enunciation of a new rule of law or the modification or clarification of an existing rule. Wis. Stat. § 809.23(1)(a)1. In addition, deciding this case will require this court to address an apparent conflict between prior decisions of the state and federal supreme courts. Wis. Stat. § 809.23(1)(a)3.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

The state charged Brian L. Halverson with two counts: criminal damage to property and misdemeanor theft. (1:1). The complaint alleged that while Halverson was imprisoned at Stanley Correctional Institute, he stole and destroyed a watchband and various documents belonging to another inmate. (1:1-2). According to the complaint, the evidence against Halverson consisted primarily of statements made to law enforcement—both by the alleged victim and by Halverson himself. (*Id.* at 2).

Halverson moved to suppress his statements, arguing they were obtained in violation of his right against compelled self-incrimination. (18). There were two hearings on his motion. (51; 48; App. 101-64). The circuit court granted suppression at the conclusion of the first hearing. (51:22-27; App. 122-27). The state then filed a motion to reconsider (38), and the circuit court heard additional testimony and reconsidered its ruling at a second hearing. (48; App. 129-64). Its decision did not change. (48:33-35; App. 161-63).

Officer Matthew Danielson, to whom Halverson confessed, was the sole witness at the first suppression hearing. (51:3-19; App. 103-19). Danielson testified that he discovered Halverson was incarcerated at the Vernon County Jail while he was investigating the Stanley inmate's allegations against him. (51:4; App. 104). When Danielson called the jail and asked for Halverson, he was told by "somebody"

there "that they would get [Halverson]," give Danielson a call back, and then let the two speak. (51:4-5; App. 104-05).

Danielson received a call back about ten minutes later, and Halverson was put on the phone. (51:4-5; App. 104-05). Danielson promptly questioned Halverson about whether he'd stolen and destroyed another inmate's property, and Halverson eventually confessed. (51:5-6; App. 105-06). Danielson said the conversation was brief—it took "just a few minutes" to obtain Halverson's confession. (51:5; App. 105). He also said he didn't provide Halverson with *Miranda* warnings prior to obtaining his confession because he didn't believe Halverson was in custody when the two spoke. (51:6-7; App. 106-07).

Although the state called an additional witness at the second suppression hearing, Danielson was the only person with direct knowledge of Halverson's interrogation to testify about it. (*See* 48:15; App. 143). And since Danielson wasn't *with* Halverson when he confessed, his testimony left many questions unanswered: what language and tone of voice did correctional officers use when informing Halverson that he'd received a call from a police officer? Was he instructed to take the call, or given a choice? How was Halverson transported from his jail cell, or wherever he might have been, to the phone? Was Halverson shackled or otherwise restrained? What kind of room did the interrogation take place in, and was Halverson permitted to leave? Was the call monitored or recorded? Was Halverson watched as he spoke to Danielson? If so, how many officers were standing by, and were they armed?

To fill in some of these gaps, the state called Corporal Matthew Hoff from the Vernon County Sheriff's Department. (48:14; App. 142). Although Hoff had no memory of the call in question, he provided detailed testimony about how such calls are ordinarily handled—that is, about "the standard operating procedure that's utilized" when a jail inmate receives a professional call. (48:15-22; App. 143-50); *see* App't's Br. 5-6. Hoff explained that inmates who receive professional calls are escorted from their "pods" to a separate room called "the program room"; that the program room is locked so inmates can't leave on their own; that the phone within the program room has a private, unrecorded line; and that the program room's walls are made of glass, enabling continuous observation of inmates while they're on the phone. (48:17-23; App. 145-51). Hoff also testified that inmates aren't usually shackled or handcuffed on their way to the program room or inside it; that they choose whether or not to take a call; and that they're escorted back to their pods once their call is over. (48:17-19; App. 145-47).

At the end of both suppression hearings, the circuit court concluded that Halverson was in custody for *Miranda* purposes during his interrogation by Danielson. (51:22-27; 48:33-35; App. 122-27, 161-63). The court reasoned that binding case law from the Wisconsin Supreme Court says incarceration always amounts to *Miranda* custody, and it distinguished the recent United States Supreme Court case holding otherwise. (51:24-26; 48:34-35; App. 124-26, 162-63).

The state appeals from both of the circuit court's suppression rulings. (42).

ARGUMENT

Under Both the State and Federal Constitutions, Halverson Was in Custody During His Interrogation. Thus, the Officer Who Interrogated Halverson Was Required to Give the *Miranda* Warnings. Because He Failed to Do So, Halverson's Confession Was Obtained in Violation of His Right Against Compelled Self-incrimination and Was Properly Suppressed.

A. Overview of argument.

Halverson made incriminating statements during a custodial interrogation at which he had no lawyer by his side. When a defendant moves to suppress such statements, "a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Miranda v. Arizona*, 384 U.S. 436, 475 (1966).

Here, the state concedes it cannot prove waiver, as the officer who interrogated Halverson didn't read him his *Miranda* rights. (*See* 51:7; App. 107). Instead, the state argues that Halverson was not subjected to a custodial interrogation, and thus *Miranda* warnings weren't necessary to render his confession admissible. App't's Br. 18. In other words, although Halverson was incarcerated when he was interrogated, the state contends that he wasn't "in custody" for *Miranda* purposes. *Id.* at 18. On this point, as on waiver, the state bears the burden of

proof. *State v. Armstrong*, 223 Wis. 2d 331, 345, 588 N.W.2d 606 (1999). It seeks to meet its burden in two ways.

The state begins by pointing to precedent from the United States Supreme Court, which—contrary to precedent from the Wisconsin Supreme Court—deems the fact of incarceration insufficient to establish *Miranda* custody. App't's Br. 8. Under binding federal case law, the state explains, there are circumstances in which police can fail to provide *Miranda* warnings before obtaining a confession from an incarcerated defendant and can nevertheless comport with the strictures of the Fifth Amendment. *Id.* at 9.

While the state reads the federal cases correctly, it fails to recognize that the Fifth Amendment isn't all that protects Wisconsin's criminal defendants from compelled self-incrimination—and thus federal cases aren't all that control. *See* Wis. Const. Art. I, § 8(1). In the *Miranda* context, as elsewhere, the Wisconsin Supreme Court has previously "afford[ed] greater protection to the liberties of persons within its boundaries under the Wisconsin Constitution than is mandated by the United States Supreme Court." *State v. Knapp*, 2005 WI 127, ¶59, 285 Wis. 2d 86, 700 N.W.2d 899 (internal quotation marks omitted). Such "greater protections" are appropriate here. *See id.*

Moving from the premise that incarceration doesn't on its own establish *Miranda* custody, the state turns to the circumstances surrounding Halverson's interrogation—and, lacking much insight into those circumstances, to Corporal Hoff's testimony about how the Vernon County Jail usually

handles professional calls for inmates. App't's Br. 11-18. The state contends that the jail's standard procedures are insufficiently coercive to show Halverson was in custody during his interrogation. *Id.* at 16-17.

The flaws in this reasoning are twofold. First, even accepting that Halverson's interrogation followed the pattern described by Hoff, the level of coercion he was subjected to—along with Officer Danielson's failure to tell him he could end the call at will—placed Halverson in custody for *Miranda* purposes. Second and more fundamentally, Hoff and the state could only speculate that Halverson's interrogation followed the usual pattern, as no one at the jail recalled the interrogation and there was no record of its occurrence. (48:15, 23; App. 143, 151). Mere speculation cannot fulfill the state's burden of proof. *See, e.g.*, *Weber v. Mayer*, 266 Wis. 241, 253, 63 N.W.2d 318 (1954) (explaining that a party cannot meet its burden of proof "by merely theorizing and conjecturing").

Here is what the record shows: Halverson was put on the phone with Danielson, was interrogated, and confessed. He did so without a lawyer present, without receiving *Miranda* warnings, and while he was incarcerated at the Vernon County Jail. There is no evidence suggesting Danielson told Halverson he could end the call or return to his cell. Nor is there any solid evidence about the circumstances inside the jail that led up to and surrounded Halverson's interrogation. With these (and only these) facts in the record, the circuit court was right when it twice concluded Halverson was in custody during his

interrogation. The state has not proven otherwise. Halverson's confession was properly suppressed.

B. Governing law.

Half a century ago, the United States Supreme Court announced a series of "procedural safeguards" —commonly called the *Miranda* warnings—that must be employed in every custodial interrogation "to secure the [Fifth Amendment] privilege against self-incrimination."[1] *Miranda*, 384 U.S. at 444. Absent these safeguards, the Court held, all statements stemming from a custodial interrogation must be suppressed. *Id.*

Since the *Miranda* decision was handed down, courts at every level have examined and reexamined its multifaceted holding. One aspect of the decision that has spawned especially extensive litigation is the concept of custody; there is a whole body of cases examining what "objective circumstances" render an interrogation "custodial" under *Miranda*. *See, e.g.*, *Howes v. Fields*, 565 U.S. 499, 508-09 (2012). Relevant here is a subset of that case law asking a more specific question—namely, whether a defendant is in custody for *Miranda* purposes when he is incarcerated at the time of his interrogation. *See, e.g.*, *Fields*, 565 U.S. at 514-17; *Armstrong*, 223 Wis. 2d at 345.

The Wisconsin Supreme Court most recently considered this issue in *Armstrong*. Tonnie Armstrong was interrogated about a homicide while

[1] The Fifth Amendment to the United States Constitution provides, in relevant part, that "[n]o person … shall be compelled in any criminal case to be a witness against himself."

serving an unrelated sentence in the Racine County Jail. *Armstrong*, 223 Wis. 2d at 335. Armstrong made inculpatory statements during his interrogation, and he did so before the police had read him his rights. *Id.* at 335. He later moved to suppress his statements on the grounds that they were obtained in violation of *Miranda*. *Id.* The state countered by arguing that he wasn't in custody for *Miranda* purposes—even though he was incarcerated at the time of his interrogation—because his custodial status didn't change when his interrogation began. *Id.* at 353.

The court was not convinced. It said it could "think of no situation in which a defendant is more clearly in custody" under *Miranda* than when he is "confined in a prison or jail." *Id.* at 356. The illogic of holding that an incarcerated defendant can be *out* of custody during an interrogation, in conjunction with contrary decisions from the state and federal supreme courts in analogous cases,[2] led the court to establish a bright-line rule: an incarcerated person "is *per se* in custody for purposes of *Miranda*." *Id.* at 355. Thus, Armstrong was in custody, and his inculpatory statements should have been suppressed. *Id.* at 359.

The clarity of the *Armstrong* rule was muddied by the United States Supreme Court when it took up the same issue in *Fields*. Like Armstrong, Randall Fields was serving a jail sentence when police arrived

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[2] The court gave particular attention to the first United States Supreme Court case to consider *Miranda* custody of incarcerated defendants, *Mathis v. United States*, 391 U.S. 1 (1968), as well as "its Wisconsin counterpart," *Schimmel v. State*, 84 Wis. 2d 287, 267 N.W.2d 271 (1978). *State v. Armstrong*, 223 Wis. 2d 331, 353-56, 588 N.W.2d 606 (1999).

to interrogate him about a new crime. *Id.* at 502. Fields was told at the outset of the interrogation and multiple times thereafter that he was "free to leave and return to his cell," but he was never advised of his *Miranda* rights. *Id.* at 503. Eventually, he confessed. *Id.*

The admissibility of Fields's confession turned on whether he was in custody during his interrogation. In assessing that question, the Court declined to draw a bright line like that approved by *Armstrong*, saying: "[d]etermining whether an individual's freedom of movement was curtailed"—say, by incarceration—"is simply the first step in the analysis, not the last." *Id.* at 509. The Court held that the test for whether police must give *Miranda* warnings to an incarcerated defendant is whether the totality of the circumstances surrounding the incarcerated defendant's interrogation present "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* Thus, it turned to the circumstances surrounding Fields's interrogation.

The record established that Fields was escorted from his cell to "a well-lit, average-sized conference room, where he was 'not uncomfortable.'" *Id.* at 515. There, he "was offered food and water, and the door … was sometimes left open." *Id.* Fields was questioned for over five hours, until well past his usual bedtime. *Id.* He wasn't physically restrained or threatened, but the sheriff's deputies who questioned him were armed, and one deputy used a "sharp tone." *Id.* "Most important, [Fields] was told at the outset

of the interrogation, and was reminded again thereafter, that he could leave and go back to his cell whenever he wanted." *Id.*

With heavy emphasis on the fact that Fields was informed and repeatedly reminded that he could end his interrogation at will, the Court decided he was *not* in custody during his interrogation. *Id.* at 517. Accordingly, *Fields* makes clear that defendants are not necessarily in custody within the meaning of the Fifth Amendment by virtue of their incarceration. Insofar as the *per se* rule announced in *Armstrong* is rooted in the Fifth Amendment, *Fields* overruled it.

But the question remains whether the *Armstrong* rule survives as a means of protecting the right against compelled self-incrimination provided by article I, section 8(1) of the Wisconsin Constitution.[3] Although Wisconsin courts usually construe state constitutional provisions in conformity with their federal counterparts, the Wisconsin Supreme Court has repeatedly asserted that it "will not be bound by the minimums which are imposed by the Supreme Court of the United States if it is the judgment of this court that the Constitution of Wisconsin and the laws of this state require that greater protection of citizens' liberties ought to be afforded." *Id.*, ¶59 (quoting *State v. Doe*, 78 Wis. 2d 161, 171, 254 N.W.2d 210 (1977)). *Knapp*, a case considered by the Wisconsin Supreme Court on two occasions, provides a useful example.

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[3] Article I, section 8(1) of the Wisconsin Constitution provides, in relevant part, that "[n]o person … may be compelled in any criminal case to be a witness against himself or herself."

The issue in *Knapp I* was "whether physical evidence obtained as the direct result of a *Miranda* violation should be suppressed when the violation was an intentional attempt to prevent the suspect from exercising his Fifth Amendment rights." *State v. Knapp*, 2003 WI 121, ¶1, 265 Wis. 2d 278, 666 N.W.2d 881 (*Knapp I*). Relying on federal precedent interpreting the Fifth Amendment, as well as "policy considerations related to deterrence and judicial integrity," the *Knapp I* court held that suppression was required. *Id.*, ¶2.

The United States Supreme Court reversed that decision and sent the case back to the Wisconsin Supreme Court for further consideration in light of *United States v. Patane*, 542 U.S. 630 (2004). *Patane*, like *Knapp I*, raised "the physical-evidence-as-*Miranda*-fruit issue." 4 Wayne R. LaFave et al., *Criminal Procedure* § 9.5(b) (3d ed. 2007). A majority of the *Patane* Court reached consensus that, for one reason or another, physical evidence derived from statements a defendant gave without the benefit of *Miranda* warnings need not be suppressed. *Id.*

Thus, when the case returned to the Wisconsin Supreme Court, part of its premise in *Knapp I*—that the federal constitution requires suppression of physical evidence derived from an intentional *Miranda* violation—had fallen away. *State v. Knapp*, 2005 WI 127, ¶1, 285 Wis. 2d 86, 700 N.W.2d 899 (2005) (*Knapp II*). Unchanged, however, was the "strong need for deterrence" of such violations. *Id.*, ¶74. With that need in mind, the *Knapp II* court rejected the "lock-step theory" under which state constitutional rights are construed to correspond with

their federal equivalents and upheld its earlier decision under article I, section 8(1) of the Wisconsin Constitution. *Id.*, ¶¶59, 83.

Just as the rule announced by the *Knapp I* court survived *Patane* via the Wisconsin Constitution, so too should the rule announced by the *Armstrong* court survive *Fields* via the Wisconsin Constitution. Article I, section 8(1) should once again be interpreted to more fully protect the right against compelled self-incrimination than does the Fifth Amendment.

As the *Armstrong* court observed, confinement in a prison or jail is the clearest form of custody. *Armstrong*, 223 Wis. 2d at 356. The absence of freedom that characterizes (indeed, *is*) such confinement presents exactly the "compelling pressures" the *Miranda* Court sought to keep in check. *Miranda*, 384 U.S. at 467. In *Fields*, the United States Supreme Court took a confusing step away from its longstanding commitment to safeguarding defendants' privilege against self-incrimination in coercive environments like prison or jail. *See generally*, George M. Dery, III, *The Supposed Strength of Hopelessness: The Supreme Court Further Undermines Miranda in Howes v. Fields*, 40 Am. J. Crim. L. 69, 72-87 (2012). But as *Knapp II* shows, Wisconsin need not blindly follow suit. This court should hold that the categorical rule in *Armstrong* remains valid under the state constitution.

C. Standard of review.

Whether the bright-line rule articulated by *Armstrong* or the totality-of-the-circumstances analysis set forth in *Fields* governs, it is the state's burden to prove by a preponderance of the evidence that Halverson was *not* in custody during his interrogation. *Armstrong*, 223 Wis. 2d at 345. This court determines whether the state has met its burden in two steps, upholding the circuit court's findings of fact unless they are clearly erroneous but independently deciding whether those facts meet the legal standard for a custodial interrogation. *See Id.* at 352-53.

D. Regardless of whether this court takes the *Armstrong* approach or the *Fields* approach to assessing Halverson's custodial status, he was in custody for *Miranda* purposes.

If *Armstrong* survives under the Wisconsin Constitution, then Halverson was clearly in *Miranda* custody, as it's uncontested he was incarcerated when Officer Danielson interrogated him. If the *Fields* test for *Miranda* custody governs, then "all of the features of the interrogation" collectively determine whether Halverson was in such custody, and the state must prove those "features" show he wasn't—despite his incarceration. *See Fields*, 565 U.S. at 514; *Armstrong*, 223 Wis. 2d at 345. The state argues that *Fields* alone governs this court's decision and thus seeks to meet its burden of proof by discussing the totality of the circumstances surrounding Halverson's interrogation. Even under *Fields*, however, it fails.

The evidence presented by the state—testimony from Hoff about how the Vernon County Jail generally handles officer calls for inmates and testimony from Danielson about his call with Halverson—demonstrates that Halverson's interrogation was custodial. Hoff depicted a scene in which inmates are held in a locked, glass-walled "program room"; watched by guards from outside the room; and privately interrogated by phone. (*See* 48:15-22; App. 143-50). The officer on the phone likely holds some power over the inmate's future, at least with regard to the allegations under investigation. The jail guards standing outside the program room hold more obvious power over the inmate's daily life. To be isolated, questioned, and controlled by such figures—especially together—creates exactly the sort of psychologically coercive atmosphere the *Miranda* Court sought to restrain. *Miranda*, 384 U.S. 448. As that Court put it, "[i]t is obvious that such an environment is created … to subjugate the individual to the will of his examiner," and "[u]nless adequate protective devices are employed to dispel the compulsion inherent in [such] surroundings, no statement obtained from the defendant can truly be the product of his free choice." *Id.* at 457-58. In sum, far from proving Halverson was *not* in *Miranda* custody, the testimony elicited about the jail's standard procedures supports the conclusion that he was.

Danielson's testimony does the same. Danielson's apparent failure to tell Halverson he was free to end their call is the single most significant factor, beyond incarceration, compelling the conclusion that Halverson was in *Miranda* custody. The *Fields* Court gave great weight to the fact that

Fields was informed at the outset of his interrogation, "and was reminded again thereafter, that he could leave and go back to his cell whenever he wanted." *Fields*, 565 U.S. at 515. The Court called this fact the "[m]ost important" aspect of Fields's interrogation and rooted its determination that Fields was not in custody "especially" in "the undisputed fact that [he] was told that he was free to end the questioning." *Id.* at 515-17. This emphasis is logical, as inmates in a prison or jail aren't free to do much of anything. The rules of the institution, along with its staff, dictate when and where inmates eat, sleep, shower, exercise, visit with family, and speak with their lawyers, among other aspects of daily life. Thus, when an inmate receives a call from law enforcement and is *not* explicitly told he can end it, how can he know? The *Fields* Court understood that when continuous submission is what's required of the subject of an interrogation, as is the case for jail and prison inmates, an express statement that the inmate can opt out of the interrogation is necessary to override the natural assumption: that he has no choice.

Since Halverson did not receive the crucial message sent to Fields—that he needn't participate in the interrogation—there was nothing moderating the atmosphere of coercion in which his call with Danielson took place. Even under *Fields*, then, the testimony elicited by the state shows Halverson was in custody for *Miranda* purposes.

Finally, there is a deeper problem with the state's evidence. It seeks to show what *Fields* requires: that the particular facts surrounding Halverson's interrogation at the Vernon County Jail

were insufficiently coercive to render the interrogation custodial. But it had not a single witness at either suppression hearing who could testify to those particular facts. No one at the jail remembered Halverson's call with Danielson, and the jail had no record of it. (48:15, 23; App. 143, 151). What the state presents instead is testimony about how things ordinarily go in the Vernon County Jail, and it speculates that things went that way for Halverson. Such "theorizing and conjecturing" cannot be enough to affirmatively prove the counterintuitive notion that a man who was confined in jail when an officer questioned him about new criminal allegations was *not* in *Miranda* custody during that questioning. *Cf. Weber v. Mayer*, 266 Wis. 241, 253, 63 N.W.2d 318 (1954).

The logic and policy considerations underlying the *Armstrong* decision remain valid and important, and the categorical rule it announced (that an incarcerated defendant is always in custody for *Miranda* purposes) should remain good law pursuant to article I, section 8(1) of the Wisconsin Constitution. But even without *Armstrong*'s bright-line rule—employing the fact-intensive *Fields* analysis instead—Halverson was in *Miranda* custody when Danielson interrogated him. The state presented almost no evidence about how the interrogation transpired, and the factor *Fields* found most compelling—that the subject of the interrogation was repeatedly told he could end it at any time—is not present here. The state carries the burden of proof on the issue of custody, and it hasn't fulfilled that burden under either *Armstrong* or *Fields*.

E. The circuit court's suppression rulings should be upheld.

The only dispute in this case is whether Halverson was in *Miranda* custody during his interrogation by Danielson. The circuit court determined that he was. (51:26; 48:35; App. 126, 163). Regardless of whether it takes on the question of *Armstrong*'s continuing vitality after *Fields*, this court should do the same. Applying either of the two possible tests for custody, the state hasn't met its burden of proof.

Because it deemed Halverson's interrogation custodial, and because Halverson was not read his *Miranda* rights, the circuit court granted Halverson's motion to suppress the statements he made during his interrogation. (44). That is the ruling *Miranda* dictates, and it should be upheld. *Miranda*, 384 U.S. at 444.

CONCLUSION

Halverson requests that this court affirm the circuit court's orders granting his suppression motion and denying the state's motion for reconsideration.

Dated this 23rd day of August, 2018.

Respectfully submitted,

MEGAN SANDERS-DRAZEN
Assistant State Public Defender
State Bar No. 1097296

Office of State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 266-8383
sandersdrazenm@opd.wi.gov

Attorney for Defendant-Respondent

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 4,095 words.

CERTIFICATE OF 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). 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 the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 23rd day of August, 2018.

Signed:

MEGAN SANDERS-DRAZEN
Assistant State Public Defender
State Bar No. 1097296

Office of State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 266-8383
sandersdrazenm@opd.wi.gov

Attorney for Defendant-Respondent

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Page

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation 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 23rd day of August, 2018.

Signed:

MEGAN SANDERS-DRAZEN
Assistant State Public Defender
State Bar No. 1097296

Office of State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 266-8383
sandersdrazenm@opd.wi.gov

Attorney for Defendant-Respondent