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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

CASE NO 2018 AP000896- CR

STATE OF WISCONSIN,
Plaintiff-Respondent

vs.

WILLIAM LESTER JACKSON,
Defendant-Appellant

ON NOTICE OF APPEAL TO REVIEW THE JUDGMENT OF
CONVICTION ENTERED ON OCTOBER 25, 2017 BY MILWAUKEE
CIRCUIT JUDGE DAVID SWANSON

BRIEF AND APPENDIX OF APPELLANT DEFENDANT

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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I
CASE NO: 2018 AP000896 -CR

ON NOTICE OF APPEAL TO REVIEW THE JUDGMENT
OF CONVICTION ENTERED IN MILWAUKEE COUNTY
CIRCUIT COURT ON THE 25TH OF OCTOBER, 2017
BY THE HONORABLE DAVID SWANSON

ISSUE PRESENTED

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION TO SUPPRESS HIS STATEMENTS TO LAW ENFORCEMENT AUTHORITIES. HE WAS HANDCUFFED AND IN CUSTODY AT THE TIME HE MADE THE STATEMENTS AND WAS NEVER READ HIS MIRANDA RIGHTS. SINCE THESE STATEMENTS WERE ADMISSIONS AND WERE THE ONLY EVIDENCE AGAINST HIM AT TRIAL, THE CASE SHOULD BE DISMISSED.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

This appeal involves issues of law, including the need to establish clearer standards as to if and when the so called "public interest" exception to Miranda applies. In this case, the trial court expanded the scope of this exception so that it would keep the apparent victim of a crime in custody against his will without reading him his rights. Lower courts need additional guidance in determining what are reasonable limits to the use of this exception so that a defendant's Miranda rights are not improperly denied. Oral argument would assist lower courts in

establishing these limits. Publication would serve as a blue print for future courts when they address this issue. Oral argument and publication are requested in this case.

STATEMENT OF THE CASE

On May 7 , 2016 a Criminal Complaint was filed in Milwaukee County Circuit Court charging Defendant-Appellant with one count of Felon in Possession of a Firearm pursuant to Wis. Stats. Sec. 949.29(1m)(a). The criminal complaint alleged that on May 4, 2016 Mr. Jackson checked himself into St Joseph's Hospital in Milwaukee, Wisconsin for a gun shot wound. In response to three rounds of questioning by a Milwaukee Police Officer and a MPD Detective., Defendant finally admitted that he had been attempting to clear a jam in a firearm when the gun fired striking him in the left leg. At the time he possessed a weapon Mr. Jackson had been convicted of a felony offense. He was subsequently charged with the offense of felon in possession of a firearm.(1:1-2)..

On May 17, 2016 a preliminary hearing was held before Court Commissioner Barry Phillips. At that time, the detective who had taken Mr. Jackson's statement testified about his admission. Based upon the detective's testimony about the confession, the court found that probable cause existed to show that Defendant had illegally possessed a firearm. Defendant then entered a plea of not guilty to the information and the court bound defendant over for trial. (67:1-12).

On August 26, 2016, Defendant filed a Motion to Suppress statements based on a violation of the Miranda decision. Notwithstanding , the apparent custodial status of defendant when he

confessed, he was never read his Miranda rights. The hearing on the Motion occurred on September 28, 2016. Two witnesses testified : the Milwaukee Police officer who originally met with Mr. Jackson at the hospital and handcuffed him, and the MPD Detective who obtained the confessions from defendant during two interviews. (72:1-61).

After hearing their testimony, the trial court denied the Motion to Suppress. First, the court acknowledged that defendant (who was questioned while handcuffed to a hospital bed,) was in custody at the time of the interrogation. The court did , however, hold that the circumstances of the police questioning created an exception to the requirements of Miranda. Since the interrogation was conducted only to maintain the public safety from other shootings, Miranda warnings were not required. Unfortunately, the trial court erred in its overly broad application of the public safety exception to these circumstances.

The court set the matter for a projected guilty plea on December 2, 2016. At that hearing. Defendant did not admit that he possessed the firearm and the plea was not accepted. On December 20, 2016 the State amended the information based on the requirements of Wis. Stats. Sec. 941.29(4m) which required that the mandatory minimum sentence for defendant's firearm possession must be three years initial confinement.

After several adjournments, the matter went to trial on October 11, 2017. At trial, Detective Tracy Becker testified that he interviewed Defendant two times without reading him his rights under Miranda. During he second interview, Mr. Jackson admitted that he had possessed a firearm and accidentally shot himself. Detective Becker also testified that he had found a .380 caliber casing when he searched Defendant's car. The firearm was not recovered. Detective

\ Becker was the only witness called in the State's case in chief. His testimony about the Defendant-Appellant's statements was by far the most significant evidence that the State presented of to establish defendant's guilt. (79:1-125).

After the detective's testimony was concluded , the Defense presented two witnesses. One was Defendant's thirteen year old child who stated they he saw defendant being shot by another individual. He testified that defendant never had possessed a weapon or shot himself. Defendant Jackson then testified on his own behalf. His testimony was consistent with the child's statements. He stated a third party had shot him in the vehicle after he refused to provide him money. On rebuttal, the prosecutor called another of Defendant's children who had also been present in the vehicle when the shooting took place. The child testified that a third party had shot Mr. Jackson.(80:1-89).

By far, the most damaging evidence presented against Defendant were his own words i.e. the statements that Detective Becker had obtained from him while he was handcuffed to the hospital bed. On October 12, 2017 the jury returned with a verdict of guilty as to the sole count of the Amended Information.

Defendant was sentenced by the court on October 25, 2017 by the Honorable Christopher Dee. Defendant-Appellant received a sentence of four years initial confinement followed by four years extended supervision. ((82:1-29).

Had the trial court correctly ruled on defendant's suppression motion and excluded these improperly obtained statements, it is very likely that the matter would have been dismissed.

Based on these facts, the Judgment of Conviction should be vacated and the trial court

should correct its error and grant the defendant's meritorious suppression motion. The Court of Appeals should either dismiss the case outright or remand the matter to the trial court for a new trial in which Defendant's illegally obtained statements are excluded .

STATEMENT OF FACTS

On September 28, 2016 the court conducted a hearing on Defendant's Motion to Suppress statements. Two witnesses testified at the hearing, both on behalf of the State.

Defendant was in Custody at the time of his interview with PO Crowley

The first was MPD Police Officer Robert Crowley. He was dispatched to St Joseph's Hospital on May 4, 2016 at approximately 8:00am to investigate Defendant's shooting. He interviewed Defendant in Emergency Room Number 3 shortly after his arrival. When he first came in contact with Mr. Jackson, he was lying in a hospital gown in a hospital bed . Officer Crowley was accompanied by a police aide . Officer Crowley testified that when he confronted defendant , he was uncooperative and standoffish Defendant told Officer Crowley that "everything was all right, I don't want anything done, and I didn't call you." He clearly did not wish to make a statement. After about five minutes of trying to elicit a response, the officer gave up trying to interrogate him and left the hospital room. Prior to leaving, he placed Defendant's right hand in one handcuff and he tied his other one to the bed. The police aide was left at the door to monitor Mr. Jackson's movements and apparently keep him from leaving. (72: 5-14). A few minutes later, the officer returned to the hospital room to re interview defendant. Mr. Jackson again refused to respond to the officer's question.

In cross examination officer, Officer Crowley admitted that defendant had initially provided the police false information . (72: 10, 16-17). He stated that Mr. Jackson had obstructed the law enforcement investigation by providing the police a false name .

Based on Officer Crowley's testimony, it was apparent that during this period, defendant was in custody and not free to go. He was handcuffed to the hospital bed.. Police wanted to keep him under "control" so they could talk to him about the events leading up to his shooting. A police aide was assigned to stand directly in front of the hospital room door to "monitor" his movements." When Officer Crowley was asked if he restrained Mr. Jackson's movements in any way he responded as follows:

"Yes I did. At that point I did. I placed him in handcuffs."

During his testimony at the suppression motion, Officer Crowley emphasized that he "needed to keep defendant here"(i.e. in the hospital) to finish his investigation with him. It is interesting to note that when asked why by defense counsel why he wanted to keep Mr. Jackson from leaving the hospital, Officer Crowley testified that it was to keep "him safe". Unfortunately, the record does not reflect any immediate danger Mr. Jackson actually faced in the hospital or if he in any immediate danger of threatening or violent behavior upon leaving the hospital. Defendant was clearly not free to go and in custody at the time of these interviews. Detective Becker's testimony concerning his two interrogations of Defendant.

Detective Tracy Becker testified next. He stated that about an hour after Officer Crowley had first interviewed Defendant, he continued to interrogation him. At all times during Detective Becker's interrogation of Defendant , Mr. Jackson was handcuffed to the

hospital and not free to go. During this first interview, Detective Becker testified that the Defendant told him that he had been shot by an unknown person while he stopped at a gas station to get a cigarette. (72: 23). Detective Becker told him that he did not believe his story and that it did not make a lot of sense. The fact that Detective Becker felt compelled to examine Defendant's pants for gunpowder residue shows that he did not believe Defendant's version of the facts and believed that he was lying. Despite Becker's intensive questioning of defendant for ten to fifteen minutes, he did not change his version of the events. (72:28).. At no time during this interview did Detective Becker read Mr. Jackson his Miranda rights.

After briefly talking with Defendant's girlfriend(Ms. Mitchell), who had just arrived at the hospital, Detective Becker made another attempt to question Defendant about the shooting. He obviously did not believe Mr. Jackson's prior statements and as a result he proceeded to interrogated him for another five to ten minutes. He testified that at that time he knew defendant had been shot but did not know how this occurred. During this second round of interrogation, which lasted five to ten minutes, Mr. Jackson admitted that he had shot himself. Detective Becker then determined that Mr. Jackson was a felon and formally arrested him before he could leave the hospital. At no time during this second interview did Detective Becker read Mr. Jackson his constitutionally mandated rights pursuant to the Miranda decision. At all times Mr. Jackson was handcuffed to the bed and not free to leave the hospital.(72: 36-37).

The Judge's decision

After hearing this testimony, Judge Swanson denied the Motion to Suppress. The court stated that the standard in determining the admissibility of defendant's statements is subject

to a two part test. First, in the totality of the circumstances, would a reasonable person believe that he is in custody and not free to go. After reviewing the facts of defendant's detention the court ruled as follows:

“The circumstances were – where he was in the hospital room at the time indicates to the Court that he was in custody at the time that he was questioned by Detective Becker”. (72: 52).

The second factor the Court looked at was whether this was an interrogation—were the questions the two law enforcement officers asking likely to elicit an incriminating response? Judge Swanson found that at the time of the questioning there were other shooting victims in the hospital and that the officers were concerned about the safety of everyone in the hospital because of the disturbances created by individuals associated with the other case.(72: 53-54.) The court also found that Detective Becker's questions were not attempting to interrogate defendant about a crime but only to figure out the circumstances of the shooting.. (72: 54).

But most importantly, the court denied Defendant's Motion to Suppress based upon the public safety exception to the application the Miranda rule. Specifically, the Court held as follows:

“Now in this case the Court does find that custody existed but does not find that there was an interrogation. The specific circumstances indicate to the court indicate that there was a concern for the safety of all the individuals not just Mr. Jackson, but Ms. Mitchell, her family and the other individuals who may have been impacted by this shooting and the Detective was trying to determine whether other individuals were involved and who these individuals were.”(72: 55)

Nowhere in the Judge's ruling does the court explain how a random shooting would enable

the police to place the alleged “victim” in custody and deny him his freedom in the name of “public safety”. The court’s speculation that the lives of others may be in immediate jeopardy is just that— unfounded speculation and guesswork, This conjecture does not in any way authorize the detention of a third party for nearly two hours and subject him to repeated questioning until he confesses to a crime. In these circumstances, there is no tangible or immediate threat to public safety that justifies the custodial detention and interrogation of Mr. Jackson. The court’s logic underlying its decision in these facts creates a dangerously overbroad expansion of the public safety exception to Miranda for virtually every crime. It allows a witness to virtually any violent offense to be kept in custody because the police may believe that the witness has not been totally forthcoming because of “public safety”. In addition,, these facts are not even remotely similar to the those in State vs. Stearns 175 Wis. 2d 185. 506 NW2d 165(Ct. App. 1993) which the trial court relied upon to justify its decision. In Stearns the lives of several hostages may have been in immediate danger and the defendant was armed with a firearm. . In these facts, no such immediate danger exists only the unsubstantiated speculation that something could happen. Notwithstanding the self serving denials of Detective Becker, the police illegally and forcibly kept defendant, who had previously obstructed justice by giving a false name, in custody, until he confessed to a crime.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT’S MOTION TO SUPPRESS HIS STATEMENTS TO LAW ENFORCEMENT AUTHORITIES. DEFENDANT WAS IN HANDCUFFS AND IN CUSTODY AT THE TIME THESE STATEMENTS WERE MADE AND WAS NOT READ HIS MIRANDA RIGHTS PRIOR TO MAKING HIS STATEMENTS. SINCE THESE STATEMENTS WERE THE ONLY EVIDENCE AGAINST DEFENDANT, UPON THEIR EXCLUSION ,THE CASE SHOULD BE DISMISSED.

A. Defendant was in custody and not free to leave when he confessed to the crime..

In determining whether a person is in custody for purposes of Miranda warnings the court considers the totality of the circumstances. This includes such factors as the defendant's freedom to leave, length and place of interrogation, and the degree of restraint State vs. Morgan, 2002 WI AP 124, 254 Wis. 2d 602, 648 NW2d 23. It is well known that Miranda prohibits the prosecutor from using oral or written statements of defendant unless he is first advised of his right to remain silent, his right to an attorney and that the knowledge that his statements may be used against him. Miranda vs. Arizona 384 U.S. 436, 86 S. Ct. 16 (1966). Miranda safeguards "become applicable as soon as a suspect's freedom of action is curtailed to a degree associated with a formal arrest." The relevant inquiry is how a reasonable person in the suspect's situation would understand the situation, Berkemer vs. McCarty, 568 U.S. 420, 82 L. Ed. 317, 104 S. Ct. 3138(1984).

In the present facts, Defendant was handcuffed to bed and not free to go between approximately 8:30am and the time of his formal arrest at 10:20 am on May 4, 2016. He was questioned by two separate law enforcement officers each asking him to first discuss the circumstances of the shooting and each then going back yet again for another attempt to get him to talk.

A police aide was also present to "monitor" Mr. Jackson who was handcuffed to his hospital bed and apparently to block him from exiting the hospital. When Detective Becker was asked if Defendant was free to leave-restrained- during the time of his two interviews of him, he answered "At that point , no". (72: 37-38).

Nothing physically changed in Defendant's custodial treatment by police from the time he was first handcuffed by Officer Crowley at approximately 8:30am until his formal arrest by Detective Becker at 10:20 am. Although he was not formally told that he was under arrest at 8:30am, in the totality of the circumstances in his custodial treatment was unchanged. His restraint by police was the functional equivalent of being under arrest and in custody for at least two hours before he was formally told that he was under arrest.

Under the totality of the circumstances, the trial court properly concluded that the degree of restraint the police used against Mr. Jackson created a situation in which a reasonable person in his position would not feel free to leave. For Miranda purposes the facts establish that defendant was in custody at the time he gave the unMirandized statements to Detective Becker.

B. Detective Becker repeatedly questioned Defendant about his role in the offense. Defendant was never read his Miranda rights. There is no public safety exception to the Miranda requirements in these facts.

In the absence of Miranda warnings, statements made by a Defendant in response to police custodial interrogation are inadmissible to establish defendant's guilt. Berkemer vs. McCarty, 468 U.S. 420, 429 (1984). In these facts, the trial court appropriately concludes that Defendant was in custody. The present facts also establish that defendant was extensively and improperly interrogated by Detective Becker during this custodial period. Interrogation is defined as express questioning or its functional equivalent ..ie. "Words or actions on the part of the police (other than normally attendant to arrest and custody) that police should know are reasonably likely to elicit an incriminating response from the defendant. State vs. Cunningham 144 Wis. 2d 272, 423 NW2d 862 (1988).

The repeated questioning of defendant about the shooting , first by Officer Crowley and then by Detective Becker, was reasonably likely to elicit an incriminating response. A review of the testimony of both police officers at the suppression hearing establishes that the police thought that Defendant's story about being shot by a stranger was a lie. In repeated and continual interrogations of defendant, the police told defendant that his story "did not make sense" and asked him to tell what "really happened." They knew something was criminally wrong and wanted to find out what defendant was hiding. The police wanted to determine if defendant had committed a crime and their questions were intended and reasonably likely to elicit an incriminating response. Why would Detective Becker examine an "innocent victim's" clothes for gunpowder burns if he did not believe that defendant may have shot himself or something else criminal was afoot?? Further, at the time the police interviewed Defendant -Appellant they knew he had provided a false name. In other words Defendant-Appellant had already committed the offense of obstruction of justice. At the very least, at that point the police should have terminated their questioning of defendant or read him his Miranda rights. They did neither but continued their interrogations of Defendant.

The police believed that defendant was hiding something about his shooting and refused to believe his initial statement that he was shot by a third party. They continually questioned him about the "real" story. In these circumstances, when police knew Defendant was lying about the shooting and had already given a false name it is "reasonably likely" that Defendant would give an incriminating response

The trial court argues that this repeated questioning of Mr. Jackson was an exception to the requirements of Miranda. In New York vs. Quarles, 467 U.S. 648, 81 L. Ed. 550, 104 S. Ct. 2626 the Supreme Court set forth a “public safety exception” to the requirement that Miranda warnings be given before a suspect’s answers may be admitted into evidence. The court held that the police are not required to give Miranda warnings before asking questions “reasonably prompted by a concern for public safety.” The public safety exception addresses the need for the police to ignore Miranda protections when police are in danger. The private safety exception deals with the need to ignore Miranda protections when private individuals are threatened. The policy supporting both the public and private safety exception rests on the need for answers to questions posing a threat to safety, thus, the need to protect life and neutralize volatile situations, which outweighs the need for Miranda rules. State vs. Camacho, 170 Wis. 2d 53,487 NW2d 67(Ct. App. 1992).

The trial court bases its decision denying Defendant’s Motion on the public safety exception to the Miranda rule. (72: 51-55). The trial judge found that a danger to defendant, his family, and others in the chaotic hospital environment, existed unless the police were able to get the “real” story about defendant’s shooting. In concluding that the public safety exception applied, the Court relied on State vs. Stearns _ 178 Wis2d 845 , 506 NW2d 165, (CtApp. 1992). In Stearns the defendant was barricaded by police in a building apparently with a firearm and possibly holding hostages. It was a volatile , potentially violent situation in which the police evacuated the building where he was located and spent an hour on the telephone trying to convince him to exit the building without harming anyone. During the hour long standoff he

talked to police by telephone and made some incriminating statements about an armed robbery. Unfortunately, Defendant was not read his Miranda rights during this telephone conversation. The Court of Appeals held that Stearns, who was surrounded by police, was in custody during the telephone conversation. They also held that since the incriminating statements were made to defuse a dangerous, violent situation they were admissible due to the public safety exception to Miranda. The Appellate Court held that in a “supercharged” situations such as this one, the police were not trying to elicit a confession only to secure the defendant’s peaceful surrender. It held that these facts did not present a Miranda situation and reversed the trial court’s order which had suppressed the statements.

These facts do not in any way resemble those before this court. Mr. Jackson was not holding hostages with a gun but harmlessly chained to a hospital bed presenting no possible danger to himself or to others. Detective Becker’s speculation that there was a roving gunman in the community shooting random individuals and presenting an immediate danger to others including Mrs. Mitchell and her children is just that--- unfounded speculation. The chaotic atmosphere in the hospital at the time referred to by the court had absolutely nothing to do with Mr. Jackson’s shooting and to state otherwise is once again just guesswork and speculation. To permit the detention of Mr. Jackson in these circumstances, who claimed he was a victim, would broaden the scope of the public safety exception to a new, dangerous level. Why not detain and handcuff an armed robbery victim or a sexual assault victim if the perpetrator is still out there and you suspect the victim is not telling the real story. The public safety exception should only be used to circumvent Miranda rights when there is a real immediate danger not a speculative one.

Unlike the facts in Stearns, the facts in the present case did not demonstrate an immediate threat to the public or to police. The public safety exception did not apply, and Defendant should have been read his Miranda rights. The trial court erred in failing to grant Defendant's Motion to Suppress.

C. Without defendant's improperly obtained confession, the State has insufficient evidence against defendant. The matter should be dismissed.

A review of the trial court record demonstrates that the only substantial evidence of Defendant-Appellant's guilt was his own words. The gun was not recovered. There were no witnesses to his accidental shooting or possession of a firearm. The .380 caliber casing found in the vehicle was not linked to any weapon in possession of Defendant and the bullet could have been fired by anyone. When he examined defendant's clothing, Detective Becker discovered no powder burns which he considered to a possible indicator of a self/close range shooting.

Without admission of Defendant's illegal, unMirandized custodial confession on May 4, 2016, the State would be unable to prove defendant's guilt to the charged offense beyond a reasonable doubt. Based on these facts, Defendant Appellant requests that the Court of Appeals not only reverse the Judgment of Conviction but also enter a Judgment of Acquittal in this matter.

In the alternative, Defendant - Appellant requests that the Court of Appeals vacate the Judgment of Conviction and remand this matter to the trial court for a new trial in which Defendant's unMirandized statements are excluded.

CONCLUSION

Based on the above facts, the trial court erred in denying the Motion to Suppress filed by trial defense counsel. Both of the two prongs of a successful suppression motion were met in these facts. Defendant, handcuffed to a bed for nearly two hours, was not free to leave. He was in custody when he made the unMirandized statements to the police. Second, the police did not at all believe defendant's version of the incident and continually questioned him about it until they obtained his confession. Knowing that the defendant had committed obstruction and was lying about the incident, it is reasonably likely that they knew that their questioning would elicit an incriminating response. Finally, neither the public or private safety exceptions to Miranda are applicable to these facts. It is mere speculation to extend these exceptions to the present facts and to do so improperly expands their application to virtually every alleged witness or victim of a criminal offense at the unfettered discretion of the police.

If the motion to suppress had been granted and defendant's statements been excluded, the State would not have sufficient remaining evidence to establish Defendant's guilt beyond a reasonable doubt. The Judgment of Conviction should be vacated and the court of Appeals should enter a Judgment of Acquittal. In the alternative, Defendant-Appellant asks that the Judgment of Conviction be vacated and the matter be remanded to the trial court for a new trial in which defendant's unMirandized statements are specifically excluded.

Dated this 22nd Day of May, 2018 in Waukesha, Wisconsin.

Respectfully Submitted,

Electronically Signed by Michael S. Holzman

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CERTIFICATION

I HEREBY CERTIFY THAT the Appellant's Brief of the Appellant-Defendant William Lester Jackson in the matter State vs. William Lester Jackson Case No. 2018AP000896- CR conforms to the rules contained in Wis. Stats. Sec. 809.19(b)© for an Appellant's Brief produced with a proportional font and the length is 17 Pages. The Brief contains 5145 words.

Dated this 21st Day of May 2018 in Waukesha, Wisconsin.

SS//Michael S. Holzman
Michael S. Holzman
Attorney for Defendant-Appellant

CERTIFICATION

I HEREBY CERTIFY THAT FILED WITH THIS BRIEF either as a separate document or filed with this Brief is an Appendix that complies with Wis. Stats. Sec. 809.19(A) and that it contains the following:

1. A table of contents.
2. Relevant trial entries.
3. The findings and opinions of the trial court.
4. Portions of the record essential to the issues raised including oral and written rulings or decisions showing the trial court's reasoning concerning these issues.

I hereby certify that if the record is required to be confidential , portions of the record included in this appendix are reproduced using the 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 records have been reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 21st Day of May, 2018 in Waukesha, Wisconsin.

SS// Michael S. Holzman
Attorney for Defendant-Appellant

CERTIFICATION

I FURTHER CERTIFY THAT the text of the electronically filed Brief in this matter is identical to the text of the paper brief filed with the Court of Appeals.

Dated this 21st Day of May 2018 in Waukesha, Wisconsin.

SS//Michael S. Holzman
Michael S. Holzman
Attorney for Defendant-Appellant