STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2018AP2357-LV

In the matter of the commitment of:

STATE OF WISCONSIN,

Petitioner-Petitioner,

v.

ANTHONY JAMES JENDUSA,

Respondent-Respondent.

ON APPEAL FROM A DENIAL OF A PETITION FOR LEAVE TO APPEAL A NONFINAL ORDER FOR THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE JOSEPH R. WALL, PRESIDING

REPLY BRIEF OF THE PETITIONER-PETITIONER

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I. This data unambiguously fails to meet any provision of Wis. Stat. § 980.036.

Jendusa is wrong that the discoverability of this data was a discretionary decision for the circuit court. (Jendusa's Br. 14–15.) Jendusa implicitly admits this as he conducts a statutory interpretation analysis despite erroneously claiming this issue is reviewed for an erroneous exercise of discretion. (Jendusa's Br. 14–24.)

A circuit court has no authority to compel production of discovery that exceeds the scope of the applicable discovery statute. *State ex rel. Lynch v. County Court, Branch III*, 82 Wis. 2d 454, 466, 262 N.W.2d 773 (1978). The data is discoverable only if it falls under the language of one of the subsections of Wis. Stat. § 980.036, meaning this Court must apply that statutory language to this data. And "[s]tatutory interpretation and the application of a set of facts to the statute are both questions of law this court reviews *de novo*." *Reyes v. Greatway Ins. Co.*, 227 Wis. 2d 357, 364–65, 597 N.W.2d 687 (1999).

This data unambiguously does not meet any subsection of Wis. Stat. § 980.036, and Jendusa's argument to the contrary is nonsensical and untenable.

A. Jendusa clearly told the trial court that he would use the data only to compose a new comparison sample, and the data is not discoverable under Wis. Stat. § 980.036(5).

Wisconsin stat. § 980.036(5) requires that a party intend to introduce the raw data at the trial to be discoverable. This is not an unreasonable interpretation of the statute (*see* Jendusa's Br. 22–23); it is precisely what the statute says. Wis. Stat. § 980.036(5). Indeed, the fact that

"[r]aw data is frequently unhelpful to a fact finder in the absence of testing or analysis" is the likely reason why the Legislature provided that raw data one party intends to introduce at trial can be obtained by the other via discovery for testing and analysis. (Jendusa's Br. 22.)

Jendusa assured the circuit court that the raw data would be disclosed only to "a very small group of people, maybe just two or three or so," who would redact it and provide it to Dr. Thornton for analysis so the result of Jendusa's scores on the actuarial assessments using this sample could be introduced at trial. (R. 48:8–9.) Jendusa now moves the goalposts and insists he intends to introduce the raw data itself at trial to try to shoehorn it into the statute. (Jendusa's Br. 21–22.) But Jendusa's post-hoc assertion that he intends to introduce this raw data at trial cannot force it into Jendusa's contorted reading of the statute. A party cannot make nondiscoverable information discoverable simply by stating prospectively that they want to introduce it at trial without having possession of it; that standard would put no limit on discovery under Wis. Stat. § 980.036(5). Data possessed by any private or public entity would be discoverable just by virtue of the defendant or the State proclaiming they want to introduce it at trial. That is an unreasonable interpretation of the statute.

B. This data does not fall under Wis. Stat. § 980.036(2)(h) because it was not collected, used, or considered as part of any test or examination of Jendusa the prosecutor intended to introduce at trial.

Jendusa claims that this data is discoverable under Wis. Stat. § 980.036(2)(h), alleging "the raw data here was collected as part of Tyre's SPE of Jendusa, and compiled for examination with other SPE data." (Jendusa's Br. 24.) He alleges that because the data was collected in order to

presumably perform some kind of examination in the future, he is entitled to it because the statute says he's entitled to "any raw data" collected for an examination, test, instrument, experiment, or comparison. (Jendusa's Br. 24–25.) Both contentions are false.

Dr. Tyre in no way collected this data about other offenders as part of his SPE examination of Jendusa. He specifically testified that Jendusa is "not part of the data set that's being analyzed." (R. 47:40.) Indeed, Jendusa does not purport to offer how it would even be possible to gather data about others when evaluating whether Jendusa's treatment and offense history warrants a sexually violent person referral.

That Dr. Tyre eventually planned to conduct research with this data does not make it fall under Wis. Stat. § 980.036(2)(h), either. Jendusa attempts to read out of the statute the requirement that the raw data had to be gathered and used "*as part of the* examination, test, instrument, or experiment" the prosecution intends to introduce at trial. (Jendusa's Br. 24–25.) Instead, he claims that because Wis. Stat. § 980.036(2)(h) says "any raw data that were collected," it requires the prosecution to provide him with "any raw data collected" for the purpose of *any* "examination, test, instrument, or experiment," including information gathered for future research and unrelated to any examination, test, instrument, or experiment performed on him. (*See* Jendusa's Br. 24.) That is an absurd construction of the statute that reads the words "any raw data" in isolation and ignores the rest of the statutory language.

But "statutory language is interpreted . . . not in isolation but as part of a whole." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. Here, the whole phrase states that the state must turn over the results of any test "that the prosecuting

attorney intends to offer in evidence at the trial or proceeding," and "any raw data that were collected, used, or considered in any manner *as part of the* examination, test, instrument, experiment, or comparison." Wis. Stat. § 980.036(2)(h). So, the statute plainly requires the prosecution to turn over only raw data that was actually used to conduct the examination or comparison the results of which the prosecution intends to introduce at trial. Jendusa's interpretation of the statute is fractured and unsupported by the whole of the statutory language. This data unambiguously does not fall under this subsection.

C. Jendusa's speculation about what an analysis of the data might produce does not make this data exculpatory evidence.

Jendusa misstates the record and relies on speculation in order to claim that this raw data and anything he might produce with it constitute discoverable exculpatory evidence. (Jendusa's Br. 15–21.) Though contradictorily, he also admits that the data is not exculpatory. (Jendusa's Br. 20 ("Indeed, the data itself is not exculpatory.").) He then continues to insist that because he suspects a comparison sample consisting of Wisconsin-only offenders would show a lower recidivism rate generally, he is entitled to the data to create one under Wis. Stat. § 980.036(2)(j). (Jendusa's Br. 15–21.) He is wrong.

Again, evidence is not exculpatory when no more can be said of it "than that it could have been subjected to tests, the results of which might have exonerated the defendant," *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988).

Jendusa's attempt to distinguish *Youngblood* and its progeny fails. Jendusa claims these cases are irrelevant because they dealt with defendants asserting a *Brady* violation about the destruction of evidence. (Jendusa's Br. 20.)

That is not accurate. *Youngblood* itself noted that the state complied with *Brady* in that case and stated that instead the case dealt generally with "what might loosely be called the arena of constitutionally guaranteed access to evidence" pretrial. *Youngblood*, 488 U.S. at 55 (citation omitted). Further, Jendusa does not explain why the procedural posture of these cases would render their observations about what constitutes exculpatory evidence inapplicable. (Jendusa's Br. 20.) And at no point does he attempt to address the holdings in *State v. Franszczak*, 2002 WI App 141, 256 Wis. 2d 68, 647 N.W.2d 396, that (1) evidence that has not been analyzed possesses no inculpatory or exculpatory value, *id.* ¶ 21, and (2) that the defense's ability to put an exculpatory spin on something does not make it exculpatory evidence, *id.* ¶ 23.

Jendusa and his expert both admitted, multiple times, that they do not know what the calculation of a Wisconsin-specific base rate will actually show (R. 21:6; 45:59; 48:5), and can only say that "*if* [the analysis] shows that the rate of reoffending" is lower than the comparison samples currently being used, "this evidence *would be* exculpatory." (R. 21:6; *see also* 45:59.) That is nothing more than speculation, and moreover, it is wrong.

As the State explained, it is only Jendusa's score on the actuarial assessments that could potentially be exculpatory. A comparison sample showing lower recidivism rates among Wisconsin offenders generally says nothing about Jendusa's actual risk to reoffend and he may remain well over the threshold no matter what sample is used, as Jendusa's own expert, Dr. Thornton, testified. (R. 45:59.) Wisconsin Stat. § 980.036(2)(j) does not require the prosecution to provide Jendusa with data with which he merely might be able to produce something favorable, if an analysis of it turns out the way he hopes.

Jendusa's claim that Dr. Tyre testified that the data shows a lower base rate than the samples currently being used is false. (Jendusa's Br. 20.) Dr. Tyre never testified to any such thing. (R. 47:39–50.) He said *if* the data showed a low base rate once analyzed that would be something that would have to be considered, but the data was not currently in a form that would allow for an accurate calculation of a base rate and that he and his colleagues had not yet taken the next steps toward doing so. (R. 45:28–30; 47:5–11, 40–50.) And again, because there is no requirement that any evaluator use a particular sample and Dr. Thornton himself has not invalidated the samples currently being used, a new comparison sample would not "impeach" anyone. (*See* Jendusa's Br. 18.)

Finally, the State is not "knowingly suppress[ing] exculpatory data in its possession where the analytical results of the data are unfavorable." (Jendusa's Br. 20.) The analytical results of the data are unknown, they do not exist, and Jendusa's insistence that they will produce anything exculpatory is, again, completely speculative.

Neither the data at issue nor Jendusa's speculation about what Wisconsin-specific base rate samples might show constitutes exculpatory evidence. Jendusa is not due this data under Wis. Stat. § 980.036(2)(j).

II. DOC is not "the state" as contemplated by Wis. Stat. § 980.036, but even if it is, Jendusa still is not entitled to the data.

Again, evidence is only in the state's possession if the prosecutor or the prosecution team possesses or has the right to possess it. *State v. Lynch*, 2016 WI 66, ¶ 29, 371 Wis. 2d 1, 885 N.W.2d 89. DOC, and particularly Dr. Tyre, is not part of the prosecution simply because the state sometimes calls him to testify at the preliminary hearing. As explained, DOC

simply has notice requirements and must inform the prosecutor when someone *may be* eligible for commitment. DOC in no way assists in prosecuting chapter 980 proceedings. Indeed, the prosecution was prevented from possessing and using this data by the same privacy statutes that prevent DOC from disclosing it to Jendusa. The prosecution team had no right to, and does not, possess this data, and therefore it is not in the "possession, custody, or control of the state." Wis. Stat. § 980.036(2).

Jendusa claims that "as a state agency," DOC is "indisputably part of the state," and therefore Wis. Stat. § 980.036(2) allows discovery of anything possessed by DOC. (Jendusa's Br. 25.) This is an untenably broad interpretation of "within the possession, custody, or control of the state." Wis. Stat. § 980.036(2). Under Jendusa's interpretation, the prosecutor would be required to scour the records of *every single state agency* to see if they had any kind of raw data or information a chapter 980 respondent might be able to find a use for, appropriate it, and turn it over.

The State can find no jurisdiction that has held everything possessed by any state entity is in "the state's possession" for the purposes of either criminal or civil discovery. It is precisely the opposite: "information possessed by an agency that has no connection to the investigation or prosecution of the criminal charge against the defendant" is not considered to be in the state's possession, "and the prosecutor does not have the duty to search for or to disclose such material." *People v. Superior Court,* 96 Cal. Rptr. 2d 264, 271–72 (Cal. Ct. App. 2000); *see also State v. Darcy N.K.*, 218 Wis. 2d 640, 651–56, 581 N.W.2d 567 (Ct. App. 1998) (Mendota Mental Health Institute records not in the State's possession).

But even if this Court determines that DOC should be considered "the state" for the purposes of Wis. Stat.

§ 980.036(2), Jendusa is still not entitled to discovery of this data because it is not about him, was not gathered in relation to his case, and does not meet any provision of Wis. Stat. § 980.036(2). Jendusa is not entitled to everything in the state's possession. He is entitled only to things in the state's possession that meet the statutory discovery provisions. And this data meets none of those even if DOC is "the state" under Wis. Stat. § 980.036(2) because the data is unrelated to Jendusa's commitment proceeding.

For example, the fact that law enforcement is considered "the state" does not mean that a criminal defendant is entitled to every record and evidence ever possessed by the police department. He is entitled only to evidence that falls under one of the provisions of Wis. Stat. § 971.23 and that the prosecution team is entitled to possess as part of his case. *See Lynch*, 371 Wis. 2d 1, ¶ 29. A defendant is not entitled to discovery of the police database of demographic information about other offenders under the "exculpatory evidence" subsection simply because the defendant thinks he might be able to construct a mistaken identity defense if he could search the police database. That is akin to what Jendusa is attempting to do here: he claims that he might be able to present a better defense if he can compare himself to a particular group of people, and is then claiming he is entitled to this data simply because DOC possesses it and he can think of a scenario where it might be favorable to him.

But he is wrong. The DOC psychologists are called as witnesses when they find that someone may meet the criteria for commitment pursuant to their notice function, but that does not mean that DOC actively prosecutes the commitment of anyone. And even if DOC is "the state" as contemplated by the statute, this data still does not fall under any part of Wis. Stat. § 980.036(2), so it is not discoverable.

III. Jendusa has conceded that the court's order in this case violates the privacy statutes and violates *Alt.*

Jendusa "asks this Court to remand to the circuit court with instructions to amend its order to exclude from disclosure information in the database revealing mental health and substance abuse diagnoses." (Jendusa's Br. 32.) So, he concedes that the order violates the state and federal privacy statutes protecting this information. He blames the expansive order on the court: "The circuit court ordered the DOC to disclose the complete, un-redacted spreadsheet . . . , but Jendusa only seeks names and birthdates (to identify recidivists), and scores on actuarial instruments and the information comprising those scores (to assess recidivism risk)." (Jendusa Br. 31.) But Jendusa neglects to acknowledge that his trial counsel asked for the full, unredacted database and argued in the circuit court there "would be no HIPAA concerns." (R. 48:6.) Having been misinformed, the circuit court entered an unlawful order that now even Jendusa's appellate counsel asks this Court to remedy.

Although Jendusa unequivocally asks for a remand to remedy this privacy violation, (Jendusa Br. 32.), he then states this "Court should affirm the circuit court order to disclose the un-redacted data" because DOC initially approved Jendusa's research request. (Jendusa Br. 34.) Jendusa incorrectly states there is "no risk that disclosure would violate any state or federal privacy law because the DOC Research Review Committee had already concluded that Jendusa's request satisfied the research exceptions to those laws." (Jendusa Br. 35–36.) But an approved research request does not mean Jendusa is legally entitled to unredacted data as discovery. It simply means that DOC has taken the preliminary steps to be able to release some of this data for

research purposes without itself violating these laws by the disclosure.

Jendusa's rationale conflates obtaining the database through a circuit court order as discovery in a Wis. Stat. ch. 980 proceeding—that is at issue in this appeal—with obtaining it from DOC through a research exception under Executive Directive 36—that is not at issue in this appeal. The research exceptions create a minimum protocol that covered entities must follow to release PHI without violating privacy statutes; they do not legally entitle a researcher to a release of PHI. Indeed, Wis. Stat. § 51.30(4)(b)3. specifically requires the research project to have "been approved by the department" with sufficient assurances that the information will be guarded and used appropriately. *Id.* The department is concordantly free to rescind approval as it deems appropriate. *Id.* Additional safeguards may be needed to protect privacy, and neither DOC nor any other entity is required by these statutes to release anything just because it initially approved a research request. (Petitioner's Br. 27–28 (citing Wis. Stat. §§ 51.30(4)(b)3., 146.82(2)(a)6.).) Likewise, 45 C.F.R. § 164.512(i)(2)(ii)(A) requires that the covered entity has received adequate plans and assurances from the researcher that the information will be kept confidential to the extent possible. That means a covered entity can rescind approval if it does not think the researcher is going to comply.

Jendusa then also recognizes the circuit court's flaw in commanding Thornton to conduct research, contrary to *Burnett v. Alt*, 224 Wis. 2d 72, 88, 589 N.W.2d 21 (1999) (expert cannot be compelled to engage in out-of-court preparation). (Jendusa's Br. 36.) He thus additionally suggests this Court should "remand with instructions to amend the order to remove that command," as well. (Jendusa's Br. 36.) So, Jendusa pivots from asking for a remand to an affirmance before returning to a remand.

This Court need not choose between Jendusa's competing remand requests because it should reverse the decision of the circuit court. Jendusa ignores the court's most critical error: Jendusa has no legal entitlement to this data, which is protected by these state and federal statutes. The circuit court's order unambiguously requires DOC to violate these privacy laws. (*See* Petitioner's Br. 18–29 (explaining that releasing this data violates federal and Wisconsin privacy law).)[1]

Jendusa suggests the Department's database "is not a legitimate health record" because it was compiled pursuant to compulsory civil commitment evaluations. (Jendusa's Br. 32.) Jendusa has missed the mark. It is the health and substance use disorder *information* in the database gleaned from the offender's treatment records that is protected, not whether the database itself is a health care *record*. *See* Wis. Stat. § 146.816(1)(f); 45 C.F.R. § 160.103. Jendusa neglects to realize that DOC has protected information due to its statutory duty to provide health and mental health care to inmates, and that it is subject to these privacy protections. *See* Wis. Stat. §§ 301.335, 302.38–.388; *see also* Wis. Admin. Code §§ DOC 311, 314, 316. An entity such as DOC cannot make protected information disclosable simply by transferring it to another record or compiling it in a database.

It is undisputed that the database contains protected SUD information, as Dr. Tyre testified that the data contains 1400 inmates' alcohol and other drug abuse (AODA) diagnosis and treatment information. (R. 25; 47:33.) It also contains

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[1] The State fails to understand Jendusa's claim that the State "makes no argument that disclosure of the data is prohibited by HIPAA." (Jendusa's Br. 32.) The State devoted multiple pages to explaining how HIPAA prohibited this disclosure because the court's order meets none of the federal requirements. (Petitioner's Br. 20–22, 25–28.)

their demographic information, psychological diagnoses, and actuarial assessment scores. (R. 23.) DOC is required by law to protect this information. This Court should reverse the circuit court's order**.**

IV. This Court should not issue an advisory opinion on whether *Brady v. Maryland* should apply to chapter 980 proceedings.

Any opinion this Court would issue on whether *Brady* applies to chapter 980 proceedings would "devolve into an impermissible discussion of a hypothetical situation," because it is an issue not needed to decide this case. *Tammi v. Porsche Cars North America, Inc.*, 2009 WI 83, ¶ 3, 320 Wis. 2d 45, 768 N.W.2d 783. This data is not evidence, it is not exculpatory, and it is not in the State's possession as contemplated by Wis. Stat. § 980.036(2)(j). (*Supra* 5–10; Petitioner's Br. 13–18, 29–31.) Jendusa has also failed to explain how he could possibly show that the unknown result of analyzing this data and equally unknown result of applying it to his case would be material. Accordingly, Jendusa can establish no part of a *Brady* claim. *See State v. Harris*, 2004 WI 64, ¶¶ 24–27, 272 Wis. 2d 80, 680 N.W.2d 737. Equally fatally, *Brady* does not allow defendants to compel pretrial discovery, so even if *Brady* applies to chapter 980 proceedings, that would be of no help to Jendusa here. *United States v. Gray*, 648 F.3d 562, 567 (7th Cir. 2011) ("The *Brady* rule is not a rule of pretrial discovery."); *see also* (Petitioner's Br. 30–31).

However, even if this Court determined that the data is evidence, is exculpatory, and is in the state's possession, Jendusa is then due it under Wis. Stat. § 980.036(2)(j) and the *Brady* question is moot. If not, Jendusa could not meet the requirements of a *Brady* claim even if it did apply, and resolution of the issue would have no bearing on the outcome

of this case. "Courts will not render merely advisory opinions." *Tammi*, 320 Wis. 2d 45, ¶ 3 (citation omitted).

Jendusa has ignored that resolving this issue is unnecessary and simply leaps to offering reasons *Brady* should apply in chapter 980 proceedings. (Jendusa's Br. 37–45.) By failing to address the State's argument that resolution of this issue is not necessary and should be avoided, Jendusa has conceded the point. *Charolais Breeding Ranches, Ltd. v. FPC Securities Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

The State does not dispute chapter 980 commitment constitutes a significant deprivation of liberty requiring due process protections, nor does it dispute that the State has no legitimate interest withholding exculpatory evidence in its possession. (Jendusa's Br. 37, 39.) The State maintains, however, that chapter 980 proceedings are too far afield from the criminal process at issue in *Brady* to reasonably extend *Brady* to commitment proceedings, particularly when there are adequate chapter 980 statutory and prosecutorial ethical safeguards to protect an individual's liberty interest. (*See* Petitioner's Br. 31–34.)

V. Dismissing this case would waste judicial resources, and Jendusa has conceded that the court of appeals erroneously exercised its discretion in denying the State's petition for leave to appeal.

Both parties agree that this Court "should require the court of appeals to explain the reasons for granting or denying permissive appeals." (Jendusa's Br. 49.) Jendusa asks this Court to dismiss this case as improvidently granted, however, because it usually refuses to review the court of appeals' discretionary decisions to deny petitions for leave to appeal. He cites the reasons this Court has given for the rule:

reviewing only decisions that finally determine the matter presented, preventing unnecessary delays in litigation, discouraging a flood of petitions for review of such decisions in this Court, and concerns that review would "divest the court of appeals of the discretion entrusted to it by sec. 808.03(2)." (Jendusa's Br. 45–46 (citing *Aparacor*, *Inc. v. DILHR*, 97 Wis. 2d 399, 403, 293 N.W.2d 545 (1980)).) Jendusa fails to explain, though, how any of those rationales support dismissing this appeal now. (Jendusa's Br. 46.) Doing so would waste the considerable resources that have been expended on this case without advancing any of the purposes for denying review.

That this is review of a nonfinal order means nothing: this Court has acknowledged that its refusal to review the court of appeals' denial of a permissive appeal is a matter of practice and not lack of authority to do so. *Leavitt v. Beverly Enterprises, Inc.,* 2010 WI 71, ¶¶ 47–49, 326 Wis. 2d 421, 784 N.W.2d 683. The delays in the underlying case that the rule was meant to avoid have already occurred. *Bearns v. DILHR*, 102 Wis. 2d 70, 74, 306 N.W.2d 22 (1981). Jendusa does not explain how this Court's issuing an opinion in this single case will lead to a flood of petitions for review. (Jendusa's Br. 46–47.) Indeed, this Court has granted review of such decisions before, and those decisions have not led to disregard for this Court's general practice of refusing to review such decisions. *See, e.g., State v. Jenich*, 94 Wis. 2d 74, 79–80, 288 N.W.2d 114 (1980).

Furthermore, this Court's decision in *State v. Scott*, 2018 WI 74, ¶¶ 35–41, 382 Wis. 2d 476, 914 N.W.2d 141, calls into question whether the court of appeals' single rote sentence it uses to deny petitions is sufficient to exercise discretion, which this case is squarely positioned to address. Finally, the issues in this case are questions of law with significant statewide impact that the lower courts are in no

better position to answer than this Court. *See Streiff v. American Family Mut. Ins. Co*, 118 Wis. 2d 602, 603 n.1, 348 N.W.2d 505 (1984).

In short, Jendusa offers no compelling reason for dismissing this case. Doing so would leave this blatantly unlawful order in place while answering none of the significant questions raised here. Review of this decision was not improvidently granted.

Otherwise, Jendusa does not dispute that the court of appeals' order "did not provide a reasoned explanation for denying the state's petition for leave to appeal" and therefore constitutes an erroneous exercise of discretion. (Jendusa's Br. 47–48.) But his argument that this Court should affirm the court of appeals' decision merely rehashes his arguments why he believes the circuit court's order was lawful. (Jendusa's Br. 47–49.) The State explained why those contentions are meritless, but regardless, the court of appeals' determination that the case met none of the criteria for a permissive appeal was unreasonable given the lack of guiding case law addressing any of these issues.

CONCLUSION

This Court should hold that the court of appeals erroneously exercised its discretion in denying the State's petition in this case; reverse the circuit court's order unlawfully requiring disclosure of this data; and remand to the circuit court for proceedings consistent with this opinion.

Dated this 9th day of October 2020.

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 4,493 words.

Dated this 9th day of October 2020.

LISA E.F. KUMFER
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

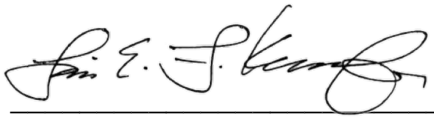
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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 October 2020.



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