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OF WISCONSIN**

DISTRICT III

Case No. 2019AP1565-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RYAN HUGH MULHERN,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN PIERCE COUNTY CIRCUIT COURT, THE
HONORABLE JOSEPH D. BOLES, PRESIDING

RESPONSE BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

At trial, the circuit court permitted the State to elicit testimony from a complainant, Lisa, that in the week before Ryan Mulhern allegedly sexually assaulted her, Lisa had not had sexual intercourse or contact with anyone else. Assuming that testimony violated the rape shield statute, was the error harmless?

The circuit court did not assess harmless error.

This Court should say yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither. The parties' briefs should adequately set forth the relevant facts and law, and the question presented can be resolved by applying established legal standards.

INTRODUCTION

Twenty-two-year-old Lisa claimed that her friend, Mulhern, had forcible sexual intercourse with her after the two consensually cuddled. The issue at trial was whether intercourse occurred.

At trial, a DNA analyst testified that a swab of Lisa's vagina collected the day after the assault identified the presence of foreign male DNA. Over Mulhern's objection, the court allowed the State to elicit from Lisa that she had not had sexual intercourse or contact with anyone in the week before the assault. Mulhern argues that he is entitled to a new trial based on the admission of that statement.

While Lisa's statement regarding her lack of sex the week prior to the assault likely was inadmissible under the rape shield statute and case law interpreting it, any error was harmless. The State had a solid case that intercourse occurred

without the inconclusive DNA evidence, and Lisa's testimony regarding her lack of sexual conduct in the week before the assault was not likely to bolster her credibility or to prejudice Mulhern under the circumstances.

STATEMENT OF THE CASE

In the early morning hours of Tuesday, November 22, 2016, Mulhern sexually assaulted Lisa, an acquaintance, in her home. Based on Lisa's report of the assault, the State charged Mulhern with one count of second-degree sexual assault and one count of strangulation and suffocation.¹ (R. 1; 8.)

The case went to trial. Lisa testified that on Monday night, November 21, Mulhern called Lisa "begging to come over to be consoled as a friend," sounding "upset," depressed, and "almost frantic" over some personal issues. (R. 85:127–30.) Lisa had known Mulhern for a little over a year. (R. 85:132.) Lisa was concerned for Mulhern, so she "told him that he could come over if he would stay on the futon; [she] would be there for him as a friend, and that would be all it was." (R. 85:128.)

Mulhern arrived at around midnight on November 22. (R. 85:128, 153.) Lisa said that after Mulhern arrived, they started talking. (R. 85:129.) Lisa tried to get Mulhern to talk about what was upsetting him, but he kept turning the conversation back to Lisa and her life. (R. 85:129–30.) Lisa had an exam the next morning, so when Mulhern declined to share what was troubling him, she told him she was going to bed "and he needed to do the same." (R. 85:129–130.) She directed him to the futon. (R. 85:132.)

¹ The State also charged Mulhern with misdemeanor bail jumping, for which Mulhern waived a jury trial and the court ultimately adjudicated him guilty. (R. 1; 8; 65; 86:167.)

Instead, Mulhern ended up in Lisa's room and on her bed, where she was laying under her covers fully clothed. He put an arm over her, "just trying to cuddle" as Lisa described it. (R. 85:133.) Though Lisa did not object to that contact, it escalated. (R. 85:134.) Through detailed testimony, Lisa explained how Mulhern then began to kiss her, growing more forceful until he was holding her face and shoulders to immobilize her as he kissed her mouth, face, and neck. (R. 85:134–37.) Lisa said that she responded by telling him that she didn't "want this," reminding Mulhern that he had a girlfriend, and not reciprocating his advances. (R. 85:136–37.)

When Mulhern stopped kissing her, Lisa thought he had gotten the message and was leaving her room; instead, he took off all his clothes and got under the covers with her, pressing his erect penis against her bottom. (R. 85:137–39.) He began trying to put his hands up her shirt and down her pants. (R. 85:138–40.) Lisa reacted by yelling emphatically at Mulhern to get off her, pushing his hands away, slapping at him, and trying to prevent him from removing her clothes. (R. 85:140–42.) Mulhern grew "more angry and forceful." (R. 85:141.) Despite Lisa's using all her strength to resist him, she had limited mobility because she was pinned on the bed between Mulhern and the bedroom wall. (R. 85:141–43.) Besides that, Mulhern was simply stronger; he overpowered Lisa and got her pants off. (R. 85:141–43, 145.)

Mulhern paused in the assault; Lisa began crying and curled into a ball next to the wall. (R. 85:144.) According to Lisa, Mulhern tried to console her, but she yelled at him to get out. (R. 85:144.) Instead of leaving, Mulhern pulled Lisa onto her back by putting his forearm across her neck and got on top of her. (R. 85:144–45.) He positioned his forearm across her neck; when she tried to yell, he covered her mouth and nose with his hand. (R. 85:145–46.) Lisa felt Mulhern's penis enter her vagina. (R. 85:145–46.) She tried pushing back but Mulhern continued to pin her down by her neck; at this point,

her head was hanging over the edge of the bed, her neck and throat hurt, and she struggled to breathe. (R. 85:145–46.) Lisa believed that she bit his hand once or twice during the assault. (R. 85:146–47.) When asked, Lisa estimated that this portion of the assault lasted three to five minutes. (R. 85:178.)

Lisa described not remembering much else until moments later, she was curled up and crying and Mulhern was standing at the end of the bed. (R. 85:147–48.) Mulhern again expressed concern that Lisa was upset and disregarded her commands that he leave. (R. 85:147–48.) Lisa said that Mulhern left only after she threatened to call the police. (R. 85:148.)

After Mulhern left, Lisa said that she called one of her roommates, told her what happened, and asked her to come home. (R. 85:149–50.) While the roommate was on her way, Lisa also took a shower, though without using soap, because she felt “disgusting [and] dirty.” (R. 85:149–50.)

In addition to her roommate, Lisa reported or disclosed the assault to multiple people. At around 11:30 a.m. on the morning of the assault, Lisa called a local sexual assault resource team (SART). (R. 85:155–56.) That evening, Lisa disclosed the assault to a friend, Jaimi Hoernke, who testified and confirmed that Lisa was “distraught,” “upset,” and “crying” when she disclosed the assault. (R. 86:12.) Lisa also reported the assault to police the next day, November 23. (R. 85:157.) Officer Logan Dohmeier, a River Falls police officer, testified that he interviewed Lisa and relayed her description to him of what happened, which was consistent with her trial testimony. (R. 86:26–28.)

Shortly after Lisa called SART on November 22, she went to the hospital for an exam. (R. 85:155–56.) The nurse who examined Lisa testified that Lisa had injuries including tenderness and tightness on her neck, a sore throat, a semicircular wound on her right shoulder, and tenderness on

her right chest wall, inner thighs, and inner calves. (R. 85:207–08.) The nurse also noted that Lisa had tenderness on her inner and outer labia, a linear tear to the left inner labia, an abrasion on her right vaginal wall, and redness on the left vaginal wall. (R. 85:208.) The nurse, who received a report of Lisa’s description of the assault, said that the injuries were consistent with Lisa’s “stated history.” (R. 85:209.)

DNA analyst Vincent Purperero testified that he tested a series of swabs taken from Lisa. (R. 85:185, 188.) His testing of a swab taken from Lisa’s neck revealed the presence of a DNA mixture profile from two individuals: Lisa was the source of a major female contributor, and Mulhern was the source of a partial minor male contributor. (R. 85:189, 193.) Purperero detected amylase, which is found in very high concentration in saliva, on the swabs taken from Lisa’s forehead and neck. (R. 85:192.)

Purperero testified that he identified the presence of foreign male DNA from the vaginal swabs, but the amount was insufficient to allow him to reach a conclusion on it. (R. 85:191, 197.) Purperero explained that if ejaculation did not occur or occurred outside the body, he would not expect to find DNA from ejaculate inside the body, only possibly DNA from skin cells, which he would generally expect to find in a much lower concentration than he would from semen. (R. 85:199–201.) He testified that skin-cell DNA deposited by touch can vary by individuals: some people will leave large amounts, whereas others “naturally leave very few skin cells behind.” (R. 85:193.) Purperero also explained that when foreign DNA is deposited on a person’s body, that person’s body will eventually “slough cells or cleanse itself” of the foreign DNA. (R. 85:191–92.) Purperero acknowledged that showering or wiping can remove foreign DNA. (R. 85:199.)

Before the State rested, it sought to recall Lisa and Purperero. (R. 86:38–39.) The State explained that it was recalling Lisa to ask her two questions: how the assault

measured in terms of trauma for her and whether she had “sexual intercourse or sexual contact with anyone for one week prior to November 22nd, 2016.” (R. 86:41.) Over Mulhern’s counsel’s objections, the court allowed the testimony, noting that the proposed testimony fell outside the rape shield statute because it related to lack of sexual conduct. (R. 86:44.)

The State recalled Lisa and asked her the two questions. (R. 86:51.) She stated that she did not have sexual contact or intercourse with anyone in the week before Mulhern’s assault, and that the assault was “the scariest thing [she’d] ever been through.” (R. 86:51–52.) The State also recalled Purpero to ask him how long “foreign DNA deposited in the vagina remain[s] there.” (R. 86:57.) Purpero responded that “five days after an assault, we generally would not see any evidence of foreign DNA remaining or persisting . . . in the vagina.” (R. 86:57–58.)

Mulhern agreed that he went to Lisa’s house at her invitation at around midnight on November 22 but denied that they had sex of any kind including oral, vaginal, anal, or “any other kind of sexual contact with her” below her waist. (R. 86:90–99, 101.) Mulhern initially denied recalling any agreement or discussion that he would sleep on the futon, (R. 86:90, 117), but he conceded, after being shown text messages, that Lisa was asking him to sleep on the futon if he did come over. (R. 86:118.) Mulhern nevertheless testified that he and Lisa went to her room, talked for about half an hour, and consensually kissed. (R. 86:95–97.) Mulhern said that when they were kissing, Lisa brought up his girlfriend and they discussed whether to continue. (R. 86:97.) According to Mulhern, they continued to kiss and progress toward sex, each removing their own clothes. (R. 86:113.) Mulhern denied that Lisa did anything to lead him to believe that she did not want the contact until he was about to enter her vagina. (R. 86:97–100.) At that point, Mulhern said, Lisa suddenly

objected and he stopped the contact and left shortly after that. (R. 86:100–02, 112.) Mulhern also offered testimony from family members who saw him two days after the assault and denied noticing any physical injuries or changes to Mulhern. (R. 86:60–61, 62–63, 66, 70–71.)

The jury found Mulhern guilty of count one—second-degree sexual assault—but acquitted him of the strangulation and suffocation count. (R. 86:161.) The court sentenced him to nine years of initial confinement and seven years of extended supervision. (R. 90:54.)

Mulhern did not seek postconviction relief; he now appeals.

STANDARD OF REVIEW

This Court reviews a circuit court’s admission of evidence for an erroneous exercise of discretion. *See State v. DeSantis*, 155 Wis. 2d 774, 777, 456 N.W.2d 600 (1990).

An erroneous admission of evidence is subject to harmless-error analysis, which this Court reviews de novo. *State v. Monahan*, 2018 WI 80, ¶ 31, 383 Wis. 2d 100, 913 N.W.2d 894.

ARGUMENT

Even if the rape shield statute barred Lisa’s testimony regarding her lack of sexual intercourse in the week before the assault, the error was harmless.

A. Under the rape shield statute and existing law, Lisa’s statement likely was inadmissible.

Under Wisconsin’s rape shield law, “evidence concerning the complaining witness’s prior sexual conduct or opinions of the witness’s prior sexual conduct and reputation as to prior sexual conduct shall not be admitted into evidence

during the course of the hearing or trial” unless a statutory exception applies. Wis. Stat. § 972.11(2)(b). “Prior sexual conduct includes a lack of sexual conduct, meaning that evidence that a complainant had never had sexual intercourse is inadmissible.” *State v. Bell*, 2018 WI 28, ¶ 63, 380 Wis. 2d 616, 909 N.W.2d 750 (citing *State v. Gavigan*, 111 Wis. 2d 150, 159, 330 N.W.2d 571 (1983)).

Here, Lisa’s negative response to the question whether she had had sexual intercourse or contact with anyone the week before the assault falls under the rape shield statute as Wisconsin courts have interpreted it. Thus, the circuit court wrongly reasoned that the statement was admissible because it involved a lack of sexual conduct. (R. 86:44.) While Wisconsin courts have not addressed a case where the challenged testimony involved lack of sexual activity for a discrete period—as opposed to virginity—there does not appear to be a basis to believe that the courts would so distinguish. Moreover, none of the exceptions to the rape shield statute would appear to apply. *See* Wis. Stat. § 972.11(2)(b)1.–3.

Hence, the court erroneously exercised its discretion in admitting this part of Lisa’s testimony. That said, the error was harmless, as discussed below. This Court may affirm on that ground.

B. The harmless-error test asks whether the jury would have found the defendant guilty absent the error.

An erroneous admission of rape-shield evidence is subject to harmless-error analysis. *State v. Mitchell*, 144 Wis. 2d 596, 619–20, 424 N.W.2d 698 (1988). For an error to be harmless, the party benefitting from the error must demonstrate that it is “clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *State v. Martin*, 2012 WI 96, ¶ 45, 343 Wis. 2d 278,

816 N.W.2d 270 (quoting *Neder v. United States*, 527 U.S. 1, 18 (1999)).

When considering whether the erroneous admission of evidence is harmless, the following seven factors, among others, assist the Court's analysis: (1) the frequency of the error; (2) the importance of the erroneously admitted evidence; (3) the presence or absence of evidence corroborating or contradicting the erroneously admitted evidence; (4) whether the erroneously admitted evidence duplicates untainted evidence; (5) the nature of the defense; (6) the nature of the State's case; and (7) and the overall strength of the State's case. *Martin*, 343 Wis. 2d 278, ¶ 46.

In this case, the third and fourth factors do not apply: there is no corroborative, contradicting, or duplicative evidence regarding Lisa's sexual activity in the week before the assault. The remaining factors, however, demonstrate that the error in admitting Lisa's statement did not affect the verdict.

C. The jury would have still convicted Mulhern of second-degree sexual assault absent Lisa's statement.

The final three factors—the nature of the parties' cases and the overall strength of the State's case—especially demonstrate that the error was harmless. To prove second-degree sexual assault without consent, the State had to prove the following three elements: that Mulhern had sexual intercourse with Lisa; that Lisa did not consent to the sexual intercourse; and that Mulhern had sexual intercourse with Lisa by use or threat of force or violence. *See* Wis. Stat. § 940.225(2)(a); Wis. JI-Crim 1200B (2010), 1208 (2016).²

² The State's statement of the elements of the crime is narrowed based on an error in the jury instructions given at trial.

Given Lisa's and Mulhern's diverging accounts of the events—Lisa's being that Mulhern forced sexual intercourse with her, Mulhern's being that no nonconsensual sexual contact and no intercourse at all occurred—the only truly contested element at trial was the first, i.e., whether there was intercourse. In other words, there was no version of events presented to the jury that Lisa and Mulhern had consensual intercourse. And to that end, the jury was required either to believe Lisa's account and convict Mulhern, or to believe Mulhern's account and acquit him.

As it turned out, the jury believed Lisa's account that, after some consensual cuddling and a consensual kiss, Mulhern physically forced sexual intercourse despite Lisa's objections and efforts to fend him off.

And to that end, the State's case was strong. Lisa offered compelling testimony, acknowledging that at first, she did not object to Mulhern's cuddling with her. (R. 85:133–34.) She also admitted that she kissed him on the promise that he would leave her room. (R. 85:134–35.) She described in detail

Typically, for a second-degree sexual assault prosecution, the State could prove sexual contact or sexual intercourse. Wis. Stat. § 940.225(2)(a); Wis. JI–Crim 1200A (2007), 1208 (2016). In this case, the circuit court refused the State's request to instruct the jury on sexual contact. In support of its position, the State pointed to testimony from Lisa that she felt his erect penis on her buttocks and from Mulhern that he touched her breasts and buttocks with his hands. (R. 86:115–16, 123–25, 127.) The circuit court denied the State's request because the Information charged intercourse and, in the court's view, the focus of trial had been intercourse, not contact. (R. 86:123–25, 128.)

The State maintains that the court's decision on this point was erroneous and that the jury should have been instructed on sexual contact as well as intercourse. That said, the error was ultimately harmless, since the jury convicted Mulhern. And for purposes of this brief, the State's argument is based on the instructions the court provided.

how Mulhern's aggression progressed: his immobilizing her face and neck to kiss her forcibly; his disrobing and then forcibly removing her pants to the point that she heard the seams beginning to pop; his forcing her down on the bed; and his further immobilizing her by bracing his forearm down onto her neck, covering her mouth with his hand, impeding her breathing, and forcing himself between her legs. (R. 85:136–46.) She was able to articulate how her mental state progressed throughout the assault from annoyance and anger to fear and terror. (*See id.*)

Lisa's version of events had support in the testimony of the sexual assault nurse examiner, who testified to the injuries and tenderness that Lisa suffered in her vagina, on her labia, and all over her body and that the injuries were consistent with Lisa's stated history. (R. 85:208–09.) It also had support in the testimony of Hoernke, whom Lisa disclosed the assault to that day, (R. 86:10–12), and Dohmeier, who testified that Lisa reported details of the assault the next day that were consistent with her trial testimony. (R. 86:26–28.)

In contrast, Mulhern's version of events was less compelling. He explained that he arrived at Lisa's house shortly after midnight, though he claimed it was at her invitation. (R. 86:90.) He also initially denied having asked Lisa for her help in working through some struggles, but he agreed, when confronted with screen shots of his text messages, that he asked Lisa to invite him over and that he told her that he needed to talk and was about to have a "nervous breakdown." (R. 86:105–06.) He also denied recalling any discussion about his sleeping on the futon, (R. 86:90–91, 117), until he reviewed texts messages and agreed that there was such a discussion. (R. 86:118.) He further described, in general terms, an encounter with Lisa that was wholly consensual just until the point of intercourse, at which point he said that Lisa suddenly and emphatically objected. (R. 86:98–101.) In light of Mulhern's internally inconsistent

testimony, Lisa's statement that she had not had sex the week before the assault did not affect the verdict.

Further, the second factor—the importance of the erroneously introduced evidence—was low. The prosecutor introduced that statement to provide context for the foreign male DNA found on the swabs from Lisa's vagina and to bolster its case. (R. 86:141, 154–55.) Yet the prosecutor's inviting the jury to draw the inference that the DNA detected had to have been Mulhern's cannot have affected the verdict under the circumstances. To convict Mulhern, the jury did not have to believe that the foreign male DNA in Lisa's vagina was Mulhern's. Just as the State was not required to prove the presence of semen, it was not required to prove the presence of DNA.

Moreover, Lisa's statement that she did not have sex in the week before the assault was just that: a statement that the jury was entitled to believe or reject. Whether she had sex the week before the assault was not directly pertinent to whether she or Mulhern more credibly described what happened on November 22. Put differently, even if the jury was inclined to believe Mulhern and disbelieve Lisa, Lisa's statement about her lack of sex the week before would have made no difference. Nothing about her saying that she didn't have sex the week before the assault would have caused the jury to go from believing Mulhern's account that no intercourse occurred to believing Lisa's account that there was forcible intercourse.

And as for the first factor, like the minimal importance of the statement, the frequency of the error was also low. The testimony was one answer to one question during trial. (R. 86:51–52.) To be sure, the prosecutor in closing and rebuttal highlighted his hypothesis that the foreign male DNA had to have been Mulhern's based on Lisa's lack of sexual activity the week before the assault. (R. 86:141, 154–55.) But under the totality of the evidence, the value of that hypothesis to the

State's case was neutral at best. The State neither needed to prove that the foreign DNA was Mulhern's nor disprove that it was someone else's to establish that Mulhern sexually assaulted Lisa on November 22. To that end, nothing about Lisa's statement prevented Mulhern from arguing that the unidentifiable amount of DNA detected was inconsistent with Lisa's claim that he forced intercourse with her for three to five minutes. Indeed, counsel made that exact point in his closing statement. (R. 86:150–51.)

Finally, Wisconsin courts have reasoned that a complainant's evidence of lack of sexual conduct or activity is inadmissible under the rape shield statute because it "is generally prejudicial and bears no logical correlation to the complainant's credibility." *Gavigan*, 111 Wis. 2d at 156. That rationale, however, evolved out of cases where the evidence in question was a statement that the complainant was a virgin. *See, e.g., Bell*, 380 Wis. 2d 616, ¶ 63; *Mitchell*, 144 Wis. 2d at 608; *State v. Penigar*, 139 Wis. 2d 569, 583, 408 N.W.2d 28 (1987); *Gavigan*, 111 Wis. 2d at 160–61.

Yet evidence that a complainant was a virgin before an alleged sexual assault is "generally prejudicial" because it implies that the sexual assault was more reprehensible because it was the victim's first sexual experience. Further, the rationale hearkens to concerns that the parties will attempt to use the evidence to suggest that a "virtuous complainant" is less likely to consent or more likely to be credible. *See Penigar*, 139 Wis. 2d at 585. And despite the general notion that virginity testimony is "generally prejudicial," courts have found harmless error and lack of prejudice in cases where such evidence was admitted in violation of the rape shield statute. *See, e.g., Bell*, 380 Wis. 2d 616, ¶¶ 68–69; *Mitchell*, 144 Wis. 2d at 620 (error harmless where consent was not at issue, victim was 11, and jury was not likely to give her testimony more credence because she was a virgin). The only contrary example the State has

identified involved distinguishable circumstances from this case: virginity testimony later revealed to be false and where consent was determinative was not harmless. *See Penigar*, 139 Wis. 2d at 586.

Here, Lisa did not testify that she was a virgin; rather, she simply reported that she had no sex the week before the assault. Her statement implicates none of the concerns identified in the line of cases involving virginity testimony. Rather, the State elicited the statement to support its theory on the DNA found in her vagina; it did not advance it to cast Lisa as a virtuous complainant or propose that she was less likely to lie because she'd not had sex the week before the assault. For those reasons, the evidence was not prejudicial to Mulhern and any error in its admission was harmless.

D. Mulhern's arguments to the contrary are unsupported.

Mulhern suggests that the error was not harmless because the State's case was weak due to failures by police to collect Lisa's bedding or clothing for DNA testing. (Mulhern's Br. 6.) He writes that his "DNA was not found in [Lisa's] vagina, leaving the most logical source another individual," and suggests that without Lisa's statement, the jury would have acquitted Mulhern. (Mulhern's Br. 6.)

All of those points might be relevant if identity was an issue at trial. It wasn't. In fact, Mulhern admitted that he was the person at Lisa's home on November 22, 2016, and testing identified his DNA on saliva on Lisa's neck. So, whether Mulhern deposited more DNA on the bedding or Lisa's clothing would not have done anything to prove whether Mulhern forced intercourse with Lisa without her consent. As for his claim that "another individual" was the most logical source of the DNA, nothing about Lisa's testimony stopped him from arguing that the jury could doubt her testimony, from arguing that Lisa could have obtained (or inadvertently

self-placed) that DNA after Mulhern left, or, from arguing, as he did, that the unidentifiable DNA found was inconsistent with the forcible intercourse she described.

And Mulhern, in suggesting that the State's case was weak, entirely ignores the testimony of the sexual assault nurse, who described the injuries and abrasions to Lisa's vagina that she saw on November 22, testified to the injuries and tenderness that Lisa experienced in other parts of her body, and stated that Lisa's injuries and reported tenderness were consistent with what Lisa had reported to have happened. (R. 85:208–09.) Regardless of Lisa's testimony regarding her lack of sexual contact before her encounter with Mulhern, Mulhern had no explanation for an alternative source for those injuries or theory why Lisa had them within 12 hours of his encounter with her.

Accordingly, this Court should affirm on harmless-error grounds.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 16th day of January 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 4,445 words.

Dated this 16th day of January 2020.

SARAH L. BURGUNDY
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 16th day of January 2020.

SARAH L. BURGUNDY
Assistant Attorney General