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STATE OF WISCONSIN

COURT OF APPEALS – DISTRICT III

Case No. 2019AP2024 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DOUGLAS J. RICHER,

Defendant-Appellant.

Appeal of a judgment and an order
entered in the Eau Claire County Circuit Court,
the Honorable Shaughnessy P. Murphy and
Sarah Mae Harless, presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

Douglas Richer entered a plea pursuant to a plea bargain, and the circuit court accepted it. Did the circuit court violate Richer's right not to be subjected to double jeopardy when it later vacated the plea during Richer's sentencing colloquy?

The circuit court held that it did not. Because this conclusion is contrary to *State v. Comstock*, 168 Wis. 2d 915, 485 N.W.2d 354 (1992), and related authority, this Court should reverse.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Richer does not request oral argument, though he would welcome it if the Court were to deem it helpful. Publication is not warranted as the controlling law is clear.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

In this Eau Claire County case, the state charged Douglas Richer with one count of possessing more than 50 grams of methamphetamine with intent to deliver (a Class C felony) and one count of maintaining a drug house (a Class I felony). Each was charged with both the second-and-subsequent and felony repeaters. (6). Richer's wife was also charged with the same counts in Eau Claire County Case No. 2016CF878, minus the repeater enhancers.

In a related case in Dunn County, Richer was charged with possessing between three and 10 grams of methamphetamine, a Class E felony, with second and subsequent and felony repeaters. *See* Dunn Co. Case No. 2016CF230.

In the Dunn County case, Richer's first counsel, Francis Rivard, withdrew. (52:2). Successor counsel, Christopher Bub, eventually filed a suppression motion that was heard and denied. He also filed a motion to compel discovery, which asserted that the prosecutor had told him he was intentionally delaying turning items over. (53). Both motions bore on the legality of the traffic stop that led to Richer's arrest and the discovery that he had methamphetamine; these facts, in turn, formed the basis for the search warrant leading to the charges in this case. (53; 1:2-3).

Eventually, Richer and the state reached an agreement by which he would plead to Count One in this case. The remaining charges—both in this case and in the Dunn County case—were to be dismissed and read in. The parties agreed to jointly recommend six years of initial confinement and 10 years of extended supervision, consecutive to a revocation sentence Richer was serving. The charges against his wife were also to be dismissed with prejudice. (61:2-3; App. 102-03). The parties agreed not to request a presentence investigation and to ask the court to proceed immediately to sentencing. (61:3; App. 103).

The court conducted a colloquy with Richer. It informed him of the maximum penalties and that it was not bound by the parties' sentencing recommendation, and inquired as to his education, mental state and comprehension. (61:4-6; App. 104-06).

When the court began to inquire about the elements of the offense, Richer expressed some concern about the idea that the large amount of methamphetamine found in his home could lead to the conclusion that he intended to sell it. He discussed it with his counsel and confirmed that he understood the elements. (61:6-8; App. 106-08). The prosecutor and the court later also clarified to Richer that there was no legal presumption that the weight proved intent to deliver, but that the weight could be evidence of such intent. (61:16-17; App. 116-17). The court then recited the elements and Richer reconfirmed that he understood them, and that the state would have to prove them beyond a reasonable doubt at a trial. (61:8-9,11; App. 108-09, 111). Richer also admitted the prior offenses underlying the repeater enhancers. (61:15; App. 115).

The court confirmed with Richer that other than the inducements in the plea agreement, no one had threatened or promised him anything in connection with the plea. It discussed the immigration, firearms, and civil rights consequences of conviction. (61:10; App. 110). It also went over each constitutional right Richer was giving up, and Richer

confirmed that he understood. (61:12-14; App. 112-14).

Richer pleaded no contest. (61:16,17; App. 116-17). The court accepted the plea:

> The court will accept your no contest plea and find you guilty, and I'll find that your plea is freely, voluntarily, and intelligently made with a full understanding of the nature of the charges, the maximum penalties, and the rights you're giving up here today by entering into this plea, and the court will again accept your plea and find that there's a factual basis for the plea.

(61:17; App. 117).

The court then moved on to sentencing. (61:17; App. 117). The state gave its recommendation, emphasizing that it was a joint recommendation and explaining why it was appropriate. (61:18-21; App. 118-21). At the end of his comments, the prosecutor said that he did "not want Richer to enter his plea if he's not comfortable with this agreement." (61:21; App. 121). The court then invited Richer's counsel to make his sentencing argument, which he did. (61:21-24; App. 121-24).

The court next invited Richer to give allocution. (61:24; App. 124). Richer began by saying "I don't want to say anything that's going to – that's going to jeopardize the court trying to withdraw – not accept my plea. I want to make that real clear." (61:24; App. 124). He went on to fault his wife's lawyer for failing to file a discovery motion in her case, and noted that the state's agreement not to prosecute her

was a major factor in his decision to plead. (61:24-25; App. 124-25). He asserted that the drugs found in his residence had been placed there by dealers who had lived there for a time and had since been charged with possessing large quantities of methamphetamine, though he did not deny knowing the drugs were there. (61:25; App. 125). He complained about his first lawyer in the case failing to meet with him, and said (accurately) that his second attorney had submitted a motion in Dunn County alleging the prosecutor had admitted not turning over evidence. (61:25-26; App. 125-26).

At this point the court broke in, saying it wanted to "ask Richer a couple of questions." (61:26; App. 126). It went over the elements of the offense with him again, and Richer confirmed that he understood them, and that he believed the state could prove each of them beyond a reasonable doubt. (61:27-28; App. 127-28). Richer then continued his statement, asserting that he had wanted to further litigate the Dunn County discovery issue, but had been told that the plea offer would be withdrawn if he did so. (61:29; App. 129).

The prosecutor then spoke, and the hearing came to the following end:

> MR. RINDAL: Judge, at this point, I don't believe that we can have this plea go through today. He's alleging *Brady* violations --
>
> THE DEFENDANT: No.

MR. RINDAL: – ineffective assistance of counsel, he's alleging that the DA's office is suppressing evidence. Those are major, major allegations and certainly deserve to be heard in court in an appropriate and highly factually supported way.

THE DEFENDANT: Your Honor –

MR. BETTHAUSER: Let me talk. Judge, if I may. Mr. Richer started off his statement saying that he knew that he was going to be saying some things that were – perhaps would lead the court to believe that he didn't want to, but he absolutely wants the court to accept this plea today. Your Honor, as he stated, he gave up these motions that were filed in Dunn County in order to take this deal. He did that so he could protect his wife. The court now – and, certainly, the court has a lot of discretion, especially when we get to this point – but has accepted Mr. Richer's plea and we're at sentencing, and he is simply and perhaps going a little bit too far, especially given the court's hesitance at this second, but trying to explain the reasons why he took the plea. I don't believe that he's treading in the area that, even if these issues existed, it often happens in criminal cases where defendants choose not to pursue certain arguments and take a deal instead. That is exactly what has happened here. He has stated that he – on the record that he has not been threatened or coerced or done anything into accepting this offer and to recommending it to the court and to making this plea. If Mr. Richer would like to continue his statements, then certainly he has that right of allocution. But despite the State's comments and – and I know that the court has some hesitance here, I would like the court to continue on this sentencing hearing.

THE DEFENDANT: Your Honor --

MR. BETTHAUSER: Let him talk first.

THE COURT: While we engaged in the colloquy, I wasn't confident initially that Mr. Richer wanted to take this plea. We went over each element thoroughly, we went over each constitutional right thoroughly, and each response to the question was either cute or tried to be nuanced, and that's why I went over it multiple times and until the point where I was satisfied. Mr. Richer, in his right of allocution, is making it abundantly clear to me that he doesn't think that – he doesn't think that the facts of this case that have been stipulated to support his plea.

THE DEFENDANT: No, that's not true, sir. And that's not my intention.

MR. BETTHAUSER: Let him talk.

THE COURT: And I – I am very concerned. I've tried to rehabilitate you in this portion by going through the elements again –

THE DEFENDANT: I understand that.

THE COURT: – and I thought that was a good enough warning, but you actually took it further; and so at this point, I'm not willing and ready or able to move to sentencing and I will not accept the plea. I will withdraw your plea on your behalf and ask that this matter be set for the appropriate hearing at the appropriate time, but right now is not the time to have that debate. Mr. Rindal is correct. These are grave, grave, grave allegations that have been leveled on the court. And, Richer, you have the right to have those heard, and the – and the time to have those heard isn't just, as you alluded to, on appeal. You didn't say the words appeal, but you alluded to it. And you have the right to appeal, but you don't

> have that right until a sentence is given, and I don't – I don't think it's appropriate to enter into this phase knowing that there's going to be the appeal phase, whether or not that phase is going to come no matter what. The purpose of – at a sentencing hearing of this gravity is to make sure that you are clear-minded and entering into what you know you're entering into, and I am not convinced that you are, so I will ask that Mr. Rindal and Mr. Betthauser schedule time, probably a couple of hours, a couple of different days, probably, for these hearings, and this matter is adjourned.
>
> THE DEFENDANT: Your Honor, can I make a comment?
>
> THE COURT: No.

(61:29-32; App. 129-32).

Richer's counsel did later file a motion to suppress related to the Dunn County traffic stop, but that was withdrawn when Richer and the state reached a second plea agreement. (67:7-9). The terms of this one were substantially less favorable to Richer. Principally, the state was no longer willing to agree to a joint recommendation of six years of confinement and 10 of supervision (it would ultimately recommend 15 years of confinement and 15 years of supervision). (67:8; 69:6). Also, though the state still agreed to dismiss charges against Richer's wife, this dismissal was now without prejudice. (69:9).

Before Richer entered his new plea, though, his counsel filed a motion asking the court to reconsider

its decision to vacate the old one. It noted that the court had accepted Richer's plea, and had interrupted his sentencing allocution; it alleged that had that allocution been completed, it would have been clear that Richer's plea was voluntary. It went on to assert that "Richer has had his disagreements with certain things on this case, but he was 100% in agreement with voluntarily waiving his constitutional rights and entering his plea, which was the result of a negotiated agreement." (25). The motion therefore requested that the court reinstate the plea and the plea bargain that had already been entered. (25:1)

Richer's counsel asked the court to take up the motion at the beginning of what would become the second plea hearing. (67:3; App. 136). The state opposed the motion. (67:4; App. 137). Richer's counsel noted that the court had accepted the plea at the original hearing and noted that Richer had expressly stated that he wanted the court to accept it. (67:6; App. 139). The court reiterated its concerns from the previous hearing—that "I was getting the feeling that [Richer] didn't believe in the words he was saying"—and denied the motion to reconsider. (67:6-7; App. 139-40). The court then took Richer's plea under the new bargain. (67:10-21). At the subsequent sentencing hearing, the court imposed a 30-year sentence, consisting of 15 years of confinement and 15 years of supervision. (69:47-48).

Richer filed a postconviction motion, which again sought reinstatement of, and sentencing upon, the original plea agreement. (52). The motion

asserted that the circuit court's decision to vacate Richer's plea over Richer's objection violated his right not to be subjected to double jeopardy. It further submitted that Richer's second plea did not waive this claim, and that if it *did* waive the claim, his trial counsel was ineffective for failing to assert it. (52:1-2). After additional briefing, the court held an evidentiary hearing. (54; 55; 72; App. 141-158).

At the hearing, Richer's trial counsel testified about the motion he'd filed to reinstate the original plea. He said that he'd argued that Richer's plea was, despite the court's impression at the sentencing hearing, voluntary. (72:7-8; App. 147-48). Asked whether he had raised a double-jeopardy claim or cited *State v. Comstock*, 168 Wis. 2d 915, 485 N.W.2d 354 (1992), counsel responded that he "did not do sufficient research" to learn that it was relevant and that he was not aware of the case at the time. (72:7-8; App. 147-48).

The court denied the motion at the end of the hearing. The judge noted that she was not the same judge who had taken the plea. (72:15; App. 155). She alluded to the difficulties in taking that plea reflected in the transcript, and continued:

> When I looked to what the court specifically said on page 31, looking at the court's language, very clearly the judge says, I wasn't confident initially that Mr. Richer wanted to take this plea, and goes on to lay out some of his feelings about that. And then says, Mr. Richer, in his right of allocution, is making it abundantly clear to me that he doesn't think -- he doesn't

> think that the facts of this case that have been stipulated to support his plea. And that's fairly important, because what we know from *Johnson v. State*, though it is a pre-plea case, is that a judge must reject a plea if a defendant denies one of the elements of the crime. And what all judges know is that it's important as you're going through the plea colloquy that you make sure that the defendant's entering the plea knowingly, voluntarily, and intelligently. In this case, it's pretty clear, looking at the statements and reviewing the transcript, that the judge did not feel that that's what happened in this case, that if these statements that Mr. Richer made, if he had made those before the judge accepted the plea, then he wouldn't have accepted it. But what was said went right to the heart of the case. And I think it's also fairly clear that Mr. Richer knew that would be the case because he chose to begin his right of allocution by saying, I don't want to say anything that's going to make you reject the plea, which shows some knowledge of just how serious these statements were, and he chose not to present that initially as going through -- when going through the plea colloquy with the judge but later after it was accepted, and it looks like the court did what the court believed was the only right thing to do in this case, which was to withdraw the plea. So I find under the facts of this case that the court found that the defendant withheld material information which would have induced the court not to accept the plea, so for that reason, the motion is denied.

(72:15-17; App. 155-57). The court later entered a written order, and Richer appealed. (57; 58).

ARGUMENT

I. The circuit court violated Richer's right to be free from double jeopardy when it *sua sponte* vacated his already-accepted plea

A. Jeopardy attaches when a court accepts a guilty plea, such that a court generally may not vacate an accepted plea.

Both the state and federal Constitutions guarantee the right not to be twice put in jeopardy for the same offense. U.S. Const. amend. V; Wis. Const. art. I § 8. Among the protections encompassed by this right is protection "against a second prosecution for the same offense after conviction." *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969).

In *State v. Comstock*, our supreme court held that a "conviction" for these purposes occurs when a court accepts a guilty plea. 168 Wis. 2d at 938-39; *see also Hawkins v. State*, 30 Wis. 2d 264, 267, 140 N.W.2d 226 (1966) ("The general rule, adhered to by this court, is that jeopardy attaches the moment a plea of guilty is accepted by the court."); *State v. Petty*, 201 Wis. 2d 337, 362, 548 N.W.2d 817 (1996) ("Where there is no trial, jeopardy attaches upon the court's acceptance of a guilty or no contest plea."). The *Comstock* court noted that *before* accepting a plea, a circuit court may "ask sufficient questions … to satisfy itself of the wisdom of accepting the plea." 168 Wis. 2d at 946. (It's well settled that a circuit

court has the discretion to reject a proposed plea bargain. *See State v. Roubik*, 137 Wis. 2d 301, 305, 404 N.W.2d 105 (Ct. App. 1987)). But, once a court has *accepted* a plea, it generally lacks the power to undo that acceptance, both as a matter of double jeopardy rights and by exercise of the supreme court's superintending authority over the lower courts. *Comstock*, 168 Wis. 2d at 946-47, 953. The timing of such a vacatur is "legally irrelevant"—it is unlawful whether it takes place "minutes, hours, or days" after the acceptance of a plea. *State v. Terrill*, 2001 WI App 70, ¶24, 242 Wis. 2d 415, 625 N.W.2d 353. The remedy for a trial court's improper vacatur of a plea is the reinstatement of the original pleas and dismissals, and a sentencing on the original bargain. *Comstock*, 168 Wis. 2d at 947, 953.

Here, the circuit court clearly accepted Richer's plea, saying

> The court will accept your no contest plea and find you guilty, and I'll find that your plea is freely, voluntarily, and intelligently made with a full understanding of the nature of the charges, the maximum penalties, and the rights you're giving up here today by entering into this plea, and the court will again accept your plea and find that there's a factual basis for the plea.

(61:17; App. 117). Under *Comstock* and related cases, jeopardy attached, and the circuit court violated Richer's constitutional right when it later vacated the plea.

B. The *Comstock* exception for fraud or intentional withholding of material information does not apply here.

At the postconviction hearing, the circuit court acknowledged the rule of *Comstock* but concluded that this case falls within an exception noted in that case: a court may *sua sponte* vacate a plea if it "finds that there was fraud in procuring the plea or that a party intentionally withheld from the circuit court material information which would have induced the circuit court not to accept the plea." *Id.* at 953.

Specifically, the circuit court said that Mr. Richer, during sentencing, made it "abundantly clear" that he didn't "think that the facts of this case that have been stipulated to support his plea." (72:16; App. 156). The court referred to *Johnson v. State*, in which the supreme court held that a court must reject a plea where a defendant denies an element *before* a plea's acceptance. 53 Wis. 2d 787, 790, 193 N.W.2d 659 (1972). It observed that Richer had begun his remarks by saying he didn't want them to cause the court to undo the plea, suggesting he knew that they might. (72:17; App. 157). Thus, the court concluded that Richer had intentionally "withheld material information which would have induced the court not to accept the plea": that is, his denial of an element of the crime. (72:16-17; App. 156-57).

The circuit court apparently referred to this passage of Richer's sentencing allocution:

> I sat eight months in jail, and three -- three of that was in a -- in a treatment program; and during that period, there was two people living in our home, these two people are now in custody charged with possession of similar amounts, same people were living at our residence. A search warrant was done at our house and drugs were found. I shared this information with my -- with my lawyers. I offered to take -- I begged to take -- take lie detector tests telling where the drugs came from that they found at our residence. I was told that, you know, it's not admissible, you know, everything else, well, it's up to the court to decide whether the new science – 'cause that -- that case law is 30 years old. You know, I mean, it was so frustrating for me.

(61:25; App. 125).

It appears the postconviction court viewed these statements as a denial either that Richer possessed the drugs in his home, or that he intended to distribute them. The court's conclusion that these statements were "material information" Richer "intentionally withheld" which "would have induced the court not to accept the plea" is wrong, for three reasons.

First, Richer neither denied possessing the drugs nor an intent to distribute them. "Possession" of a controlled substance does not require the actual physical touching or manipulation of the drugs: it is also present where the drugs are "in an area over which the person has control and the person intends to exercise control over" them. WIS JI—CRIMINAL 6030 (2012). This is true whether or not the person "owns" the drugs. *Id.* Richer's claim about how the

drugs came to be in his house is not a denial that he knew they were there, intended to exercise control over them, or intended to distribute them.

Second, the postconviction court was wrong as a factual matter about the effect of Richer's statements. After Richer made these claims, the circuit court expressed concern, but it in fact continued with the sentencing. It did so only after clarifying with Richer that he understood the elements and that he believed the state could prove them each beyond a reasonable doubt. (61:26-28; App. 126-28). As his trial counsel noted, Richer was pleading no contest—a plea that does not require the defendant to agree that he is guilty, only that the state could prove its case. It was only later, when Richer began to describe his predecessor counsel's failings and his (not unfounded) belief that the Dunn County prosecutor was withholding evidence—claims he made clear he understood he was giving up by pleading—that the court vacated Richer's plea.

Third, even if Richer *had* denied an element, and this denial *had* caused the court to vacate the plea it had already accepted, this vacatur would still be error. In *State v. Rushing*, 2007 WI App 227, ¶2, 305 Wis. 2d 739, 740 N.W.2d 894, a defendant entered a plea to a sexual assault of his grandson. The plea colloquy in that case was perhaps even more difficult than the one here. *Id.*, ¶¶2-5. Rushing, like Richer, was equivocal about having committed the offense; nevertheless, after assuring itself that he understood the elements and wished to plead, the

court accepted the plea. *Id.*, ¶5. On the scheduled date of sentencing, though, the court noted that Rushing had denied to the PSI writer that he was guilty. *Id.*, ¶6. So, without objection, it vacated the plea. *Id.*

The state later informed the court it had erred, and Rushing agreed. *Id.*, ¶7. The court reconsidered its *sua sponte* vacatur and reinstated the plea; it later also denied Rushing's pre-sentencing motion for plea withdrawal. *Id.*, ¶¶7-8.

On appeal, Rushing argued that the court had properly vacated his plea. This Court disagreed. Noting *Comstock*, it said circuit courts "may not, absent circumstances not present here, *sua sponte* vacate guilty pleas validly accepted." *Id.*, ¶12. Thus, the circuit court had erred in vacating Rushing's plea simply because he later denied he was guilty. *Id.* This Court also rejected Rushing's claim that the plea colloquy was insufficient, saying he

> ignores the circuit court's rationale for *sua sponte* vacating his guilty plea-it did not vacate the plea because it saw any flaw in its careful, patient, and solicitous plea hearing colloquy, but, rather, because Rushing told the presentence investigator that he was innocent. A claim of innocence, of course, is not sufficient as a stand-alone reason to permit a plea withdrawal even before sentencing.

Id., ¶12.

The same is true here. Richer's claims about the origin of the drugs—even if taken a claim of

innocence—wouldn't permit him to withdraw his own plea. It would be quite strange and unjust if it did permit the court to "withdraw" it for him, over his clear and consistent objection.

The same is true of Richer's complaints about the withholding of material in Dunn County and the failings of his previous counsel and counsel for his wife. The prisons of this state are filled with men and women who believe their convictions were obtained in violation of the Constitution. This subjective belief doesn't allow them to undo their pleas. Still less does it permit the state, or the court, to vacate their convictions and subject them to additional prosecution in violation of the Double Jeopardy Clause.

Richer's constitutional rights belong to *Richer*—they don't belong to, and can't be asserted by, the state or the court. It's up to a defendant to choose whether to litigate them, or whether instead to waive them by entering a plea. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. It's very clear from Richer's allocution that he had chosen the latter course—he knew he would lose the benefit of the state's offer if he continued to litigate about the events in Dunn County, and so he elected to take the offer and drop the litigation. (61:29; App. 129). Nothing about this decision rendered the plea infirm, or permitted the circuit court to vacate an already-accepted plea.

C. Richer's second plea did not waive his double-jeopardy claim.

Though Richer later entered a second plea—after the court refused to reinstate his original one—this second plea did not waive his double-jeopardy claim. While a guilty plea can waive a double-jeopardy violation under some circumstances, it does not do so where the claim can be assessed on the existing record *or* where the plea was the product of the ineffective assistance of counsel. *Kelty*, 294 Wis. 2d 62, ¶¶42-43. Both of these conditions are met here.

First, the facts supporting Richer's double-jeopardy claim are entirely contained within the record of this case—primarily, the transcripts of the two plea hearings. This is not a case like *Kelty*, where the existence of a double-jeopardy problem depended on the facts underlying the charged crimes themselves, so that the merits of the claim were "heavily enmeshed with disputed and uncertain facts." *Id.*, ¶42. Because Richer's claim "can be resolved on the record," *id.*, his second plea did not waive substantive review.

Second, and independently, Richer's second plea was only entered because the court denied his motion to reinstate the first one. That motion was filed by his then-counsel Charles Betthauser. It provided as grounds that the court had erroneously concluded that Richer was not entering a knowing, intelligent and voluntary plea. But there was another, stronger ground available—that, under

Comstock, the court simply lacked the power to vacate Richer's plea. Betthauser testified that he did not assert a double-jeopardy claim not because of any strategic calculation, but because he was unaware of *Comstock*. This constituted deficient performance. *See State v. Domke*, 2011 WI 95, ¶40, 337 Wis. 2d 268, 805 N.W.2d 364. As for prejudice, Richer must show that, if counsel had informed him of his double-jeopardy right, he would have asserted it (thereby reinstating the original plea). *See, e.g., Missouri v. Frye*, 566 U.S. 134, 148 (2012). Richer asserted this in his motion, and it's also more than clear from the record that he would have done so—he consistently sought to reinstate his plea, both at the original plea hearing and by trial counsel's subsequent motion.

So, both because Richer's double-jeopardy claim is presented in the record, and because his second plea was the product of ineffective assistance of counsel, that second plea did not waive his right to assert his claim under *Comstock*.

CONCLUSION

Because the circuit court erroneously vacated his plea over his objection, Douglas Richer respectfully requests that this Court vacate his sentence and remand with directions that the circuit court hold a new sentencing hearing under the terms of the original plea bargain.

Dated this 6th day of January, 2020.

Respectfully submitted,

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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,962 words.

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.

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 § 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.

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 6th day of January, 2020.

Signed:

ANDREW R. HINKEL
Assistant State Public Defender

A P P E N D I X

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