STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2019AP002150-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

VALIANT M. GREEN,

Defendant-Appellant.

On Appeal from a Judgment of Conviction
Entered in the Kenosha County Circuit Court,
the Honorable Bruce E. Schroeder, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

Mr. Green was arrested for operating while intoxicated and his blood was taken pursuant to a search warrant. Did the affidavit in support of that search warrant fail to state probable cause to believe that Mr. Green had committed a crime and thus require suppression of the blood test result?

The circuit court answered no.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument would be welcomed if it would be helpful to the Court. Publication is not warranted, as this case can be decided based on established legal principles.

STATEMENT OF THE CASE AND FACTS

On May 27, 2014, the State charged Valiant Green with operating a motor vehicle while intoxicated (OWI), as a fourth offense with a prior in the past five years, contrary to Wis. Stat. §§ 346.63(1)(a) and 346.65(2)(am)4m,[1] and resisting or obstructing an officer, contrary to Wis. Stat. § 946.41(1). (4:1-2).

[1] All statutory references will be to the 2013-2014 versions unless otherwise noted. Wis. Stat. § 346.65(2)(am)4m was repealed after Mr. Green's arrest in this case. *See* 2015 Wis. Act 371, § 6.

The complaint alleged that on May 25, 2014, Mr. Green was arrested for OWI at his home in the City of Kenosha. (4:2). Mr. Green's neighbor called the police to report that Mr. Green was intoxicated and driving his truck. (4:2). When the arresting officer arrived at Mr. Green's home, he observed Mr. Green seated in the driver's seat of his truck, which was located within his private driveway. (4:2). The officer saw that the truck was at the edge of the driveway and he believed that Mr. Green was waiting to drive onto the street. (4:2). The officer then observed Mr. Green reverse the truck further back into the driveway, pull forward again, and then reverse again without ever leaving the private driveway on his property. (4:2).

The officer exited his squad car and made contact with Mr. Green, who exhibited classic signs of alcohol intoxication. (4:2). The officer attempted to administer standardized field sobriety tests but Mr. Green would either not follow instructions or failed to understand them. (4:2). Mr. Green was then arrested and he refused to submit to a chemical test of his breath as requested by the officer. (4:2). Mr. Green had three prior OWI convictions and his most recent offense occurred in December of 2010. (4:3).

Police also received a statement from Mr. Green's neighbor indicating that before police arrived, she observed Mr. Green drinking beer and that he appeared to be intoxicated. (4:3). The neighbor further told police that she observed Mr. Green drive his truck from his driveway onto the public street before returning to his driveway again. (4:3).

After Mr. Green refused the breath test, police applied for a search warrant. (28:3). Attached to the application for the search warrant was a sworn affidavit from the arresting officer. (29; App. at 123-124). The affidavit generally stated the affiant's qualifications as a police officer. (29:1; App. at 123). With regard to probable cause that Mr. Green had committed a crime, the affidavit simply stated that on May 25, 2014 at 1:19 p.m., Mr. Green "drove or operated a motor vehicle at driveway of 3207 45 Street in Kenosha County Wisconsin." (29:1; App. at 123). 3207 45th Street in Kenosha was Mr. Green's home address at the time. (4:1).

The affidavit also stated that Mr. Green had been arrested for OWI as a second or subsequent offense, that his driving was observed by a police officer and by a citizen witness, that Mr. Green admitted to drinking at home, and listed a number of indicators of impairment that the arresting officer observed in Mr. Green. (29:1-2; App. at 123-124). After reviewing this affidavit, a circuit judge signed the search warrant authorizing the police to draw Mr. Green's blood. (28:3).

Police took Mr. Green to a hospital for the blood draw and during that time he tried to physically pull away from the officers and also tried to bite and kick them. (4:3). Mr. Green ultimately had to be handcuffed to the hospital bed. (4:3).[2]

[2] On February 17, 2015, a jury found Mr. Green guilty of both charges but he was granted a new trial by the circuit court on the OWI charge after filing a postconviction motion. (86:1).

On March 28, 2018, the State filed an amended information adding a charge of operating with a prohibited alcohol concentration, as a fourth offense with a prior in the past five years, contrary to Wis. Stat. §§ 346.63(1)(b) and 346.65(2)(am)4m.[3] (95:1-2).

On May 11, 2018, Mr. Green filed a pre-trial motion to suppress the blood evidence based on the fact that the affidavit supporting the search warrant failed to state probable cause that Mr. Green had committed a crime. (99). The motion argued that the affidavit in support of the search warrant failed to state probable cause that Mr. Green committed a crime because it only alleged that Mr. Green was driving or operating a motor vehicle in a private driveway. (99:3).

The circuit court held a hearing on Mr. Green's suppression motion on June 4, 2018. (161). No evidence was taken during the hearing but the parties made brief oral arguments. (161:3-6). The court, the Honorable Bruce E. Schroeder presiding, then denied Mr. Green's motion to suppress in an oral ruling. (161:22-23; App. at 121-122). While the court indicated that it thought Mr. Green was correct in his assertion that the affidavit in support of the search warrant was deficient for failing to state probable cause, it did not believe that suppression was the remedy. (161:6, 11-16; App. at 105, 110-115).

[3] On June 12, 2018, the State filed another amended information containing the exact same charges. The only difference between the two amended informations appears to be how Mr. Green's blood alcohol content is reported: as .214 in the March amended information and as 0.214g/100ml in the June amended information. (*See* 95:1-2 and 101:1-2).

The court noted that while the affidavit failed to state probable cause, the officer had probable cause based on facts not included in the affidavit. (161:7; App. at 106).

The court further stated that the exclusionary rule was only meant to deter police misconduct and in this case the officer "acted quite properly." (161:7-8; App. at 106-107). The court cited *Herring v. United States*, 555 U.S. 135 (2009), *Arizona v. Evans*, 514 U.S. 1 (1995), and *Hudson v. Michigan*, 547 U.S. 586 (2006) in support of its conclusion that the exclusionary rule was not appropriate in this case because there was no police misconduct to deter. (161:11-16; App. at 110-115). The court also seemed to suggest that the search for Mr. Green's blood would have been justified even without a search warrant. (161:18, 20-21; App. at 117, 119-120). The court briefly discussed exigent circumstances but cited none, other than the dissipation of alcohol from the blood over time. (161:18-19; App. at 117-118).

After the court denied Mr. Green's motion to suppress, this case again proceeded to jury trial. After a two-day trial, on October 9, 2018, the jury found Mr. Green guilty of both operating a motor vehicle while intoxicated and operating with a prohibited alcohol concentration as charged in the amended information. (165:113). The State moved to dismiss the OWI count and the court entered a judgment of conviction for operating with a prohibited alcohol concentration, as a fourth offense with a prior in the last five years. (165:116; 130:3; App. at 103). During the trial, the results of a chemical analysis of Mr. Green's blood, taken

pursuant to the search warrant, were admitted into evidence. (165:66-67).

On January 23, 2019, the court, the Honorable Bruce E. Schroeder presiding, sentenced Mr. Green to 2 years of initial confinement and 7 months of extended supervision for operating with a prohibited alcohol concentration. (166:4, 8).

Mr. Green now appeals.[4]

ARGUMENT

I. The affidavit in support of the search warrant did not state probable cause and as a result the blood evidence must be suppressed.

A. Legal principles and standard of review.

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect citizens against unreasonable searches and seizures. A warrant is generally required when police conduct an investigatory blood draw of a person suspected of OWI. *Missouri v. McNeely*, 569 U.S. 141, 148 (2013); *State v. Kennedy*, 2014 WI 132, ¶ 34, 359 Wis. 2d 454, 856 N.W.2d 834.

For a search warrant to be valid, a neutral and detached magistrate or judge must find probable cause to believe that evidence of a crime may be found in a specific location. *State v. Marquardt*, 2001 WI App 219, ¶ 10, 247 Wis. 2d 765, 635 N.W.2d 188.

[4] *See* Wis. Stat. § 971.31(10).

The existence of probable cause is judged upon examination of the totality of the circumstances and is a commonsense test. *Id.*, ¶ 11.

The United States Supreme Court has stated that:

> The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Illinois v. Gates, 462 U.S. 213, 238 (1983). Thus, in determining whether probable cause exists, a judge considers only those facts presented by police in the supporting affidavit, along with any reasonable inferences from those facts. *Marquardt*, 247 Wis. 2d 765, ¶ 12.

In reviewing the probable cause determination of the issuing court, this Court must ensure that there was a "substantial basis to conclude that probable cause existed." *Id.*, ¶ 13. This Court must view the record objectively and determine whether it "provided sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime…." *Id.* The issuing judge's decision is given "great deference" and will be upheld unless the defendant can show that the facts were "clearly insufficient" to support probable cause. *Id.* The reviewing court is "confined to the record that was before the warrant-issuing judge." *State v.*

Higginbotham, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991).

This Court reviews a circuit court's decision on a suppression motion using a two-step standard of review. *State v. Sloan*, 2007 WI App 146, ¶ 7, 303 Wis. 2d 438, 736 N.W.2d 189. First, the circuit court's findings of historical fact will be upheld unless clearly erroneous. *Id.* Second, this Court applies constitutional principles to those facts *de novo*. *Id.*

B. The affidavit in support of the search warrant did not state probable cause to believe that Mr. Green had committed a crime.

To violate Wisconsin's OWI or operating with a prohibited alcohol concentration laws, a person must drive or operate a motor vehicle while intoxicated or with a prohibited concentration of alcohol and the driving or operating must occur on a highway, or on a

> …premises held out to the public for use of their motor vehicles, [a] premises provided by employers to employees for the use of their motor vehicles, [or a] premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles.

Wis. Stat. § 346.61. Highway is defined as:

> [A]ll public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been

> opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in s. 115.01 (1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46).

Wis. Stat. § 340.01(22).

Finally, the test for whether a premise is held out to the public for use of their motor vehicles "is whether, on any given day, potentially any resident of the community with a driver's license and access to a motor vehicle could use the parking lot in an authorized manner." *City of La Crosse v. Richling*, 178 Wis. 2d 856, 860, 505 N.W.2d 448 (Ct. App. 1993).

Here, the affidavit in support of the search warrant was a standard form on which the officer wrote his specific observations in this case by hand. (*See* 29:1-2; App. at 123-124). The affidavit indicated that on May 25, 2014, at 1:19 p.m., Mr. Green drove or operated a motor vehicle at "driveway of 3207 45 Street in Kenosha County, Wisconsin." (29:1; App. at 123). Beyond this information, the affidavit stated Mr. Green was arrested for OWI as a second or subsequent offense, that the alleged driving or operating was observed by both a police officer and a citizen witness, that Mr. Green admitted to drinking at his house, and that a police officer observed that Mr. Green exhibited a number of indicators of intoxication. (29:1-2; App. at 123-124).

This information fails to establish probable cause that Mr. Green was committing a crime or that

his blood may contain evidence of a crime. The address listed in the affidavit, 3207 45 Street in Kenosha, Wisconsin, was Mr. Green's private residence at the time of the incident. (4:1; 165:29-31, 75; 80:23). The only location the affidavit indicates Mr. Green was driving or operating a motor vehicle was the driveway of that residence. (29:1; App. at 123). It is not a crime or violation of OWI laws to drive or operate a motor vehicle while intoxicated in a private driveway. Wis. Stat. § 346.61.

Typically, review of whether an affidavit in support of a search warrant states probable cause involves highly fact intensive cases where the probable cause determination is not so clear. For example, in *Sloan*, the defendant attempted to ship a box containing marijuana to himself at an address in Florida. *Id.*, ¶¶ 2-3. The return address on the package was the defendant's address in West Allis, Wisconsin. *Id.*, ¶ 2. After police were alerted and recovered the marijuana, they conducted an investigation and confirmed that the defendant was the sender of the package and that he lived at the return address. *Id.*, ¶ 5. Police used this information to apply for a search warrant for the defendant's West Allis home, which was granted and the subsequent search revealed evidence that the defendant was manufacturing marijuana there. *Id.*, ¶ 6.

On review, this Court concluded that while the affidavit established that the defendant had possessed marijuana at the shipping facility where he attempted to ship the marijuana,

> Nothing in the affidavit provides a reasonable factual basis upon which to conclude that a crime had been or likely would be committed at the [West Allis] residence, or that there was evidence of a crime at the residence.

Id., ¶¶ 32, 34. Thus, this Court concluded that the affidavit failed to state probable cause that evidence of a crime would be found at the West Allis residence and reversed the circuit court's decision to the contrary. *Id.*, ¶ 38.

Similarly, in *Marquardt*, this Court reversed the circuit court's determination that a search warrant affidavit stated probable cause to search the defendant's cabin. *Id.*, 247 Wis. 2d 765, ¶ 19. The affidavit in that case stated that the defendant's mother had been found dead at her home with a sheet covering her body, that she had been stabbed and shot, that there were footprints at the scene that may be suitable for comparison, that the victim's husband told police that he had not heard from their son, the defendant, since the killing, and that the defendant may be at his cabin. *Id.*, ¶¶ 14, 16. This Court concluded that these facts were insufficient to establish probable cause that the defendant was involved in the crime or that evidence of the crime would be found at his cabin. *Id.*, ¶ 19.

Thus, in *Sloan* and *Marquardt*, the probable cause analysis involved consideration of a number of facts and whether the sum of those facts were sufficient to "excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that they will be found in the place to be searched." *Id.*, ¶ 13.

In this case the probable cause analysis does not call for such a weighing of various facts. It only requires the application of the law to one simple fact: Mr. Green was driving or operating a motor vehicle while intoxicated in a private driveway. The law clearly states that this is not a crime. Therefore, the affidavit in support of the search warrant exhibits a complete absence of probable cause to believe that Mr. Green committed a crime.

C. The good faith exception does not apply because the affidavit is so lacking in indicia of probable case that it was unreasonable for the officer to rely on the search warrant.

In *United States v. Leon*, 468 U.S. 897, 913 (1984), the U.S. Supreme Court recognized an exception to the exclusionary rule in cases where the police reasonably rely on a search warrant issued by a detached and neutral magistrate. The basis for this exception was that, in the ordinary case, an officer could not be expected to question the judge's determination of probable cause. *Id.* at 921. The Court focused on the exclusionary rule's deterrent effect on the actions of police officers. *Id.* at 907-909. The Court concluded that in cases where the police reasonably relied on a warrant later determined to be invalid, there would be little deterrent effect if that evidence were suppressed as a result. *Id.* at 922.

The Court also stated, however, that "deference to the magistrate…is not boundless." *Id.* at 914. To that end, the Court articulated four circumstances under which the good faith exception does not apply:

> (1) The magistrate or judge issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;
>
> (2) The issuing judge wholly abandoned his judicial role;
>
> (3) The warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable;
>
> (4) The warrant is so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.

Id. at 923.

In *State v. Eason*, 2001 WI 98, ¶ 74, 245 Wis. 2d 206, 629 N.W.2d 625, the Wisconsin Supreme Court adopted the good faith exception to the exclusionary rule as articulated in *Leon*. The *Eason* Court also added two additional requirements that the State must prove before the exception would apply. *Id.* First, the application for the search warrant must have been the product of significant police investigation. *Id.* Second, the application for that warrant must have been reviewed by a knowledgeable government attorney or by a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion. *Id.*

Here, the good faith exception to the exclusionary rule does not apply because the affidavit

in support of the warrant was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923.

In *State v. Marquardt*, 2005 WI 157, ¶ 31, 286 Wis. 2d 204, 705 N.W.2d 878, the Wisconsin Supreme Court discussed the "indicia" requirement articulated in *Leon*, and noted that it is "grounded in Justice Byron White's concurrence in…*Gates*…, in which [he] explained that 'the good-faith exception would not apply if the material presented to the magistrate or judge is…so clearly lacking in probable cause that no well-trained officer could reasonably have thought that a warrant should issue.'"

Thus, the *Marquardt* Court concluded that "the exclusionary rule will apply when 'a reasonably well trained officer would have known that the search warrant was illegal despite the magistrate's authorization.'" *Id.*, ¶ 33 (quoting *Leon*, 468 U.S. at 922 n.23).

That principle is applicable here and leads to the conclusion that the good faith exception does not apply in this case. A reasonably well trained officer would have known that it was not a crime or violation of OWI laws to drive or operate a motor vehicle while intoxicated in a private driveway. Therefore, a reasonably well trained officer would have known that the warrant was illegal despite the fact that the judge authorized it.

The good faith exception would also be precluded in this case because it failed to meet the additional requirements required by *Eason*. In

particular, the application for the warrant was not reviewed by a knowledgeable government attorney or by a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion. In fact, there is no indication that this warrant was reviewed by anyone other than the officer who drafted it. It cannot be argued that he was a police officer trained and knowledge in the requirements of probable cause because anyone satisfying that standard surely would have known this warrant was insufficient.

Furthermore, in *State v. Tye*, 2001 WI 124, 248 Wis. 2d 530, 636 N.W.2d 473 the Wisconsin Supreme Court made it clear that when a circuit judge issues a warrant in the absence of one of the basic constitutional requirements, the good faith exception does not apply and the evidence must be excluded.

In *Tye*, a veteran police officer drafted an affidavit in support of a search warrant for the defendant's residence. *Id.*, ¶ 4. The affidavit was presented to an assistant district attorney, who approved it. *Id.* The officer submitted the affidavit to a circuit court judge, who reviewed it and issued the search warrant. *Id.*, ¶ 5. However, what none of these officials noticed was that the officer had failed to sign and swear to the truth of the affidavit. *Id.*

The circuit court ordered all evidence obtained as a result of the defective warrant suppressed even though it was undisputed that the unsworn affidavit stated probable cause to believe that the defendant had committed a crime and that evidence of that crime may be found in his residence. *Id.*, ¶¶ 2, 7.

The Wisconsin Supreme Court affirmed, concluding that the oath or affirmation requirement was not a technicality but rather a basic tenet of the Fourth Amendment and that the exclusionary rule applied because "it is plainly evident that a magistrate or judge had no business issuing a warrant." *Id.*, ¶¶ 19, 24 (quoted authority omitted).

Similarly, in this case it is plainly evident that the circuit court had no business issuing a warrant because the affidavit exhibited a complete absence of the basic constitutional requirement that it state probable cause. Therefore, the good faith exception to the exclusionary rule does not apply and the evidence in this case should be suppressed.

To be sure, the investigating officer in this case was aware of facts that established probable cause that Mr. Green had committed a crime and that evidence of that crime might be found in his blood. However, none of these facts were included in the affidavit in support of the search warrant and thus they cannot affect the analysis in this case. Just as in *Tye*, where it was undisputed that the affidavit stated probable cause, exclusion of the evidence is appropriate because the affidavit did not meet the preliminary constitutional requirement to state basic probable cause that a crime was committed.

D. The circuit court's conclusion that suppression is not the remedy in this case was wrong.

In its decision denying Mr. Green's motion to suppress, the circuit court indicated that it tended to agree with Mr. Green that the affidavit failed to state

probable cause. (161:6, 22; App. at 105, 121). However, the court denied the request to suppress the blood evidence because "the 'high obstacle' ordained by the Supreme Court as the threshold to be met before the suppression of evidence has not been surmounted." (161:23; App. at 122). In support of this conclusion, the court cited the U.S. Supreme Court's decisions in *Herring*, *Evans*, and *Hudson*. (161:11-16; App. at 110-115). The circuit court's conclusion as to suppression is wrong and its citation to those cases is misplaced.

In *Evans*, a police officer stopped the defendant and ran a record check of his name and discovered an arrest warrant. *Id.*, 514 U.S. at 4. The officer arrested him and discovered illegal drugs. *Id.* It was later learned that the arrest warrant had been quashed 17 days prior to the arrest but the court had failed to remove it from the system. *Id.* at 4-5. Relying on its decision in *Leon*, the Court concluded that the good faith exception applied to the illegal arrest because "there is no indication that the arresting officer was not acting objectively reasonably when he relied upon the police computer record." *Id.* at 15-16. Therefore, the exclusionary rule did not apply in that case.

The facts in *Herring* were very similar to those in *Evans*, except that in *Herring* the invalid warrant was mistakenly left in the system by law enforcement personnel, not an employee of the courts. *Herring*, 555 U.S. at 698. In concluding that suppression was not the remedy for the Fourth Amendment violation in that case, the Court again cited *Leon*'s holding that "when police act under a warrant that is invalid for lack of probable cause, the exclusionary rule does not apply if the police acted 'in objectively reasonable

reliance' on the subsequently invalidated warrant." *Id.* at 701 (quoting *Leon*, 468 U.S. at 922).

Finally, in *Hudson*, the U.S. Supreme Court concluded that suppression is not the remedy for violations of the knock and announce rule. *Id.*, 547 U.S. at 599.

None of these cases changed the good faith analysis the Court articulated in *Leon*: that an exception to the exclusionary rule applies only in cases where the officers acted in *reasonable* reliance on a warrant issued by a detached and neutral magistrate. Here, the circuit court did not consider *Leon* or address whether the officer's reliance on the search warrant was reasonable. However, a review of the record shows that the officer's reliance was not reasonable because a reasonably well trained officer would know that it is not a crime or otherwise a violation of OWI laws to drive or operate a motor vehicle while intoxicated in a private driveway.

In addition, the court also failed to address the additional requirements articulated in *Eason* for applying the good faith exception in Wisconsin. As noted above, because at least one of the *Eason* requirements is absent in this case, application of the good faith exception is precluded.

For all these reasons, the exclusionary rule is the appropriate remedy for the illegal search in this case.

CONCLUSION

The search warrant authorizing the blood draw from Mr. Green in this case was invalid because the affidavit in support of that warrant failed to state probable cause to believe that Mr. Green had committed a crime. Furthermore, the good faith exception to the exclusionary rule does not apply in this case because the officer could not reasonably rely on that warrant. This Court should reverse the circuit court's decision that the exclusionary rule does not apply in this case, vacate Mr. Green's conviction for operating with a prohibited alcohol concentration, and remand with instructions to suppress the results of the blood test.

Dated this 13th day of February, 2020.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

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 4,528 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 13th day of February, 2020.

Signed:

JAY PUCEK
Assistant State Public Defender

CERTIFICATION AS TO APPENDIX

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

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

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 13th day of February, 2020.

Signed:

JAY PUCEK
Assistant State Public Defender

APPENDIX

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