STATE OF WISCONSIN
IN SUPREME COURT

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs. Appeal No.: 20 AP 188-CR

WILLIAM LAWRENCE BONFIGLIO,

Defendant-Appellant-Petitioner

PETITION FOR REVIEW

Respectfully submitted,

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Defendant-Appellant-Petitioner

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PETITION FOR REVIEW

Petition for Supreme Court to review the decision of the Court of Appeals, District IV, in the case of *State of Wisconsin vs. William Lawrence Bonfiglio*, filed on October 22, 2020, in which the Court of Appeals affirmed the decision of the Circuit Court for Columbia County denying the defendant-appellant's suppression motion.

ISSUES PRESENTED FOR REVIEW

I. STATEMENT OF THE ISSUES

A. Whether *State v. Krause* applies to a determination of the reasonableness of force used to execute a warrant for a blood draw, regardless of the attainment of a warrant.

B. Whether *State v. LaCount* stands for the proposition that the burden is always on the defense to disprove reasonableness when the State has a warrant.

II. MANNER OF RAISING THESE ISSUES IN THE COURT OF APPEALS

This issue was raised in the Court of Appeals by direct appeal to that Court from a final order of the Circuit Court for Columbia County.

III. HOW THE COURT OF APPEALS DECIDED THESE ISSUES

Contrary to the assertion of the parties, the Court of Appeals held that the seminal case, *State v. Krause*, which outlines factors to be weighed when making a determination of reasonable force used against a citizen, did not control the analysis of the reasonableness of the force used to execute the blood draw against Bonfiglio.[1] Rather, the Court asserted that because the State had secured a warrant and the defense alleged that the State exceeded the scope of the warrant, by its use of unreasonable force, the burden lied with the defense to disprove reasonableness. The Court of Appeals further held that this Court pronounced that burden shift in *State v. LaCount*.[2] In *LaCount*, this Court reviewed a published Court of Appeals decision regarding multiple claims. This Court stated in *LaCount* that a petitioner who alleges that officers exceeded the scope of a

[1] *State v. Krause*, 168 Wis. 2d 578, 484 N.W.2d 347 (Ct. App. 1992).
[2] *State v. LaCount*, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780.

warrant when conducting a search must prove that officers executed an unreasonable search by exceeding the scope of the warrant, which in LaCount's case was based upon the premises of the search. Therefore, this Court's pronouncement of the burden in a disanalogous case where 'burden' was not a question before the court, was used by the Court of Appeals to state that the burden of disproving reasonableness of force used within the context of the execution of a warrant is always on the defense. Conclusively, the Court of Appeals found that despite it being clear that there were evidentiary gaps in the State's case to establish reasonableness, and further that its review of the record would lead it to conclude that the force used in this case was unreasonable, solely because the State had secured a warrant, seemingly in accordance with this Court's holding in *LaCount*, the burden was on the defense to disprove reasonableness and thus all evidentiary gaps were to be resolved against Bonfiglio.

CRITERIA FOR REVIEW

This Court should take this case for four main reasons. First, a real and significant question of both federal and state constitutional law is presented. Second, the decision by this Court will help develop, clarify and harmonize the law. The questions presented are novel, and their resolution will have statewide impact. Additionally, the questions presented are not factual in nature but are questions of law of the type likely to recur unless resolved by this Court. Finally, the Court of Appeals' decision is in conflict with controlling opinions of the United States Supreme Court, the Wisconsin Supreme Court, and the Wisconsin Court of Appeals.

This case involves the forcible withdrawal of blood in a second offense operating while under the influence case. Caselaw in both Wisconsin and the United States Supreme Court requires any such draw to be reasonable. For example: The United States Supreme Court has held "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard.[3]" However, in this case the Court of Appeals held that the burden is on the defendant to establish that the search was unreasonable. This is contrary to both Wisconsin and United States Supreme Court caselaw.

[3] *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).

STATEMENT OF THE CASE AND FACTS

This is an appeal from the trial court's denial of Mr. Bonfiglio's motion, in which he moved to suppress the results of an evidentiary chemical analysis of his blood after an arrest for operating while under the influence of an intoxicant.[4] The Court of Appeals, District IV affirmed the trial court's decision. This Petition is now requesting the Supreme Court accept this case for review.

On October 4, 2018, Mr. Bonfiglio was stopped for a speeding violation by former City of Columbus Officer Boschert.[5] During the course of their initial interaction, former Officer Boschert suspected Mr. Bonfiglio was intoxicated.[6] Former Officer Boschert noted that Mr. Bonfiglio was a slender, 68-year-old man with medical complications; subsequently, Boschert had Mr. Bonfiglio perform the standardized field sobriety tests ("SFST").[7] On the Horizontal Gaze Nystagmus ("HGN") test, former Officer Boschert noted multiple clues.[8] Due to his hip surgery, Mr. Bonfiglio could not perform the Walk and Turn test ("WAT"), nor could he perform the One-Legged Stand test ("OLS").[9] Based upon both Mr. Bonfiglio's performance, and despite the fact he was unable to complete the

[4] R.36 at 4.
[5] R.3 at 2.
[6] *Id.* at 2. During the course of the suppression hearing, it was revealed that Officer Boschert was no longer a police officer.
[7] *Id.*
[8] *Id.*
[9] *Id.*

entirely of the SFSTs, Officer Vogel (another officer on the scene) requested Mr. Bonfiglio perform a Preliminary Breath Test ("PBT").[10]

Following the PBT, Mr. Bonfiglio was arrested for operating while under the influence ("OWI").[11] During the arresting process, Mr. Bonfiglio stated that he could not breathe and was in need of his inhaler due to his asthma.[12] This asthma attack was severe enough to require Emergency Medical Services. Mr. Bonfiglio was in distress and severe discomfort for several minutes. Eventually, EMS arrived and were able to give Mr. Bonfiglio his inhaler.[13] However, as Mr. Bonfiglio was placed in the back seat of the squad car, he again complained of medical issues, such as not being able to breathe and epilepsy.[14] When the officers escorted Mr. Bonfiglio to Columbus Community Hospital for the blood draw, Mr. Bonfiglio could not walk and needed to be lifted out of the vehicle and placed in a chair to be wheeled in.[15] While at Columbus Community Hospital, a search warrant was requested and issued for the collection of a blood sample from Mr. Bonfiglio in connection with his arrest for operating a motor vehicle while intoxicated.[16]

When the nurse and officers identified from which arm his blood would be taken, Mr. Bonfiglio stated that they would have a hard time getting the blood from that arm/him.[17] Subsequently, without asking Mr. Bonfiglio for any further clarification of his

[10] *Id.*
[11] *Id.*
[12] R.36 at 7, 8.
[13] R.36 at 8.
[14] R.36 at 10, 11.
[15] R.36 at 20.
[16] R.36 at 20.
[17] R.36 at 23, 24.

statement, the officers placed Mr. Bonfiglio in a physically restraining hold.[18] He was held in this position for an unknown period of time, unable to move until it was understood that he would comply; two officers held each respective arm as a nurse stood by with a needle preparing to prick the very arm that he informed officers would be difficult from which to draw blood. Subsequently, the blood withdrawal was forcibly done.[19]

On December 5, 2018, the Columbia County District Attorney's Office charged Mr. Bonfiglio with operating a motor vehicle while under the influence of an intoxicant and operating with a prohibited alcohol concentration, both as second offenses.[20] Because the blood draw was conducted utilizing unreasonable force under the circumstances, Mr. Bonfiglio moved to suppress the result.[21]

On October 2, 2019, Mr. Bonfiglio filed a motion requesting that the blood analysis results be suppressed.[22] The State filed no response to the motion.[23] On November 22, 2019, the Honorable Troy D. Cross presided over an evidentiary hearing. The State only called former Officer Boschert to testify; Officer Vogel, who also used an "escort" hold on Bonfiglio contemporaneously with the former officer, was never called by the State.[24] At the hearing, former Officer Boschert testified that he is no longer an officer because he could not complete/pass his field training.[25] He was only an officer in training for

[18] *Id.*
[19] R.36 at 23.
[20] R.3 at 1.
[21] R.17 at 1-6.
[22] R.17.
[23] See R.36.
[24] See R.36; R.36 at 23, 24.
[25] R.36 at 15.

approximately five months.[26] Further, former Officer Boschert testified that during the arrest of Mr. Bonfiglio, he (Mr. Bonfiglio) complained of his inability to breathe and needed his inhaler due to his asthma.[27] Eventually EMS arrived and tended to Mr. Bonfiglio.[28] When Mr. Bonfiglio was placed in the back of the squad car his complications continued.[29] When officers arrived with Mr. Bonfiglio at Columbus Community Hospital, Mr. Bonfiglio needed to be lifted out of the vehicle and placed in a chair to be wheeled in.[30] While at Columbus Community Hospital, former Officer Boschert left Mr. Bonfiglio with Officer Vogel to obtain a warrant for the collection of a blood sample from Mr. Bonfiglio for an unknown period of time.[31]

Further, former Officer Boschert testified that during the periods when he was present Mr. Bonfiglio was sitting and at one point lying on the hospital bed.[32] Former Officer Boschert also testified that he was unaware and could not speak to anything that did or did not occur while he was outside of the room.[33] Again, the State failed to produce the other officer to establish what occurred when former trainee officer Boschert left. Accordingly, there is a large segment of time for which the State cannot account and for which there was no testimony to indicate Bonfiglio was released from Vogel's forcible escort hold. Former Officer Boschert testified that throughout his contact with Mr.

[26] *Id.*
[27] R.36 at 18, 19.
[28] *Id.*
[29] R.36 at 10, 11, 19.
[30] R.36 at 20.
[31] *Id.*
[32] R.36 at 21.
[33] R.36 at 20.

Bonfiglio, he was belligerent; however, the officer acknowledged that he was trained to place all pertinent facts in his report and that his report contained no information that indicated or established any such belligerence by Mr. Bonfiglio.[34] Thus, the alleged belligerence was something that was said for the first time over a year after this incident occurred.[35] Former Officer Boschert testified that after he returned into the room, when the nurse told Mr. Bonfiglio which arm would be used for the blood draw, Mr. Bonfiglio stated that they would have a hard time getting the blood from that arm/him.[36] Subsequently, without further questioning or clarification the officers placed Mr. Bonfiglio in a forcible escort hold, and the blood withdrawal was then forcibly done.[37]

At the hearing, the warrant for the blood draw was referred to and partially read into the record, which established that the blood draw could be conducted by utilizing reasonable means of force.[38] At the hearing it was also established that Mr. Bonfiglio was 68 years old and had notified the officers of breathing problems and other additional medical issues prior to the arrest.[39]

At the conclusion of the hearing, the defense moved the court to grant its motion based on the dearth of information adduced at the hearing to meet the State's burden to show that the force used was reasonable under the circumstances.[40] Nevertheless, the

[34] R.36 at 37-40.
[35] See *Id.*
[36] R.36 at 23.
[37] *Id.*
[38] R.36 at 32.
[39] R.36 at 19.
[40] R.36 at 30-34.

circuit court issued a decision stating that the defendant's motion to suppress was denied.[41] The court relied on a few factors in ruling in favor of the State: the fact that the State had a warrant, the fact that defense solicited no testimony or provided evidence of Mr. Bonfiglio's injuries, and the fact that the defense did not establish how long the hold restraining Mr. Bonfiglio for a forcible blood draw lasted.[42] Thus, the court essentially determined the burden was on the defense to show the force was unreasonable and not upon the State to show it was reasonable. The circuit court reasoned:

> And the testimony that the two officers at some point in the hospital, one on each side, grabbed one of Mr. Bonfiglio's arms and held him—We don't have any testimony on how long this hold was for, whether it was a mere 15 seconds, five seconds, three minutes. I don't know. But we don't have anything with that, nor is there anything to indicate it unreasonably or unduly caused Mr. Bonfiglio some type of injury.[43]

Therefore, the Court failed to make any findings of fact that justified this use of force.[44] The excerpt demonstrates that the court basically resolved all of the State's shortcomings in its proffering of testimony to the chagrin of Mr. Bonfiglio.[45]

The court did not take into account the established facts that Mr. Bonfiglio was a 68 year old man in poor health with medical conditions of which the police were aware.[46] The court also dismissed the fact that Mr. Bonfiglio was seen by EMS and then needed to be seen again at the hospital by medical professionals. Additionally, the State could not

[41] R.36 at 41.
[42] R.36 at 37-41.
[43] R.36 at 40.
[44] R.36 at 40, 41.
[45] See *Id.*
[46] *Id.*

establish that Mr. Bonfiglio was ever even medically cleared for release by hospital staff.[47] The court also dismissed the fact that former Officer Boschert lacked training, that he was not able to ever become a real officer, and that his report noted no belligerent conduct or physically resistant behavior from Mr. Bonfiglio. Finally, he could not speak to anything that did or did not occur in the room with Officer Vogel before the forcible blood draw was conducted.[48] Lastly, the circuit court ignored the facts that former Officer Boschert was an officer in training, who failed to complete his training and testified inconsistently with his report, which strongly tends to weigh against his reliability and credibility. This was the State's sole witness.[49] No reason was given by the prosecutor for why the other officer who used force and held Mr. Bonfiglio down for a blood draw was not subpoenaed.[50]

On December 4, 2019, Mr. Bonfiglio filed a Motion for Reconsideration outlining all the aforementioned evidence adduced at the previous Motion Hearing.[51] Specifically, eight points were articulated:

(1) Former officer Boschert admitted that Mr. Bonfiglio may have just been advising that it may be difficult to take blood from that particular arm when he provided his comment before the blood draw.[52]

a. It is the State's burden to show reasonableness under the circumstances, and the State proffered no evidence to establish that Mr. Bonfiglio's

[47] *Id.*
[48] *Id.*
[49] R.36 at 29.
[50] See R.36.
[51] See R.19.
[52] R.20 at 4.

statement could have or should have, under the circumstances, led to a reasonable belief that force was necessary.[53] Without clear evidence to the contrary, the interpretation of Mr. Bonfiglio's statement should have been resolved in his favor, given that the State bears the burden to prove otherwise.[54] The officer cannot just choose to use Mr. Bonfiglio's statement to mean he is resisting, and that force is necessitated without further inquiry into whether he was merely stating that blood would be tough to draw from him from that particular arm. A person with medical issues may have problems with blood draws being done without any blood being extracted.[55]

(2) The former officer Boschert testified he is no longer an officer because he could not complete/pass his field training.[56] He was only an officer for approximately five months. This has a direct bearing upon his conclusions, perceptions and actions taken on that day.[57] This officer should not be deemed to be sufficiently experienced to determine that force may be used to extract blood from an arrestee.[58]

a. Moreover, the other officer, Vogel, who was with Mr. Bonfiglio while this former officer was absent at the hospital, was never called to establish

[53] *Id.*
[54] *Id.*
[55] R.20 at 4.
[56] *Id.*
[57] *Id.*
[58] *Id.*

why he used force as well. The State failed to meet this burden with respect to this officer's use of force.[59]

(3) The uncontroverted testimony is that Mr. Bonfiglio's submission was predicated upon being forcibly placed in an escort hold by two officers.[60]

(4) No testimony was established to show that the duration of the hold was negligible or reasonable under the circumstances.[61] The Court opined quite the opposite when it stated that the defense failed to establish how long the escort hold lasted—despite the State bearing the burden to show reasonableness.[62] The Court basically intimated that because no evidence was shown to demonstrate that the escort hold lasted too long, then it must not have lasted too long.[63] Specifically, the court made no findings of fact as to the duration of the hold—whether it lasted too long or not or even whether Bonfiglio was injured as a result of the escort hold.[64]

(5) No testimony established that Mr. Bonfiglio was indeed medically cleared at the hospital. Boschert merely stated that he "believed" that Mr. Bonfiglio was medically cleared.[65]

[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] See *Id.*
[64] R.36 at 40, 4.
[65] R.20 at 4.

(6) No medical staff was presented at the hearing to establish that Bonfiglio was medically cleared.[66] Thus, the only evidence as to Mr. Bonfiglio's medical condition was provided by him to Boschert, and no medical personnel testified for the State to dispute his condition.[67]

(7) There was no testimony from the other officer, Vogel, with whom Mr. Bonfiglio was alone in the hospital, to establish that any force under the circumstances would be reasonable.[68]

(8) It was established that the former Officer's testimony contravened his report, which was written closer to the date and time of the incident, with regard to Mr. Bonfiglio's alleged 'belligerent' nature. Boschert admitted his report, which made no such mention of belligerent behavior, had the relevant information in it and was done when his memory was clearer about this event.[69] No other officer testified as to any belligerence. The State intimated that the video would establish belligerence but failed to put the video into evidence at the hearing.[70]

On December 5, 2019, again, the circuit denied the Motion for Reconsideration, restating its ruling from the previous hearing.[71] Specifically, the court stated:

> I've already made the ruling. We may differ on what happened or how it happened. But I did opine at the hearing that certain things weren't brought out to light that you were alleging. You

[66] *Id.*
[67] *Id.*
[68] See *Id.*
[69] *Id.*
[70] See *Id.*
[71] R.37 at 5.

> may not have the burden of proof. But if you're alleging them, I would submit you have the burden to show me where these occurred. And since you've not chosen to do that, I've chosen to believe that they did not occur.[72]

The court never specified what it felt the defense needed to "prove."[73] Subsequently, Mr. Bonfiglio entered a guilty plea to operating while under the influence of an intoxicant, second offense.[74] The court sentenced him the same day.

The Court of Appeals, District IV, in a decision issued on October 22, 2020, affirmed the trial court decision and further held as follows: With regard to suppression issues the State usually bears the burden of proof.[75] However, the Court of Appeals distinguished this case because Bonfiglio asserted that the officers exceeded the scope of the warrant and because the State had a warrant, the burden was no longer on the State to prove reasonableness. Due to this distinction the Court of Appeals asserted that this Supreme Court has seemingly determined under similar circumstances the burden of proof rested on the defendant.[76] Accordingly, the Court of Appeals determined that while the contentions raised by the defense were valid, the evidentiary gaps in testimony to prove reasonableness of the force used to attain consent for the blood draw should be resolved against Bonfiglio and not the State.

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[72] R. 37 at 4-5.
[73] See *Id.*
[74] R.37 at 9.
[75] *State v. Kieffer*, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998).
[76] *State v. LaCount*, 2008 WI 59, 310 Wis. 2d85, 750 N.W.2d 780.

In its decision the Court of Appeals further held that *Krause* did not control in this matter, when the parties and trial court all agreed it did.[77] In *Krause*, the defendant actively resisted the warrantless blood draw.[78] The Court of Appeals articulated a list of factors to determine whether the manner in which the blood was taken was reasonable.[79] These articulated factors were used by Bonfiglio and the State to argue whether the force used was reasonable. However, the Court of Appeals found that because the force used on Bonfiglio—restraining him—was used prior to the blood draw, the force was only to "demonstrate that they had physical control over and could take his blood by force if required.[80]" The Court highlights this sequence of events to determine that the force used on Bonfiglio was to compel compliance by a show of force rather than employing force to execute the blood draw. The Court of Appeals cites no authority for this distinction; the assertion that because the force used on Bonfiglio to compel acquiescence ceased right before the blood draw, then the blood draw is not done by force—seemingly due to a lack of contemporaneity. This directly contravenes the assertions of the State who acknowledged that the force used to execute the blood draw was, however, arguably reasonable. Therefore, the Court of Appeals decided this case in a way not contemplated or briefed by any party.

The Court reasoned that rather than the State, the burden was on the defense to show that the officers exceeded the scope of the warrant by using too much force. The

[77] *State v. Krause*, 168 Wis. 2d 578, 484 N.W.2d 347 (Ct. App. 1992).
[78] *Krause*, 168 Wis. 2d 578.
[79] *Id.* At 588-89.
[80] *State v. Bonfiglio*, 2020AP188-CR p7.

Court of Appeals did agree with the defense that the State did not show that the force used in the instant case was reasonable. Further, the Court agreed that the trial court's and State's assertions as to the reasonableness of the force used under a totality of circumstances were clearly in error. Moreover, the Court opines that there was insufficient evidence to find that the force used was reasonable and, therefore, seemingly beyond the scope of the warrant. However, it made a determination that the burden was upon the defense simply because there was a warrant. However, the fact that there is a warrant does not mean that the blood draw can be done in an unreasonable manner, and no case has held that unreasonableness must be proven by the defendant.[81] The exact opposite has been held both in the United States Supreme Court and in Wisconsin Courts.[82]

Thus, only this Court can now explain when *Krause* controls and whether it is ever the defense's burden to prove a forcible blood draw was reasonable as the Court of Appeals asserts this Court pronounced in *LaCount*. The mere fact that the blood was drawn pursuant to warrant makes no difference in the analysis because all forcible blood draws can only be done pursuant to warrant. Further, because the force ended right before the blood draw does not meaningfully distinguish it from *Krause*; that case never turned on contemporaneity. Therefore, this Court of Appeals decision has essentially held that

[81] *State v. Kozel*, 373 Wis.2d 1 (2017), A. Bradley, dissenting, citing *Schmerber v. California*, 384 U.S. 757 (1966). See also *Daggett*, 250 Wis.2d 112, 640 N.W.2d 546 (Ct. App. 2001).
[82] *Schmerber Id.* at 768, 86 S.Ct. 1826.

all prior caselaw must be ignored when there is a warrant and that the State may use unreasonable means for executing that warrant.

Bonfiglio now petitions this Court to accept review.

ARGUMENT

I. THE FORCE USED BY OFFICERS TO COMPEL THE BLOOD DRAW WAS UNREASONABLE.

A. Standard of Review

Whether a search is valid under the Fourth Amendment is a question of constitutional law reviewed *de novo*.[83] Appellate courts uphold findings of facts unless they are clearly erroneous.[84]

B. Under the Totality of Circumstances Officers Should Not Have Used Force to Execute a Warrant for a Blood Draw.

The pertinent section of the Search Warrant that was noted in Mr. Bonfiglio's Motion to Suppress stated:

> That the law enforcement officers executing this search warrant are hereby authorized to use reasonable force to accomplish the execution of this search warrant.[85]

The execution of this search warrant deviated from its contemplated scope.[86] While the officers were authorized to use "reasonable force," the officers put Mr. Bonfiglio in a forcible hold when he replied to them that they would have a hard time getting the blood from him.[87] As neither officer inquired further as to why the taking of blood would be difficult, nor did former Officer Boschert's testimony at the motion hearing establish a

[83] *State v. Guzman*, 166 Wis. 2d 577 (1992).
[84] *State v. Robinson*, 327 Wis. 2d 302, 786 N.W.2d 483 (Wis. 2010).
[85] R.17 at 1.
[86] R.36 at 20.
[87] R.36 at 23, 24.

sufficient reason for using such force, the State did not establish why any force was needed and did not establish that the amount of force used was reasonable. Thus, the police exceeded the scope and authorization of the warrant, and the manner of this blood draw was unreasonable.[88] The scope of a search warrant is explicit, not implicit. This requirement of reasonableness exists to prevent searches where law enforcement is left to its own discretion with regard to the search or execution of the warrant.[89] This warrant was explicit in that it allowed reasonable force, and courts are to determine when it is reasonable to use such force. Under these circumstances officers exceeded the scope of the warrant by employing unreasonable force in the warrant's execution of the blood draw.[90]

C. The Circuit Court Erroneously Concluded that the Force Used to Compel the Blood Draw was Reasonable.

In ***Pennsylvania v. Mimms***, the United States Supreme Court explained that:

> The touchstone of our analysis under the Fourth Amendment is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Reasonableness, of course, depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."[91]

In ***United States v. Ramirez***, the Supreme Court explained that this "general touchstone of reasonableness… governs the method of execution of the warrant."[92] It

[88] See R.36.
[89] See *Maryland v. Garrison*, 480 U.S. 79 (1987); *United States v. Vitek Supply Corp.*, 144 F.3d 476, 481 (7th Cir. 1998) ("This requirement . . . ensures that the scope of a search will be confined to evidence relating to a specific crime that is supported by probable cause.") *Boyd v. United States*, 116 U.S. 616, (1886) abrogated on other grounds.
[90] See *Id;* See R.36 at 20.
[91] *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1997) (*per curium*) (internal citations omitted).
[92] *United States v. Ramirez*, 523 U.S. 65, 71 (1998), citing *Mimms*, 434 U.S. at 108-109.

explained that, "excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment[.]"[93] The Supreme Court of Wisconsin has likewise emphasized that, "A search warrant execution must be conducted reasonably, and that the search and seizure must be limited to the scope that is permitted by the warrant."[94]

Here, the search warrant explicitly contemplated the collection of Mr. Bonfiglio's blood by use of **reasonable force**. Both the United States Supreme Court and the Wisconsin Supreme Court have commented on the issue of reasonable force. The United States Supreme Court has stated:

> Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of " 'the nature and quality of the intrusion on the individual's Fourth Amendment interests' " against the countervailing governmental interests at stake. *Id.*, at 8, 105 S.Ct., at 1699, quoting *United States v. Place*, 462 U.S. 696, 703, 103 S.Ct. 2637, 2642, 77 L.Ed.2d 110 (1983). Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. See *Terry v. Ohio*, 392 U.S., at 22–27, 88 S.Ct., at 1880–1883. Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See *Tennessee v. Garner*, 471 U.S., at 8–9, 105 S.Ct., at 1699–1700 (the question is "whether the totality of the circumstances justifie[s] a particular sort of ... seizure").[95]

[93] *Id.*
[94] *State v. LaCount*, 310 Wis. 2d 85, 750 N.W.2d 780 (2008).
[95] *Graham v. Connor*, 490 U.S. 386, 396 (1989).

The Wisconsin Supreme Court has accepted the following test for reasonable force when making an arrest; the test is as follows:

> What amounts to reasonable force on the part of an officer making an arrest usually depends on the facts in the particular case, and hence the question is for the jury. The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time he acted, and the measure is generally considered to be that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of the arresting officer, would have deemed necessary under the circumstances.[96]

When deciding reasonableness, both the United States Supreme Court and the Wisconsin Supreme Court consider the circumstances regarding the arrest and crime, and the element of the "unknown.[97]" Under United States Supreme Court jurisprudence, courts are to review investigatory stops and arrests with such reasonableness challenges from the perspective of how a reasonable police officer should act given the severity of the crime at issue, and whether there is an immediate threat to officer safety and other factors.[98] The arresting process is one where the officer has to be alert and take precautions necessary to prevent harm from being done to the officer or others, as the officer may not have an indication of whether or not the suspect is armed or whether or not the suspect may flee.[99]

The force used to execute the warrant happened post-arrest, meaning that Mr. Bonfiglio was already secured in an enclosed space, his person had been searched, he had complained of trouble breathing, and he had been wheeled into the hospital.[100] He had been

[96] *McCluskey v. Steinhorst*, 45 Wis. 2d 350, 173 N.W.2d 148 (1970).
[97] See *Id.*
[98] *Id.*
[99] *Id.*
[100] R.37.

seen by medical personnel more than once.[101] There was zero testimony that Mr. Bonfiglio was an immediate threat to officer safety or that the officer believed he was armed and dangerous. He would have been patted down already incident to arrest; thus, there was no danger, and the police knew that fact already. At the point the officers used force, the level of harm that Mr. Bonfiglio could have caused the officers or other individuals was minimal, almost to the point that it would be considered moot. There was no testimony that Mr. Bonfiglio threatened harm to the officers and no witness testified they were worried about harm to police.[102] Further, Mr. Bonfiglio was a senior citizen in, as somewhat of an understatement, poor health. He could not breathe due to an asthma attack and had other medical issues that could have been exacerbated due to police holding him down forcibly for an unknown length of time. There was no testimony that Mr. Bonfiglio resisted arrest or did not cooperate with the police. The only reason given for the force was that former Officer Boschert felt Mr. Bonfiglio might resist—based on a statement that could not reasonably be construed as a threat. Specifically, former Officer Boschert stated that he presumed Mr. Bonfiglio's statement "you will have a hard time with that" to be a statement of intention to be physically resistant, though this was not borne out or buttressed by additional evidence.[103]

More importantly, given that this is a mere misdemeanor case, and the defendant was a 68-year-old man, having a medical issue at the time, the police conduct here cannot

[101] R.36 at 11.
[102] See R.36.
[103] R.36 at 13; R.36 at 23.

be called reasonable under the totality of the circumstances. Not only is this a non-violent crime, it is the lowest criminal OWI, a misdemeanor; the greatest threat, under the circumstances, was to Mr. Bonfiglio. The caselaw clearly indicates that the factors that must be weighed to a determination of reasonable force all weigh in favor of no force being employed under these circumstances. The record is devoid of any evidence to suggest otherwise; moreover, the officer's testimony as to Mr. Bonfiglio's belligerence was inconsistent with his police report that indicated no such belligerence.[104] Even if he were belligerent, no case has ever held that this type of force to extract blood from an individual is permitted because of a belligerent attitude. Presumably, the officer assumed belligerence because Mr. Bonfiglio said they would have a tough time getting blood, but that leap cannot be made because the officer failed to even ask him what he meant by that statement. If someone has a problem with blood being taken regularly and informs phlebotomists that such a withdrawal will be problematic, the phlebotomist will generally ask if there's a better arm or place to withdraw blood before puncturing the patient in the same place the patient said would lead to difficulty. Here, there was not even a follow up question. It is clear from the testimony garnered at the hearing that no prudent person would have concluded, under the circumstances, that force was necessary. Therefore, the blood draw was unreasonable.

Any conclusion to the contrary would conflict with *Welsh v. Wisconsin*.[105] In *Welsh*, the United States Supreme Court considered a warrantless entry into the defendant's home

[104] R.36 at 16, 17.
[105] *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984).

for an OWI offense.[106] The Court stated that though probable cause existed, the relatively minor offense made the presumption of unreasonableness of the entry difficult to rebut.[107] Though an OWI second offense is jailable, it is relatively minor—the lowest criminal level OWI. Under *Welsh*'s reasoning, a reasonable extension of application would deem such force to compel a blood draw, even where probable cause exists, to be more difficult to justify as reasonable.[108]

In *State v. Krause*, the Court went through the necessary factors to determine whether the force used to acquire a blood draw was necessary.[109] The Court established that the proper test to a determination of excessive force is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them.[110] The Court went on to highlight pertinent factors to consider when making a determination of reasonableness:

1. Severity of the crime at issue;
2. Whether the suspect posed an immediate threat to the safety of the officers or others; and
3. Whether the defendant actively resisted.[111]

In *Krause*, the Court determined that because the defendant posed an immediate threat by (1) kicking and spitting, (2) interfering with the officer's driving of the squad

[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] 168 Wis. 2d 578 (1992).
[110] *Graham v. Connor*, 490 U.S. 386 (1989).
[111] See *State v. Krause*, 168 Wis. 2d 578, 484 N.W.2d (Ct. App. 1992).

vehicle, (3) fighting and moving his arm back and forth, prohibiting the technician from drawing the blood, and (4) continuing to spit at officers at the hospital while flailing, even after a pillow was placed on his head to prevent such, the force used by restraining Krause was reasonable in light of the circumstances.[112] The Court repeatedly highlighted that Krause posed danger to the officers, the medical personnel, as well as himself.[113] The Court then went on to establish that it still had to consider whether Krause actively resisted the blood draw. The Court concluded that given Krause's behavior in the entirety of the interaction with officers and medical personnel, the force used to restrain Krause was reasonable.[114]

By comparison, the State proffered no such evidence to the trial court establishing the need for forcible restraint in Mr. Bonfiglio's case. There was neither an immediate threat to officers as was required in Krause, and there was no physical resistance at any time throughout officers' encounter with Mr. Bonfiglio.[115] Further, Krause's case was a higher level OWI (OWI fourth offense), making Mr. Bonfiglio's case less severe and even less meriting of force.[116] There was no evidence adduced to suggest that he was even mildly resistant on scene, in the squad car or in the hospital.[117] Further, it is uncontroverted that at no point did he ever 'actively' resist.[118] When applied to this case, all of the factors the Court has established that should be weighed when determining whether any force is

[112] See *Id.*
[113] See *Id.*
[114] See *Id.*
[115] See R.36 at 37-40; R.36 at 33.
[116] See *State v. Krause*, 168 Wis. 2d 578, 484 N.W.2d (1992).
[117] See R.36 at 33.
[118] See *Id.*

excessive or reasonable under the circumstances weigh against the use of any force being necessary or reasonable to attain a blood draw. Individually, all factors support the determination that the force used with Mr. Bonfiglio was unreasonable; cumulatively, that determination is patent.

1. The State Provided Insufficient Evidence to Support a Claim of Reasonable Force.

The United States Supreme Court stated in *Birchfield v. North Dakota* that a blood withdrawal is something that should not be done with any force if possible:

> "A blood test also requires less driver participation than a breath test. In order for a technician to take a blood sample, all that is needed is for the subject to remain still, either voluntarily or by being immobilized. Thus, it is possible to extract a blood sample from a subject who forcibly resists, but many States reasonably prefer not to take this step. See, *e.g.*, *South Dakota v. Neville,* 459 U.S. 553 at 559-560 (1983). North Dakota, for example, tells us that it generally opposes this practice because of the risk of dangerous altercations between police officers and arrestees in rural areas where the arresting officer may not have backup. Brief for Respondent in No. 14–1468, p. 29. Under current North Dakota law, only in cases involving an accident that results in death or serious injury may blood be taken from arrestees who resist. Compare N.D. Cent.Code Ann. §§ 39–20–04(1), 39–20–01, with § 39–20–01.1"[119]

In the case at bar, by forcefully using an "escort" hold and this amount of force, the officers quite literally applied pressure to Mr. Bonfiglio when this was neither a case involving death or serious injury or one where there was a danger to the two armed police officers holding Mr. Bonfiglio down.[120] The United States Supreme Court has

[119] *Birchfield v. North Dakota*, 579 U.S., 136 S. Ct. 2160 (2016).
[120] R.36 at 23, 24.

acknowledged that the idea of refraining from the use of force to withdraw blood is a reasonable one.[121] With these circumstances being a factor, coupled with the fact that Mr. Bonfiglio was a 68-year-old man who suffers from asthma and was complaining of having trouble breathing both at the scene of arrest and also on the way to the hospital, an ordinarily prudent and intelligent person would not have deemed the force the officers used as reasonable.

It is constitutionally unreasonable to permit law enforcement officers to ignore the explicit scope of the search warrant and conduct the blood draw in a forceful manner.[122] The Fourth Amendment requires that officers executing a search warrant adhere to the scope of the warrant and execute it reasonably. By using force that was above the level of reasonable, the warrant's scope was exceeded, and it was executed unreasonably; the blood sample and any evidence derived from it should have been suppressed.

Given the clear caselaw and factors that are to be applied to a determination of excessive force, the scant testimony elicited at the hearing and the uncontroverted testimony regarding the behavior of Bonfiglio throughout the officers' interactions with him, namely at the hospital, the trial court's decision to deny Mr. Bonfiglio's Motion to Suppress was erroneous.

Moreover, the State did not present any reliable evidence to show that Mr. Bonfiglio was ever resistant or required (reasonable) force to compel acquiescence under the circumstances. The circuit court noted that it was unsure of whether Mr. Bonfiglio was

[121] See *South Dakota v. Neville*, 459 U.S. 553, 559-560 (1983).
[122] See *Id.*

belligerent or not.[123] Further, the circuit court stated that it was not established how long Mr. Bonfiglio was in the hold that compelled the blood draw and whether as a result Mr. Bonfiglio was injured.[124] However, the trial court reasoned that these gaps in the testimony elicited by the State are inconsequential.[125] Further, the circuit court reasoned that the scant testimony should be resolved to the detriment of Mr. Bonfiglio.[126] This is evidenced by the following excerpt of the circuit court's ruling:

> And the testimony that the two officers at some point in the hospital, one on each side, grabbed one of Mr. Bonfiglio's arms and held him—We don't have any testimony on how long this hold was for, whether it was a mere 15 seconds, five seconds, three minutes. I don't know. But we don't have anything with that, nor is there anything to indicate it unreasonably or unduly caused Mr. Bonfiglio some type of injury.[127]

The circuit court's analysis clearly demonstrated a shift of the burden from the State to prove reasonableness of force, to a burden on Mr. Bonfiglio, to prove the unreasonableness of the force used. When Mr. Bonfiglio highlighted this burden-shifting error in the court's analysis the court abruptly denied doing so, despite clear assertions in its ruling to the contrary.[128] The circuit court's findings were clearly erroneous.

The Fourth Amendment prohibits searches and seizures that are unreasonable.[129] What is reasonable depends on all the circumstances surrounding the search or seizure and

[123] R.36 at 38, 39.
[124] R.36 at 40.
[125] R.36 at 40, 41.
[126] R.36 at 40.
[127] *Id.*
[128] *Id.* at 42; *United States v. Ramirez*, 523 U.S. 65, 72 (1998); See *State v. Eason***,** 234 Wis. 2d 396, 610 N.W.2d 208 (2000); See also *State v. Stevens*, 213 Wis. 2d 324 (Ct. App 1997).
[129] *State v. Guzman*, 467 N.W.2d 564 (Wis. Ct. App. 1991).

the nature of the search or seizure itself.[130] The Wisconsin Supreme Court has acknowledged that it is if the taking of the sample meets Fourth Amendment reasonableness standards.[131] The reasonableness of a questioned action is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.[132]

In conclusion, the evidence in this case establishes that Mr. Bonfiglio was a 68-year-old man, arrested for the misdemeanor offense of operating while intoxicated as a second offense.[133] Throughout the night, Mr. Bonfiglio required multiple medical examinations and clearances due to a number of health concerns and breathing issues.[134] No consistent or reliable testimony was given to establish that Mr. Bonfiglio was ever truly belligerent or physically resistant.[135] Further, the only argument the State relied on to attempt to justify the force used was a vague and nebulous statement made by Mr. Bonfiglio that neither officer ever sought to clarify before using force.[136] It was also established that this force used was not only unjustified and unnecessary under the circumstances but that this force is what caused Mr. Bonfiglio to comply with the forced blood draw.[137]

This Court must reverse the ruling of the circuit court and find that the force used to compel acquiescence to the blood draw was unreasonable. Further, the State did not

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[130] *Id.*
[131] *State v. Zielke*, 137 Wis. 2d 39, 54, 403 N.W.2d 427 (1987).
[132] *Id.*
[133] See R.36.
[134] See R.36.
[135] See *Id.*
[136] R.36 at 20.
[137] See *Id.*

make a sufficient showing at the motion hearing to establish reasonableness of the force used on Mr. Bonfiglio.[138] Had the motion to suppress been granted in circuit court, Mr. Bonfiglio would not have pled to the OWI offense. When officers resort to unreasonable force, suppression is the remedy.[139] In *United States v. Ramirez*, the Supreme Court determined that when officers employ unreasonable force to execute a search warrant suppression of the fruits of that search is the remedy.[140] While the Court found that the State had made a sufficient showing to establish why they could break the door and enter without knocking first, thereby employing force as a primary means, the Court explicitly rejected the State's contention that had it not met that burden, suppression would not be the appropriate remedy.[141] The Court succinctly and unambiguously stated that when the circumstances do not justify such force when executing a warrant, suppression is the appropriate remedy.[142]

The Court's analysis is most appropriate and enlightening in Mr. Bonfiglio's case; without a requisite showing of the State that the force employed to execute the search warrant was necessary and reasonable, the blood draw should be suppressed.

In its decision the Court of Appeals held that Krause did not control in this matter, when the parties and trial court all agreed it did. Thus, the Court of Appeals decided this case in a way not contemplated or briefed by any party.

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[138] See R.36 at 38-41.
[139] *United States v. Ramirez*, 523 U.S. 65, 72 (1998).
[140] See *Id.*
[141] See *Id.*
[142] See *Id.*

The Court of Appeals cites one case to assert that this Court has held that when there is a warrant the burden lies on the defense.[143] In *LaCount*, this Court reviewed a published Court of Appeals decision affirming the Circuit Court for Barron County, Wisconsin.[144] There were four principal issues upon review. The first issue was whether the circuit court erroneously admitted an attorney's expert opinion testimony that LaCount had engaged in a securities transaction. The second issue was whether the evidence presented at trial sufficiently supported LaCount's conviction for securities fraud. The third issue (which the Court of Appeals uses to shift the burden to Bonfiglio) is whether the circuit court erred by not suppressing the results of the search of the office of Gates, Paul & Lear, L.L.C. (GP&L), which was a search that allegedly exceeded the scope of the search warrant. The fourth issue was whether the circuit court's finding that LaCount was a habitual criminal violated his right to a jury trial on that issue.[145]

With regard to the third issue this Court stated:

> As the proponent of the motion to suppress, LaCount had the burden of proving that his Fourth Amendment rights under the United States Constitution had been violated by the search and seizure in question.[146]

Firstly, this remark would accurately be described as dictum. This pronouncement by the Court in this case was not a necessary part of the Court's legal

[143] *State v. LaCount*, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780. The Court of Appeals also cites 6 Wayne R. LaFave, Search and Seizure Section 11.2(b) (6th ed. 2020 (noting that most states follow the general rule that, in a suppression hearing, "if the search or seizure was pursuant to a warrant, the defendant has the burden of proof; but if the police acted without a warrant the burden of proof is on the prosecution").
[144] *Id.*
[145] See *Id.*
[146] See *State v. Whitrock*, 161 Wis. 2d 960, 972, 468 N.W.2d 696 (1991) (citation omitted).

reasoning and was not needed for the Court to reach its decision.[147] That is because the issue it addresses—the burden-- was not in contention and therefore not ripe. Although it may be cited in a legal argument, it was error to rely on this as binding legal precedent.[148] Further, in LaCount's case, the particular issue turned on whether the execution of the search warrant went beyond the scope because the officers searched more than what they were authorized to search within the premises.[149] The Court held that a search warrant's execution must be conducted reasonably, and the search and seizure must be limited to the scope that is permitted by the warrant.[150] This is disanalogous to Bonfiglio's case. Primarily, the issue of the burden was not contested. Also, in Bonfiglio's case, he claims that the police exceeded the warrant because the search warrant limited the execution thereof to "reasonable force." The force used by officers to compel the blood draw was unreasonable and therefore, beyond the authorization for the warrant. The Court of Appeals' analysis is truncated and misleading as it misapprehends or mischaracterizes this Court's pronouncement in *LaCount*. It is not clear from *LaCount* that the Court is saying that the burden of disproving reasonableness is upon the defense when the State has secured a warrant. Rather, it appears that this Court was holding that a petitioner with such a claim must proffer evidence to establish that the State went beyond the scope of the warrant, not

[147] See *LaCount*, 2008 WI 59
[148] *State v. Sartin*, 200 Wis. 2d 47, 60 n.7, 546 N.W.2d 449 (1996) ("dictum is a statement in a court's opinion that goes beyond the facts in the case and is broader than necessary and not essential to the determination of the issues before it"; dictum is not controlling).
[149] *LaCount*, 2008 WI 59
[150] *State v. Andrews*, 201 Wis. 2d 383, 390, 549 N.W.2d 210 (1996).

that the State is relieved of ever having to prove reasonableness of force used when it has a warrant.

In *LaCount*, this Court did not state that it was upending the caselaw that establishes for Fourth Amendment purposes the State must prove reasonableness. The Court of Appeals clearly extended this case beyond its intended utility to the chagrin of Bonfiglio—despite the record clearly establishing that the force used to accomplish the blood draw was unreasonable. Therefore, clarification from this Court as to the applicability of *LaCount* generally and whether *Krause* controls is needful. Moreover, only clarification from this Court can determine whether Wisconsin intends its caselaw not to follow United States Supreme Court caselaw as noted.

The Fourth Amendment does not prohibit all intrusions, however, but only those which are not justified under the circumstances or are made in an improper manner.[151] Thus, the question in *Schmerber*, as in this case, was whether "the means and procedures employed in taking [ ] blood respected relevant Fourth Amendment standards of reasonableness.[152]"

The Court of Appeals observes multiple cases that establish that when officers execute a search or seizure pursuant to a warrant, they must do so reasonably.[153] Furthermore, whether a search was reasonably executed is determined by reviewing the totality of circumstances.[154] It has also been established that "unreasonable actions

[151] *Schmerber v. California*, 384 U.S. 757 (1966).
[152] *Id.*
[153] *State v. Sveum*, 2010 WI 92, 328 Wis. 2d 369, 787 N.W.2d 317.
[154] *State v. Pinder*, 2018 WI 106, 384 Wis. 2d 416, 919 N.W.2d 568 (quoting *United States v. Banks*, 540 U.S. 31, 35-36 (2003)).

include the use of excessive force or restraints that cause unnecessary pain or are imposed for a prolonged and unnecessary period of time.[155]" It has been long held that to make a determination of reasonableness of force used the court must balance the Fourth Amendment interests of the individual against the countervailing governmental interests.[156] Subsequent to acknowledging the factors and standards set to make a determination regarding the reasonableness of force the Court of Appeals finds that under the totality of circumstances, given what the officer knew at the time, "it is difficult to see how the government's interest could outweigh the individual's interest under such circumstances[157]" Therefore, the Court of Appeals acknowledges that the force used was unreasonable under the circumstances; however, because it differentiates this case from *Krause*, and claims that the burden is on Bonfiglio to disprove reasonableness, he still loses. However, this analysis even fails because according to the Court of Appeals, even if the burden was on Bonfiglio, when the Court reviewed the record it determined that the force used was unreasonable.

The Court of Appeals' reversal of burden is contrary to decisions of both the United States Supreme Court and Courts in Wisconsin. For example: The United States Supreme Court has held "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is

[155] Los Angeles County, *California v. Rettele*, 550 U.S. 609, 614 (2007).
[156] *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Tennessee v. Garner*, 471 U.S. 1, 7 (1985)).
[157] *State v. Bonfiglio*, 2020AP188-CR p9.

still the ultimate standard.[158]" The burden to establish reasonableness has always been upon the State.[159]

It should also be noted that the Court of Appeals, in part, based its decision on an argument not proposed by parties, which makes its analysis erroneous.[160] Specifically, the court reframed the issue as one of the State showing force to gain Bonfiglio's submission to the blood draw—rather than the contested issue regarding the unreasonable force used to execute the warrant for the blood draw. It is a "well-established rule" in Wisconsin that appellate courts need not and ordinarily will not consider or decide issues which are not specifically raised on appeal.[161]

Thus, only this Court can now explain when *Krause* controls and whether it is ever the defense's burden to prove a forcible blood draw was reasonable. The mere fact that the blood was drawn pursuant to warrant makes no difference in the analysis because all forcible blood draws can only be done pursuant to warrant. Therefore, this Court of Appeals decision has essentially held that all prior caselaw must be ignored when there is a warrant and that the State may use unreasonable means for executing that warrant.

[158] *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).
[159] *State v. Payano-Roman*, 290 Wis.2d 380, 714 N.W.2d 548 (2006).
[160] *Riley v. Town of Hamilton*, 153 Wis.2d 582, 588, 451 N.W.2d 454 (Ct.App.1989), citing *Public S.E. Union v. Wisconsin E.R. Board*, 246 Wis. 190, 199, 16 N.W.2d 823 (1944).
[161] *Id.*

CONCLUSION

For the reasons stated in this Petition, this Court should accept this case and reverse the decision of the Court of Appeals.

Dated: November 19, 2020 at Madison, Wisconsin.

Respectfully submitted,

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CERTIFICATION

I certify that this petition conforms to the rules contained in s. 809.62 for a petition produced using the following font:

> Proportional serif font: Min. printing resolution of 200 dots per inch, 13-point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text.

The length of this petition is 9,723 words.

Dated: November 19, 2020.

Signed,

_____

JOSHUA HARGROVE
State Bar No.: 1086823

CERTIFICATION

I certify that the text of the electronic copy of the Petition for Review, which was filed pursuant to Wis. Stat § 809.62, is identical to the text of the paper copy of the petition.

Dated: November 19, 2020.

Signed,

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JOSHUA HARGROVE
State Bar No. 1086823

CERTIFICATION

I certify that this appendix conforms to the rules contained in s. 809.19(13) for an appendix, and the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

Dated: November 19, 2020.

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