STATE OF WISCONSIN

IN SUPREME COURT

APPELLATE COURT #2020AP000999-CR
Milwaukee County Cir. Court Case No. 2018CM1973

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVONTA J. DILLARD,

Defendant-Appellant-Petitioner

PETITION FOR REVIEW

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INTRODUCTION

Davonta J. Dillard ("Mr. Dillard") petitions the Supreme Court of Wisconsin, pursuant to Wis. Stat. §808.10 and §809.62, to review the adverse unpublished decision (App.1-11) of the Court of Appeals dated and filed April 13, 2021, and the subsequent denial dated and filed April 29, 2021, (App.19) of Defendant-Appellant's Motion for Reconsideration in *State v. Davonta J. Dillard,* Appeal No. 2020AP000999-CR. (App.13-18).

The Court of Appeals decision affirmed the Milwaukee County circuit court's order denying Mr. Dillard's motion to suppress evidence of carrying a concealed weapon. The Honorable Hannah C. Dugan, presiding in Milwaukee County Circuit Court case No. 2018CM1973. (App.21-36).

ISSUES PRESENTED

I. Does law enforcement have the right to search a vehicle and arrest a person without probable cause that a crime is being committed, and without probable cause that evidence of a crime will be found within the vehicle?

CRITERIA FOR REVIEW

1. The issue presents a real and significant question of federal or state constitutional law. See Wis. Stat. § 809.62(1r)(a).

Whether police have probable cause to search a vehicle and arrest someone involves the application of constitutional principles under the Fourth Amendment of the United States Constitution, and article I, section 11 of the Wisconsin Constitution. While the legal standards involving probable cause are well-settled, the application of those principles to new factual circumstances presents a real and significant

constitutional question that warrants this Court's review. See Wis. Stat. § (Rule) 809.62(1r)(a).

2. The Court of appeals' decision is in conflict with opinions of the U.S. Supreme Court, the Wisconsin Supreme Court, and other Wisconsin Court of Appeals' decisions. See Wis. Stat. § (Rule) 809.62(1r)(d).

Specifically, the appellate court concluded that a concern for officer safety supports a warrantless search under the exigent circumstances warrant exception without probable cause that a crime was being committed. This conflicts with well settled law including (but not limited to):

In *State v. Miller,* 647 N.W.2d 348, 256 Wis.2d 80, 2002 WI App 150 (Wis. App. 2002) the Wisconsin Court of Appleals held "to search a vehicle without a warrant police must have probable cause to believe that evidence of a crime will be found inside." Id.

In W*elsh v. Wisconsin,* 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984), the U.S. Supreme Court held that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made." Id. also "The burden to justify warrantless entry is on the state. The state must prove that there was probable cause to arrest and, in addition exigent circumstances that could not brook the delay incident to obtaining a warrant." Id. At 740-741.

In *State v. Weber*, 375 Wis2d 2012, 877 NW.2d 554, 2016 WI 96, the Wisconsin State Supreme Court stated that "Before an appellate court can uphold a warrantless entry the State must show that the warrantless entry was both supported by probable cause and justified by exigent circumstances." Id.

at ¶19.citing *State v. Robinson*, 2010 WI 80, 327 Wis.2d 302, 786 N.W.2d 463 (Wis. 2010)

In *State v. Richter*, 2000 WI 58, ¶29, 235 Wis. 2d 524, 612 N.W.2d 29: the Court concluded that "the test is [w]hether a police officer under the circumstances known to the officer at the time … reasonably believes that delay in procuring a warrant would gravely endanger life or risk destruction of evidence or greatly enhance the likelihood of the suspect's escape.'" Id.

In its decision here, the appellate court has disregard the warrant requirement prong of the exigent circumstances test. As such, the court of appeals' decision in this case weakens the Fourth Amendment warrant requirement and will create confusion for law enforcement and subsequent courts assessing probable cause in the many criminal cases in which the exigent circumstance issue arises. The court of appeals' decision degrades the constitutional protections against illegal searches and seizures to a point that would allow police to search vehicles, homes, and arrest persons at any time without probable cause.

3. The question presented may be a novel one, the resolution of which may have statewide impact. See Wis. Stat. §809.62(1r)(c)2.

Additionally, the issue of how to assess probable cause in the context of exigent circumstances is topical. The U.S. Supreme Court recently heard oral arguments in *Lange v. California,* where the question is whether a person who a police officer has probable cause to believe has committed a misdemeanor categorically qualifies as an exigent circumstance sufficient to allow the officer to enter a home without a warrant. *See Lange v. California*, 141 S. Ct. 1617 (2020) (granting review of *People v. Lange*, No. A157169,

2019 WL 5654385 (Cal. Ct. App. Oct. 30, 2019) (unpublished)).

While *Lange* involves the warrant exception of "hot pursuit" unlike this case where the warrant exception is "exigent circumstances" the decision in *Lange* may have implications here.

If the *Lange* case were to differentiate between misdemeanors and felonies, it could have implications as to this case where the alleged initial "investigation" was for a municipal ordinance of unattended vehicle -a non-jailable $22 dollar parking ticket, See Milwaukee Municipal Traffic Code Ordinance 101-30 & 101-34-2 (App. 197 & 199-200). Therefore, this issue may be new to this Court and warrants its input. See Wis. Stat. § (Rule) 809.62(1r)(c)2.

This Court should grant review as this case provides an opportunity for this Court to address the important issue of constitutional protections to privacy and the necessity for probable cause to exist before claiming an exception to the warrant requirement.

STATEMENT OF THE CASE

On May 24, 2018 at approximately 10:00 p.m., Davonta J. Dillard ("Mr. Dillard") was sitting in the back seat of a running vehicle on the 28 hundred block of North 37th Street in Milwaukee, WI. (R. 1:1, 72:9-10; App.37, 67-68) . Suddenly, a bright light was the vehicle, and the rear driver-side door was wrenched open. (72:10; App.68). Mr. Dillard exited the vehicle from the rear passenger-side door and was immediately tased, handcuffed, and detained. (72:12; App. 70). The entire incident took 51 seconds. (72:21; App.79). After Mr. Dillard's arrest, a gun was located inside the vehicle.

A Criminal Complaint filed on May 25, 2018 charged Mr. Dillard with Carry of Concealed Weapon, in violation of Wisconsin Statutes §941.23(2). (R.1:1-2; App.37-38).

On August 20, 2018 Mr. Dillard filed a Notice of Motion and Motion to Suppress Evidence, asserting that the law enforcement's search of the vehicle and seizure of Mr. Dillard was illegal and constitutionally invalid, without probable cause, and warranted suppression of any resulting evidence. (R.9:1-11; App.41-52).

The trial court held a hearing on the motions to suppress on October 30, 2018. (R.72:1-76; App.59-134). At that hearing, Milwaukee Police Officer testified:

- On May 24, 2018, at approximately 10:00 p.m. six Milwaukee Police officers on bicycle patrol at approximately the 2800 block of North 37th Street came upon a silver Infiniti with running lights on. (R. 72:9, 23; App.67,81).
- At first officers believed that there was no one in the vehicle. (R 72:9; App.67.) Officer Domine testified that he believed this was a violation of a municipal traffic ordinance.
- No complaints had been made about Mr. Dillard's presence in the area. (R1:1-2, 72:1-76; App.37-38, 59-134).
- There were no reports of property or other crimes (R1:1-2, 72:1-76; App.37-38, 59-134).
- Officers illuminated the vehicle and saw someone in the back seat. (R. 72:10, 26; App.68,84).
- Officers claimed Mr. Dillard made a "lunging" movement. (R.72:10; App.68).

- Officers opened the driver's side rear door to the vehicle. (R.72:10-11; App.68-69).
- Mr. Dillard attempted to exit the vehicle from the passenger side rear door. (R. 72:12: App.70).
- The officers immediately took Mr. Dillard to the ground, tased him, handcuffed him, and placed him in custody. (R.72:35, 44; App.93,102)
- Officers did not attempt to talk to Mr. Dillard prior to opening the car door. (R. 72:28; App. 86).
- Officers did not have a warrant. (R. 72:1-76; App.59-13.).
- The entire incident from the officers first seeing the vehicle to arresting Mr. Dillard took 51 seconds. (R. 72:35-36, 38; App.93-94,96).
- After the detention of Mr. Dillard, officers found a gun inside the vehicle (R. 72:42; App.100).

On November 5, 2018, after the Motion Hearing, the State filed a Response to Defendants' Motion to Suppress. (R. 12:1-5; App.53-58).

On January 11, 2019, the court gave its oral decision denying the motion to suppress finding that there was probable cause and exigent circumstances to search the vehicle, that the investigation was reasonable because it was an intentional violation of law, and that the totality of the circumstances justified a warrantless search. (R. 58:1-16; App.21-36).

The circuit court concluded that police had probable cause to investigate a municipal code violation of unattended

vehicle and exigent circumstances to conduct a warrantless search of the vehicle and arrest and detain (App.21-36).

Mr. Dillard proceeded to jury trial in February 2019. Mr. Dillard was found guilty of one count of carrying a concealed weapon at trial. (R.61-65.) The circuit court entered a judgment of conviction. (R.70:1-21)

In May, 2019, the circuit court sentenced Mr. Dillard to twelve months of probation, withheld sentence, and required Mr. Dillard to perform twenty hours of community service. (R.70:1-21)

Mr. Dillard filed a notice of appeal and filed his appeal breif on July 29, 2020. (App. 135-166).The state filed a Resoponse on December 16, 2020 (App. 167-184). Mr. Dillard filed a Reply on January 4, 2021 (Reply App. 185-196).

On Appeal, Mr. Dillard argued that a municipal code violation of unattended vehicle does not allow for a vehicle search, especially where the vehicle is occupied; the police lacked probable cause to search the vehicle, and arrest Mr. Dillard; and the facts did not support exigent circumstances for an exception to the warrant requirement. (App.135-166).

The State conceded that the opening of the car door was a search but argued it was justified by exigent circumstances. (App.55).

The court of appeals affirmed the circuit court holding without making any findings that there was probable cause that a crime was being committed or that evidence of such crime would be found within the vehicle, rather that it was "reasonable" for the police to search the vehicle and arrest

Mr. Dillard as the movement of a person in the back seat of a vehicle was a concern for officer safety. (App. 1-12).

The individual actions that police observed did not support probable cause that a crime was being committed, nor exigent circumstances as an exception to the warrant requirement. (App. 59-134).

The court of appeals failed to address the necessary issue of probable cause and mis-charaterized movement in a vehicle as "threat to officer safety." (App. 1-12).

ARGUMENT

I. Review is warranted because Mr. Dillard's Constitutional Rights under the 4th amendment of the U.S. Constitution and Article I, §11 of the Wisconsin Constitution were violated when the police conducted a vehicle search and arrest of Mr. Dillard without a warrant and without probable cause.

The Fourth Amendment to the U. S. Constitution and the greater protections under Article I, § 11 of the Wisconsin Constitution prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Wis. Const. Art. 1, § 11. These articles protect people from the government intruding on the "the privacies of life." *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 84 A.L.R.2d 933 (1961) (quoting *Boyd v. United States*, 116 U.S. 616, 29 L.Ed. 746, 6 S.Ct. 524 (1886).

> ". . . A search, even of an automobile, is a substantial invasion of privacy. To protect that privacy from official arbitrariness, the U.S. Supreme Court has always regarded probable cause as the minimum requirement for a lawful search. *Almeida-Sanchez*, 413 U.S. 266, at 269-270, 93 S.Ct. 2535, at 2537-2538, 37

> L.Ed.2d 596; *Chambers v. Maroney*, 399 U.S. 42, 51, 90 S.Ct. 1975 1981, 26 L.Ed.2d 419 (1970). *United States v. Martinez*, 526 F.2d 954 (5th Cir. 1976).

There is no question that entering a person's car and searching items inside it constitutes a search. See *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973). However, because of the reduced expectation of privacy that individuals have in vehicles, a warrantless search of a vehicle is not necessarily unreasonable. See *State v. Matejka*, 2001 WI 5, ¶ 22, 241 Wis. 2d 52, 621 N.W.2d 891; *State v. Pallone*, 2000 WI 77, ¶ 59, 236 Wis. 2d 162, 613 N.W.2d 568. Rather, an automobile may be searched without a warrant so long as there is probable cause to believe that evidence of a crime will be found inside. *State v. Pallone,* 2000 WI 77, 236 Wis. 2d 162, 613 N.W.2d 568 (Wis. 2000); *State v. Miller*, 2002 WI App 150 at ¶11.

Mr. Dillard had a privacy interest to be free from such police intrusions. *Id.* Any person in a stopped vehicle has standing to challenge the stop, even if he or she lacks a property interest in the vehicle or its contents. *United States v. Eylicio-Montoya,* 70 F.3d 1158, 1162, (10th Cir.1995).

In this case, six armed officers rode up to the vehicle where Mr. Dillard was in the back seat. (R. 72:9, 23; App.67,81). Officers opened the door without a warrant, without probable cause that evidence of a crime would be found within, without even reasonable suspicion that a crime was being committed, and intruded on Mr. Dillard's privacy (R. 72:1-76; App.59-134). All this was done although Mr. Dillard had a privacy interest to be free from such police intrusions. See *Miller*, 2002 WI App. 150 at ¶11.

Vehicles still fall under the “persons and effects” portion of the Fourth Amendment, and suddenly opening a

car door without reason of a warrant or exception to the warrant requirement for a search is illegal and a violation of the United States Constitution. U.S. Const. amend. IV; *State v. Smith,* 2018 WI 2, ¶34, 905 N.W.2d 353, 379 Wis.2d 86 (Wis. 2018).

The state, in it's State's Response to Defendant's Motion to Suppress (filed after the suppression hearing) conceded that "while opening the vehicle's door may not have been a 'full-blown search,' it is a sufficient intrusion to be considered a search under the Fourth Amendment." citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). (R.12:3; App.55)

Once the officer saw Mr. Dillard in the back seat of the vehicle, his pretense of an investigation of a non-moving city ordinance violation of an unattended vehicle pursuant to Milwaukee City Ordinance 101-30 falls apart. (App. 197).

Furthermore, the "crime" of a non-jailable municipal offense with a penalty of $22 (App.197) would not contain evidence within the vehicle. Officers had no probable cause to believe that there was evidence of a crime inside of the vehicle and therefore violated Mr. Dillard's privacy upon opening the car door. Without a warrant, an invasion of that area is "presumptively unreasonable." *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan J., concurrence).

In *State v. Miller,* The Wisconsin Supreme Court has stated that to search a vehicle without a warrant, officers must have "probable cause to believe that evidence of a crime will be found inside." *State v. Miller*, 2002 WI App 150 at ¶11.

In *State v. Smith*, The court recognized that suddenly opening a car door without reason of a warrant or exception

to the warrant requirement was illegal and a violation of the United States Constitution. *State v. Smith,* 2018 WI 2, 905 N.W.2d 353, 379 Wis.2d 86 (Wis. 2018) at ¶34.

The State has the burden to prove that a warrantless search was reasonable and in compliance with the Fourth Amendment. *See State v. Boggess,* 217 Wis.2d 542, 115 Wis.2d 443, 449, 340 N.W.2d 516 (1983). The State bears that burden of proof by clear and convincing evidence. *State v. Kieffer,* 577 N.W.2d 352, 357, 217 Wis.2d 531, (Wis. 1998).

In this case, there was no finding that evidence of a crime would be found within the vehicle, no findings of probable cause of a crime to arrest Mr. Dillard, and unlike *Smith*, no attempt at communication was made prior to the search of the vehicle. (R. 72:1-76; App.59-134). Therefore, the state failed in its substantial burden to show there probable cause to search the vehicle. As such, the circuit court was clearly erroneous in its findings, or lack thereof, and all evidence obtained by unreasonable searches and seizures in violation of the Constitution is inadmissible in court. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081; *Smith,* 2018 WI 2 at ¶34.

The State, bears the "heavy burden" of proving by clear and convincing evidence that the exigent-circumstances exception applies. *Welsh v. Wisconsin*, 466 U.S. 740. The State bears the burden of proving "by clear and convincing evidence" that a warrantless search "was reasonable and in compliance with the Fourth Amendment."). *State v. Kieffer*, 217 Wis. 2d 531, 541-42, 577 N.W.2d 352 (1998); Welsh 466 US 740.

Because the warrantless search lacked probable cause, it violated Mr. Dillard's rights under the Fourth Amendment

of the U.S. Constitution and Article I, §11 of the Wisconsin Constitution. Therefore, the issue warrants review.

II. Review is warranted to clarify and harmonize the appellate ruling on exigent circumstances with existing state and federal cases.

Whether police have probable cause to search a vehicle arises regularly in criminal cases in Wisconsin. With the variety of facts that accompany issues of probable cause and the frequency with which they come up, this Court has regularly, and appropriately, granted review to provide needed guidance for lower courts and law enforcement.

This Court should likewise grant review in this case, given that the court of appeals' decision neither reflects a correct application of the exception to the warrant standard, nor rests consistently with its other decisions in similar cases. As an initial matter, the court of appeals disregarded the probable cause prong of the warrant requirement.

The circuit court's findings and conclusion that the officers had probable cause to search a vehicle in the investigation of a non-jailable municipal ordinance violation of an unattended vehicle was clearly erroneous in that the vehicle was occupied. (App.84).

The court of appeals did not address facts relevant to the warrant exception probable cause analysis. Instead it wholly wholly disregarded the probable cause prong in favor of a "reasonableness" standard to affirm the lower court's decision to deny Mr. Dillard's motion to suppress. (App1-12).

This disregard for the probable cause prong of the warrantless search analysis runs contrary to well-settled law and conflicts with many cases:

The Fourth Amendment to the United States Constitution provides "[t]he right ... [of people] to be secure in their persons ... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but with probable cause." U.S. Const. amend. IV. The Fourth Amend. The warrant exception, is an exception to obtaining a warrant, not an exception to probable cause.

In *State v. Miller*, 2002 WI App 150 at ¶11, the court held that to search a vehicle without a warrant police must have probable cause to believe that evidence of a crime will be found inside. Id. *Miller* makes it clear that the exception is to the warrant, not to probable cause. Id.

In *Welsh v. Wisconsin*, 466 U.S. 740 at 753 (1984), the U.S. Supreme court stated that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made." also "The burden to justify warrantless entry is on the state. The state must prove that there was probable cause to arrest and, in addition exigent circumstances that could not brook the delay incident to obtaining a warrant." Id.

In concluding that "the gravity of the underlying offense" is an important factor, *Welsh* demonstrates that an underlying offense a pre-requisite to justify a warrantless entry. Id. at 753. Contrary to *Welsh*, the appellate court here disregards entirely the need for any underlying offense.

State v. Richter, 2000 WI 58, ¶29, : "The test is '[w]hether a police officer under the circumstances known to the officer at the time … reasonably believes that delay in procuring a warrant would gravely endanger life or risk destruction of evidence or greatly enhance the likelihood of the suspect's escape.'"

Richter sets forth the two-pronged test necessary to search without a warrant. Both prongs which fail here. First, as discussed supra, once police saw the vehicle was occupied they no longer had reasonable suspicion to investigate an unattended vehicle, and certainly not the greater burden of probable cause necessary for a search and arrest.

The appellate court in its decision stated:

> "Because we conclude that this issue can be narrowly decided on whether it was reasonable for the police to conduct a warrantless search due to exigent circumstances, we decline to address Dillard's other arguments in detail." (App.1-12 ¶13)

The appellate court's "reasonable" standard to justify a search and arrest conflicts with established law that requires the dual prongs of probable cause *and* exigent circumstances set forth in *Richter,* 2000 WI 58, ¶29.

The exigent circumstances prong of the *Richter* test also fails as movement in the back of a vehicle does not gravely endanger life. Particularly, a "ducking" in response to having a bright light suddenly shown upon you.

The appellate court mis-characterizes this movement as a "threat to officer safety" However, there was not any threat. The officer himself, testified, that he had a "concern" for safety the same as at any traffic stop, but did not identify any particular threat.

In *State v. Weber*, 2016 WI 96 ¶19. This Court held that before an appellate court can uphold a warrantless entry "the State must "show that the warrantless entry was both supported by probable cause and justified by exigent circumstances." citing *Robinson,* 2010 WI 80..

In *Weber*, this court specifically addressed the warrantless entry with a two prong approach stating: "Before this court will uphold [a] warrantless entry on the grounds asserted, the State must "show that the warrantless entry was both supported by probable cause and justified by exigent circumstances." citing *Robinson*, 2010 WI 80 ¶24; *State v. Weber*, 2016 WI 96 ¶19.

The warrant requirement ensures that the validity of intrusions into the sanctity of the home are "decided by a judicial officer, not by a policeman. J*ohnson v. United States*, 333 U.S. 10, 14, (1948) It reflects the founders judgment that the right to privacy is "too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." *McDonald v. United States,* 335 U.S. 451, 455-56 (1948).

Under the court of appeals logic here, any "concern for safety," would allow an officer to search vehicles, homes, persons, etc., without probable cause that a crime is being committed. Presumably, any officer, at any time, is concerned for his/her safety. If we follow the appellate court's logic, warrantless searches would have no restrictions, but be allowed anytime, anyplace – clearly a violation of protections to privacy under the Fourth Amendment to the U.S. Constitution and the greater protections under the Wisconsin Constitution.

To put this situation into perspective – had the officer been shining his light in a picture window of a home, at night, in an "initiative" zip code, and suddenly seen a person move evasively, that would not meet the exigent circumstance exemption and allow the officer to burst into someone's home, detain and arrest them. (R. 58:10; App. 107.)

Furthermore, the police cannot benefit from an exigent circumstance of their own creation. When police conduct,

including unannounced warranteless entry, creates potential danger, then "the exigent circumstances resulting from that conduct cannot justify the warrantless entry." *State v. Kiekhefer*, 202 Wis. 2D 460, 477-78, 569 N.W.2d 316(Ct. App. 1997).

Here, six police officers suddenly rode up to the vehicle were Mr. Dillard was sitting, shone a light inside, and wrenched open the door. If Mr. Dillard made any movement in response to being startled, it is the officer's own doing (App. 67, 68, 69, 81, 93, 102).

Because the court of appeals decision conflicts with the dual-prong approach and probable cause requirements set forth in the Fourth Amendment of the U.S. Constitution, Article 1 §11 of the Wisconsin Constitution, *Weber, 2*016 WI 96*, Richter,* 2000 WI 58*, Smith,* 2018 WI 2*, Miller,* 2002 WI App 150, *Welsh,* 466 U.S. 740, and a myriad of other cases, the decision here warrants review.

CONCLUSION

The search and arrest of Mr. Dillard without probable cause presents a real and significant question of federal or state constitutional law. Additionally, because the appellate court's decision conflicts with other cases and law, the decision here warrants review.

Dated this 25th day of May, 2021.

Respectfully submitted,

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ATTY. FOR DEFENDANT-
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CERTIFICATION AS TO FORM/LENGTH

I certify that this petition meets the form and length requirements of Rules 809.19(8)(b) and 809.62(4) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the petition is 4747 words.

Dated this 25th day of May, 2021

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CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

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

Dated this 25th day of May, 2021.

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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 § 809.62(2)(f) and that contains, at a minimum: (1) the decision and opinion of the court of appeals; (2) the judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court necessary for an understanding of the petition; (3) any other portions of the record necessary for an understanding of the petition; and (4) A copy of any unpublished opinion cited under s. 809.23(3)(a) or (b).

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 first names and last initials 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 25th day of May, 2021.

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