STATE OF WISCONSIN

C O U R T OF A P P E A L S

DISTRICT II

Appeal Case No. 2020AP002147

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

KODY R. KOHN,

Defendant-Appellant.

ON APPEAL FROM AN ORDER AND JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR OZAUKEE COUNTY, THE HONORABLE PAUL V. MALLOY PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Whether the phrase "and you will be subject to other penalties" within the Informing the Accused form was coercive and rendered Kohn's consent to the blood draw involuntary.

   The trial court answered: No.

2. Whether Kohn was required under Wis. Stat. § 971.23(2m)(c) to disclose exhibits he intended to offer in evidence at trial.

   The trial court answered: Yes.

3. Whether Kohn violated a condition of bail to commit no crime by committing a second Operating While Under the Influence (OWI) offense after being released on bail but prior to conviction for the first OWI offense.

   The trial court answered: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat (Rule) 809.22(1)(b).[1] Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On Sunday, November 25, 2018, at approximately 12:56 AM, Kody Kohn was stopped and arrested by a City of Port Washington police officer for OWI first offense. (R. 37:2.) This arrest also resulted in misdemeanor criminal charges for Resisting/Failing to Stop, Possession of Tetrahydrocannabinols (THC), and Possession of Drug Paraphernalia in Ozaukee County case number 2018CM0499. (R. 37:1.) Kohn was released from custody in that case on November 26, 2018, with a condition that he not commit any crime. (R. 37:3.)

On Sunday, November 30, 2018, at approximately 1:59 AM, Kohn was stopped and arrested by Port Washington Police Officer Ryan Hurda for a second OWI offense. (R. 23:2.) Kohn was subject to the misdemeanor bail conditions on November 30, 2018. (R. 37:4.) However, he had not yet been convicted of the first OWI offense. (R. 23:2.) Following conviction for the first OWI offense on February 15, 2019, the state issued criminal charges in Ozaukee County case number

[1] All references to the Wisconsin Statutes are to the 2019-21 version unless otherwise indicated.

2019CT0090 for OWI second offense and Operating with a Prohibited Alcohol Concentration (PAC) second offense stemming from the November 30, 2018, incident. (R. 1:2.) The complaint was later amended to include a charge of misdemeanor bail jumping for violating the bail condition on November 30, 2018. (R. 23.)

Prior to trial, Kohn filed a motion to suppress the results of the blood draw alleging, in part, that the statutory language within the Informing the Accused rendered Kohn's consent to the blood draw involuntary. (R. 13:2.) This motion was heard on December 2, 2019, with testimony by Officer Hurda. (R. 67:1-2.) Officer Hurda testified that following arrest he read Kohn the Informing the Accused verbatim as required by Wis. Stat. § 343.305. (R. 67:6.) Kohn then consented to the blood draw. (R. 67:7.) Following the motion hearing, the circuit court denied Kohn's motion to suppress. (R. 21:1.)

A jury trial was held on September 8, 2020. (R. 72.) Prior to commencing the trial, the circuit court went through the motions in limine filed by each party. (R. 72:3-10.) The court addressed the state's motion pursuant to Wis. Stat. § 971.23(2m)(c) that the defense be prohibited from introducing any physical evidence at trial which was not disclosed to the state pursuant to discovery demand. (R. 28:1; 6:1.) When the court asked about this issue, Attorney Bayer responded, "And I believe that that would be relevant only if defense had an expert and were somehow doing tests. We don't have an expert. There's been no tests. I've listed no experts on my witness list." (R. 72:10.)

Following a lunch break, the court was prepared to resume the trial with testimony of the analyst from the Wisconsin State Laboratory of Hygiene. At that point, the state raised an objection noting that the defense had just provided five different physical exhibits which it intended to offer into evidence. (R. 72:132.) The court delayed bringing the jury back in and excused a witness from the stand in order to address the issue. (R. 72:131-141.)

The state indicated it had not seen the exhibits previously nor had it had a chance to review the documents. (*Id.*) The state objected to allowing these into evidence based on the lack of notice as required by Wis. Stat. 971.23(2m)(c).

Attorney Bayer stated that he had not turned over the exhibits because it "does basically [telepath] [2] the defense if you turn them over ahead of time." (R. 72:134.) The court then ruled that the exhibits would not be admitted into evidence and stated:

> The evidence isn't coming in. You know, you basically, Mr. Bayer, have said I held this back so I could do a trial by surprise or ambush. That's the old school way of doing it…. That's not going to fly. You're not introducing that.

(R72:137-138.) Despite not allowing the exhibits to be admitted into evidence, the court allowed complete cross-examination of the lab analyst about the contents of the documents. (R. 72: 138-139; 170-182.) Kohn also emphasized this evidence repeatedly to the jury in closing. (R. 72: 214-215; 227-229.)

Following trial, the jury returned guilty verdicts for all three criminal charges. (R. 43:1-3.) Kohn then made a motion to dismiss at the close of the state's case and a motion for judgment notwithstanding the verdict and the court denied those motions. (R. 72:245.) The defense then elaborated on the motion for judgment notwithstanding the verdict:

> And, Your Honor, I'd like to elaborate because I don't know why I just thought of this, but the motion notwithstanding verdict on the specific bail jumping count, the bail jumping in this case was submitted on the theory that Mr. Kohn committed a crime on the day that he was driving. And there's the OWI, it actually – I couldn't discuss this with the jury, but I probably should have before the trial, but I was more thinking about the OWI the whole time to be honest with you. But now that I think about this, it wasn't a crime for him to be drinking and driving. That was a second first offense actually. This was originally a first offense OWI, this driving … so I don't believe that he did commit a crime. I don't know, I would ask that that be dismissed.

(R. 72:245.) The court then again denied the motion. (R. 72:246.) Kohn now appeals the order denying his motion to

[2] The trial transcript records Attorney Bayer stating "tell the path of the defense." (R. 72:134.) The prosecutor heard him say "telegraph." (R. 72:137.) This brief adopts "telepath" based on the factual summary in Kohn's brief. (Pet'r Br. xi.)

suppress, the order excluding admission of physical evidence at trial, and the orders denying the motion to dismiss and motion for judgment notwithstanding the verdict.

ARGUMENT

I. This Court should affirm the circuit court order denying Kohn's motion to suppress because the Informing the Accused form did not threaten criminal penalties, nor invalidate Kohn's consent.

A. Standard of Review

The review of a circuit court's order granting or denying a suppression motion presents a question of constitutional fact. *State v. Dearborn*, 2010 WI 84, ¶13, 327 Wis. 2d 252, 786 N.W.2d 97. The appeals court "will uphold the court's factual findings until they are clearly erroneous," but will "independently apply constitutional principles to those facts." *State v. Coffee*, 2019 WI App 25, ¶6, 387 Wis. 2d 673, 929 N.W.2d 245.

B. The Informing the Accused properly informed Kohn about potential civil penalties for refusal.

Wisconsin's implied consent law requires law enforcement officers to read the Informing the Accused form to an arrested driver prior to requesting consent to a chemical test of their breath or blood. Wis. Stat. § 343.305, provides in relevant part:

> (3) ... (a) Upon arrest of a person for a violation of [Wis. Stat. §] 346.63(1) ... a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine ....
>
> ....
>
> (4) Information. At the time that a chemical test specimen is requested under sub. (3)(a) ..., the law enforcement officer shall read the following to the person from whom the test specimen is requested:

> "You have ... been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both ...
>
> This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked *and you will be subject to other penalties*. The test results or the fact that you refused testing can be used against you in court.

(Emphasis added.)

Wisconsin law provides a number of civil penalties in addition to operating privilege revocation that are imposed upon refusal. These include a one year ignition interlock device (IID) requirement or 24-7 absolute sobriety program, Wis. Stat. § 343.301(1g)(am); a prohibited alcohol concentration limit of 0.02 during that same period, Wis. Stat. § 340.01(46m)(c); and a 30-day waiting period prior to obtaining an occupational license, Wis. Stat. § 343.305(10)(b)2. Some of these civil penalties are enhanced if the driver has a prior refusal or OWI-related offense on his or her driver record, Wis. Stat. $ 343.301(2m), or if there was a minor child under 16 years of age in the vehicle, Wis. Stat. § 343.305(10)(b)4m.

While criminal penalties cannot be imposed as a consequence for refusal, it has been long-accepted that a state may impose civil penalties for implied consent violations. In *Birchfield v. North Dakota*, the U.S. Supreme Court noted:

> Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. *See, e.g.*, [*Missouri v. McNeely*, 569 U.S. 141, 160-161 (2013)] (plurality opinion); [*South Dakota v. Neville*, 459 U.S. 553, 560 (1983)]. Petitioners do not question the constitutionality of those laws, and nothing we say here should be read to cast doubt on them.

Birchfield v. North Dakota, 136 S. Ct. 2160, 2185 (2016).

The Informing the Accused form states that, upon refusal, other penalties will be imposed in addition to revocation of operating privilege. This is an accurate statement of Wisconsin law and the constitutionality of civil penalties for refusal has been emphasized in *Birchfield* and prior cases.

C. Kohn was not coerced into agreeing to a blood draw—he was properly informed of potential civil penalties for refusal.

Prior to obtaining Kohn's consent to the blood draw, Officer Hurda read Kohn the Informing the Accused as directed by Wis. Stat. § 343.305. (R. 67:6.) This properly informed Kohn that additional civil penalties would be imposed upon refusal. Nothing in the language of the Informing the Accused contains any reference to a criminal penalty upon refusal. There is also nothing in the record to suggest that Kohn actually believed a criminal penalty would be imposed. Instead, Kohn's argument rests upon the assumption that "an arrestee would believe that he is being threatened with criminal penalties." (Pet'r Br. 5.) [3]

However, the language of the Informing the Accused form does not support Kohn's argument that it threatens criminal penalties. There is nothing in the form that threatens imprisonment or a fine—the two most common criminal penalties. In fact, every penalty or consequence listed on the Informing the Accused is a civil penalty:

> If any test shows more alcohol in your system than the law permits while driving, *your operating privilege will be suspended*. If you refuse to take any test that this agency requests, *your operating privilege will be revoked and you will be subject to other penalties*. …
>
> If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, *such as being placed out of service or disqualified*."

[3] Kohn makes a contrary argument with regard to his bail jumping claim. There he insists that he could not have violated bail conditions because the only intent he demonstrated was to commit a civil OWI violation, and not to commit a crime. It seems counterintuitive that a driver would assume a second OWI offense is a civil violation, but that "other penalties" upon refusal for the same offense must be criminal.

> In addition, *your operating privileges will also be suspended* if a detectable amount of a restricted controlled substance is in your blood.

(R. 15 (emphasis added).) The only reasonable interpretation in this context is that "other penalties" are additional civil penalties similar to those listed on the Informing the Accused form.

Kohn's argument in this case the functional equivalent to the argument rejected by this Court in *State v. Levanduski*, 2020 WI App 53, 393 Wis. 2d 674, 948 N.W.2d 411. Levanduski argued that the language within the Informing the Accused form stating that the refusal "can be used against [her] in court" was a misrepresentation of the law, coercive, and rendered her consent to the blood draw involuntary. *Id.*, ¶ 6. This Court found that recent decisions have reinforced the rule that a refusal to submit to a blood draw may be used as evidence in court. *Id.*, ¶ 10. The court found the officer correctly stated the law while reading the Informing the Accused and that Levanduski's consent was therefore voluntary. *Id.*, ¶ 15.

In discussing recent U.S. Supreme Court and Wisconsin Supreme Court decisions regarding implied-consent laws, *Levanduski* specifically emphasized ability of a state to impose civil penalties as a consequence for refusal. *Id.*, ¶ 12. These are the exact "other penalties" referenced in the Informing the Accused form which was read to Kohn.

The only difference between this case and *Levanduski* is that Kohn targets a different portion of the Informing the Accused language. He then asserts without legal or factual support that the language is false statement of the law, and asks the Court to find that his consent to the blood draw was not voluntary. The Court should apply a similar analysis to *Levanduski* and find that the Informing the Accused language was accurate and that Kohn's consent was voluntary.

II. Kohn was required under Wis. Stat. § 971.23(2m)(c) to disclose physical evidence he intended to offer in evidence at trial and the circuit court correctly excluded those exhibits.

A. Standard of Review

A trial court's decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has "a reasonable basis" and was made "in accordance with accepted legal standards and in accordance with the facts of record." *State v. Pharr*, 115 Wis.2d 334, 342, 340 N.W.2d 498, 501 (1983).

B. Wis. Stat. § 971.23(2m)(c) required Kohn to disclose the exhibits he intended to offer in evidence at trial.

Wisconsin's reciprocal discovery statute requires both the district attorney and the defendant to disclose the physical evidence each party intends to offer into evidence at trial. Wis. Stat. § 971.23(2m)(c). The state is not arguing that Kohn had a general discovery obligation to turn over all reports or data compilations that he obtained from the State Laboratory of Hygiene. However, Kohn is required to disclose the five exhibits that he intended to offer into evidence at trial.

In this case, Kohn's attorney acknowledged that he did not disclose the exhibits he intended to offer in evidence so as to maintain an element of surprise. (R. 72:134.) The court specifically inquired with Attorney Bayer prior to the start of trial whether he was planning to introduce physical evidence that had not been disclosed. (R. 72:10.) Attorney Bayer avoided a direct response and instead asserted his belief that it "would be relevant only if the defense had an expert and were somehow doing tests." (*Id.*)

Kohn now attempts to parse the definition of "possession, custody, or control" to argue he had no obligation to disclose the exhibits he intended to admit at trial. "Possession, custody, or control" is not defined by statute. Wis. Stat. § 971.23. However, the Wisconsin Supreme Court has noted that 1995 Wis. Act 387, which created Wis. Stat. § 971.23(2m)(c), was "intended to expand the discovery and

disclosure requires that apply to both the State and the defendant." *State v. DeL*ao, 2002 WI 49, ¶ 20, 252 Wis. 2d 289, 643 N.W.2d 480. Under any plain meaning of the word, Kohn "possessed" the exhibits that he intended to admit into evidence at trial and deliberately withheld them for strategic advantage.

There are ample public policy reasons why the evidence a party intends to offer into evidence should be disclosed before the day of trial. As the Wisconsin Court of Appeals has stated:

> Wisconsin has abandoned the concept of "trial by ambush" where neither side of the lawsuit knows until the actual day of trial what the other side will reveal in the way of witnesses or facts. The former system may have been one of great sport and mystery, but is hardly defensible as a means to determine the truth. Adequate preparation for trial by counsel with full knowledge of the facts before them will result not only in a more orderly trial, but in many cases will result in counsel reevaluating their cases so as to avoid needless trials.

Carlson Heating, Inc. v. Onchuck, 104 Wis. 2d 175, 180, 311 N.W.2d 673, 676 (Ct. App. 1981). In this case, the refusal to identify or disclose defense exhibits prior to trial resulted in an unnecessary delay during which the jury was required to wait and a witness had to be excused from the stand so that the court could rule on an issue that should have been addressed before trial. (R. 71:131-138.)

Wis. Stat. § 971.23(7m)(a) permits the trial court to exclude witnesses or evidence not disclosed as required by Wis. Stat. § 971.23(2m)(c). Here, the trial court appropriately excluded the exhibits but still allowed the defense to fully cross examine the laboratory analyst about the information that was contained within the exhibits. (R. 72:139.) This was a reasonable ruling by the trial court and should not be overturned as an erroneous exercise of discretion.

C. Even if the trial court erred in excluding the five exhibits which Kohn intended to offer in evidence, any such error was harmless as there was no prejudice.

A court's ruling on a discovery violation is subject to a harmless error analysis. *See State v. Rice*, 2008 WI App 10, ¶ 14, 307 Wis. 2d 335, 743 N.W.2d 517. In addition, an alleged violation of a defendant's right to present a defense is also subject to a harmless error analysis. *State v. Kramer*, 2006 WI App 133, ¶ 26, 294 Wis. 2d 780, 720 N.W.2d 459. An error is harmless if "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *Id.* ¶ 26; *Neder v. United States*, 527 U.S. 1, 18 (1999).

If the trial court erred in this case by excluding the five exhibits that Kohn intended to offer in evidence, any error would have been harmless. Kohn was still permitted to fully cross examine the laboratory analyst regarding the contents of the exhibits. (R. 72:170-182.) Kohn also emphasized this evidence repeatedly to the jury in closing. (R. 72: 214-215; 227-229.) A review of the record shows that the jury had an opportunity to consider this evidence and nevertheless found Kohn guilty. As such, any alleged error in excluding the five exhibits was harmless.

III. Kohn's commission of a second OWI offense while released on bail was a violation of the bail condition to commit no crime.

A. Standard of Review

Kohn presents this issue as both that of sufficiency of the evidence or review of a denial of a motion notwithstanding the verdict. However, the legal issue presented could have been raised at a variety of points in the proceedings.[4] The real question presented is whether Kohn violated a condition of bail to commit no crime by committing a second OWI offense after

[4] While Kohn did not raise these challenges, the same issue would arise with a challenge to the sufficiency of the amended criminal complaint (R. 39) or an objection to the jury instruction informing the jury that, in relation to the bail jumping charge, operating while under the influence of an intoxicant or operating a motor vehicle while under the influence of an intoxicant is a crime (R. 73:195).

being released on bail but prior to conviction for the first OWI offense.

The factual issues in relation to this question do not appear to be in dispute. The remaining issues involve the interpretation and application of Wisconsin statutes which the Court reviews *de novo*. Appellate courts "independently interpret and apply Wisconsin statutes under known facts as questions of law." *City of Cedarburg v. Hansen*, 2020 WI 11, ¶ 12, 390 Wis. 2d 109, 938 N.W.2d 463.

B. A defendant who commits a second OWI offense prior to conviction for the first OWI offense commits a crime.

In *State v. Banks*, the Wisconsin Supreme Court held that criminal penalties for second offense OWI apply "regardless of the order in which the offenses were committed and the convictions were entered." *State v. Banks*, 105 Wis. 2d 32, 48, 313 N.W.2d 67 (1981). In *Banks*¸ the defendant committed two OWI offenses within a three-month period and was convicted of the later-in-time offense as a civil violation. The earlier-in-time offense was then prosecuted as a criminal OWI second offense. *Id.* at 36.

The Supreme Court specifically distinguished penalties for repeat OWI offenses from other penalty enhancers which require a prior conviction before the commission of a subsequent offense. *Id.* at 47. *Banks* emphasized:

> The conclusion that the legislature intended the criminal penalties … to be applied to a driver who repeatedly violates sec. 346.63(1), regardless of the sequence of offenses is consistent with the recognized nationwide and state legislative objective of removing drunken drivers from the highways.

Id. at 48. *Banks* establishes that a defendant who commits a second OWI offense commits a crime, even it occurs prior to conviction for the first OWI offense.

Notably, the Supreme Court rejected several arguments in *Banks* which bear similarity to the arguments advanced by Kohn. First, Banks argued that the OWI penalty statute was unconstitutionally vague in that it "does not give the actor

notice at the time he commits the offense whether or not his conduct is criminal or what the range of punishment his conduct will subject him to." *Id.* at 50. The Supreme Court responded that the statute "gives ample notice to a driver who wishes to avoid criminal penalties that a second offense of driving under the influence of intoxicants subjects a driver to criminal penalties." *Id.* at 51.

Second, Banks claimed that the OWI penalty statute had an *ex post facto* effect because "at the time of the commission of the second drunken driving offense he could not determine whether his conduct was criminal." *Id.* The Supreme Court also rejected this argument and noted that the statute "clearly provided criminal punishment for a drunken driving violation which results in a second conviction during a [then] five-year period." *Id*. at 76.

Under *Banks*, Kohn's second OWI offense was a crime, even though he committed the second offense prior to conviction for his first offense. Kohn incorrectly claims that he could not have violated the bail jumping statute by committing a crime because the only intent demonstrated was to commit a "second first offense traffic forfeiture level" violation. (Pet'r Br. 18.) A second offense is a civil forfeiture if it occurs outside 10-year period. Wis. Stat. § 346.65(2)(am). Here the two OWI offenses occurred within a five-day period which could only result in criminal penalties. There is no legal or factual support for the proposition that an individual in Kohn's position could have intended to only commit a "second first offense." To the contrary, *Banks* establishes that, at the time he committed the second OWI offense, Kohn had ample notice that his conduct was criminal.[5]

C. Kohn committed a crime while subject to a statutory bail condition that he not commit any crime.

The bail statute governing the release of defendants charged with misdemeanors provides that "[a]s a condition of

[5] Even if Kohn was unaware of the incremental penalties for a second OWI offense, it is well-established that ignorance is not a defense to criminal prosecution. "[D]efendants are presumed to know the law, and ignorance of the law, even if proved, would be no excuse." *Byrne v. State*, 12 Wis. 519 (1860).

release in all cases, a person released under this section shall not commit any crime." Wis. Stat. § 969.02(4). The record in this case establishes that Kohn committed the crimes of OWI second offense and PAC second offense while released on bail for misdemeanor charges.

Despite these criminal convictions, Kohn repeatedly asserts that he cannot be convicted of bail jumping because he did not commit a crime on November 30, 2018. (Pet'r Br. 15-18.) This argument is contrary to the jury's verdicts on the OWI-related criminal charges.

Kohn's argument also relies on a misunderstanding of the definition of "crime" in the bail statute. Kohn emphasizes the distinction between forfeiture and criminal offenses. This distinction is found in Wis. Stat. § 939.12. However, that definition of "crime" does not apply to the statute defining conditions of release on bail.

In *State v. West*, 181 Wis. 2d 792, 512 N.W.2d 207 (Ct. App. 1993), the Wisconsin Court of Appeals adopted a broad definition of "crime" as it relates to the statutory bail condition that a defendant "shall not commit any crime." Wis. Stat. § 969.03(2).[6] *West* addressed whether a person could violate a bail condition to commit no crime by committing an offense in another state. The court stated:

> We conclude that "crime" is defined in sec. 939.12, Stats., only for purposes of chs. 939 to 948 and 951…. Given the purposes of bail and other conditions of release, we conclude that "crime," as used in sec. 969.03(2), Stats., should be given its commonly understood meaning.

Id. at 796. The court held that the appropriate definition of "crime" in the bail statute was "an offense against the social order ... that is dealt with by community action rather than by an individual or kinship group." *Id.* The court emphasized that this definition was consistent with the purpose of Wis. Stat. § 969.01(1) which authorizes the release of a defendant on bail, including "protect[ing] members of the community from serious bodily harm." *Id.*

[6] *West* addressed Wis. Stat. § 969.03(2) which governs release of defendants charged with felonies. However, the language is identical to Wis. Stat. § 969.02(4).

The definition of "crime" adopted in *West* includes Kohn's commission of a second OWI offense while out on bail in this case. The broad definition is consistent with the legislative objectives of both the bail statute and the OWI penalty statute. The legal and factual record in this establishes that Kohn committed a crime while released on bail for misdemeanor charges and subject to a condition that he not commit any crime.

CONCLUSION

For the foregoing reasons, the State of Wisconsin respectfully requests that the Court of Appeals affirm the orders of the circuit court.

Dated this 30th day of June, 2021.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 5172 words.

Electronically signed by:

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate Electronic Filing Project, Order No. 19-02.

I further certify that a copy of this certificate has been served with this brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated this 30th day of June, 2021.

Electronically signed by:

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