STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2021AP267-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

MITCHELL D. GREEN,

Defendant-Appellant.

ON APPEAL FROM A DECISION OF THE WISCONSIN COURT OF APPEALS, DISTRICT I, REVERSING THE DENIAL OF A MOTION TO DISMISS CHARGES WITH PREJUDICE

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT-PETITIONER

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INTRODUCTION

In early 2020, Defendant-Appellant Mitchell D. Green went to trial on multiple charges stemming from his involvement in a sex trafficking ring that victimized children. On the second day of trial, Green presented testimony from Jonathan Cousin, whose testimony suggested that it was he—not Green—who trafficked the victim in this case on the night in question. Cousin was unrepresented by counsel, and Green had never given the court or the State notice that Cousin would place himself as a potential third-party perpetrator. Because of these shortcomings, the circuit court concluded that a mistrial was required. As the State moved toward re-trying Green, he sought dismissal of the case, arguing that the retrial would violate his constitutional right against double jeopardy. The circuit court denied his motion, but the court of appeals granted leave for an interlocutory appeal and reversed.

This Court should reverse the court of appeals' decision. Whether circumstances constitute a "manifest necessity" for a mistrial is a matter of discretion for the circuit court. Here, the court considered multiple relevant factors, including a lack of notice and concerns about Cousin's right to counsel, when it determined that the circumstances required a mistrial. It took its time with the decision, heard argument from both parties, and considered—but rejected—alternatives to declaring a mistrial. Yet the court of appeals dismissed the circuit court's analysis, effectively concluding that the circuit court misunderstood its own pre-trial orders and that a court must *always* hold an evidentiary hearing mid-trial before determining whether a mistrial is necessary. These conclusions were wrong, and this Court should correct them.

ISSUE PRESENTED

Did the circuit court erroneously exercise its discretion when it concluded that there was a manifest necessity for a mistrial after Green introduced unnoticed third-party perpetrator evidence at trial via the testimony of a witness who claimed to have committed the crime but was unrepresented by counsel?

The circuit court sua sponte declared a mistrial over Green's objection, concluding that the length and nature of the testimony made any resolution other than a mistrial untenable. The circuit court later denied Green's motion to dismiss the charges with prejudice on double-jeopardy grounds, concluding that there was a manifest necessity for the mistrial.

The court of appeals reversed, holding that because the unnoticed evidence was eventually ruled admissible, the pre-trial orders did not apply to *known* third-party perpetrator evidence, and the remedy for any error from Cousin not having counsel did not flow to the State, there was no manifest necessity for the mistrial.

This Court should reverse the court of appeals.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

As this Court has accepted review of this case, oral argument and publication are customary and appropriate.

STATEMENT OF THE CASE

This case relates to Green's sex trafficking of a minor, S.A.B. S.A.B. was trafficked by Green and another man, Kimeo Conley. On one occasion when Conley was out of town, Green drove S.A.B. to a prostitution date at the Marriott in downtown Milwaukee. (R. 1:2.) S.A.B. remembered the evening distinctly because her abuser spit in her mouth,

causing her to vomit. (R. 1:2.) After S.A.B. received payment and left the Marriott, Green took all of the money. (R. 1:2.)

After police arrested Conley on December 4, 2018, (R. 1:2), Green confronted S.A.B., accusing her of talking to the police (R. 1:2). Green punched S.A.B. in the face with a closed fist, pointed a gun at her, threatened to kill her, and took her phone. (R. 1:2.) At the time of these incidents, S.A.B. was 17 years old. (R. 1:2.)

Police originally knew Green only as "Money Mitch." They learned his identity when Green appeared as a witness at Conley's jury trial in February 2019. (R. 1:2; 82:75.) S.A.B. was present at trial to testify against Conley, and she identified Green as "Money Mitch" after she saw him in the courtroom. (R. 1:2.)

In a criminal complaint dated March 3, 2019, the State charged Green with one count each of trafficking of a child, physical abuse of a child, and disorderly conduct. (R. 1:1.)

On August 21, 2019, Green filed a witness list that included two names, one of which was Green's cousin, Jonathan Cousin. (R. 18:1.) The next day, the State filed an omnibus pretrial motion in limine. (R. 21:1.) One of the items in the motion sought an order "[p]rohibiting the defense from introducing any other-acts evidence involving a third-party perpetrator" unless the evidence was previously ruled admissible by the court. (R. 21:2.) At a hearing that same day, the court acknowledged receipt of the State's motion; at no time did Green object to any of the State's requests. (R. 73:2.)

Green's trial began on January 27, 2020. (R. 80.) On the first day, S.A.B. testified about her experiences with Conley and Green. (R. 82:68–78.) S.A.B. stated that Green drove her to the prostitution meeting at the downtown Marriott and said that although she did not remember the specific date that the meeting occurred, it stood out to her because of the man

spitting in her mouth. (R. 82:70.) On the second day of trial, Milwaukee Police Officer Gerardo Orozco testified about his work with the FBI Human Trafficking Task Force and his investigation into Green. (R. 83:4–7, 18–24.) Following Officer Orozco's testimony, the State rested. (R. 83:78.)

Green's first witness was Cousin. (R. 83:78.) Cousin testified that *he* was the one who gave S.A.B. the ride to the Marriott on the evening she described. (R. 83:85.) He claimed that he agreed to give S.A.B. and two men named Delmar and J.R. a ride downtown in exchange for gas money. (R. 83:85–86.) According to Cousin, when they arrived at a hotel downtown, Delmar asked him to wait in exchange for more money, and Cousin agreed. (R. 83:87.) Meanwhile, S.A.B. and J.R. left the car. (R. 83:87.) About 15 minutes later, Cousin said, they returned to the car and S.A.B. mentioned the man spitting in her mouth to J.R. (R. 83:87–88.) The State then briefly cross-examined Cousin about inconsistencies in his story, his knowledge that prostitution was occurring, and his relationship with Green. (R. 83:90–93.) The court then took a recess for lunch. (R. 83:93.)

After the break, the court stated that there had been an off-the-record discussion for about five minutes in which the State expressed concern about Cousin's testimony, and that the court shared the State's concern. (R. 86:2.) The State noted that it was never told that Green intended to use Cousin as a *Denny*[1] witness and that there was "no *Denny* investigation, no *Denny* motion hearing, and no ruling on the admissibility of that evidence." (R. 86:3.) The State further commented that Cousin had effectively admitted to trafficking S.A.B. without the advice of counsel. (R. 86:4–5.)

[1] *State v. Denny*, 120 Wis. 2d 614, 357 N.W.2d 12 (Ct. App. 1984).

The court explained that it saw two main issues: whether Cousin "did or did not need . . . counsel before he testified," and "the *Denny* issue, which wraps together with the whole, both sides have a right to a fair trial issue." (R. 86:9.) Green argued that Cousin was not necessarily offering *Denny* evidence because there was no specificity as to the dates on which Green and Cousin allegedly drove S.A.B., but the court replied that if Cousin's testimony was not meant to suggest that Cousin had driven S.A.B. instead of Green, then Cousin's testimony was completely irrelevant. (R. 86:13–14.) Green continued to argue that Cousin had not actually admitted to committing a crime, but the court disagreed, saying that "the State has enough to arguably get past probable cause right now based on what [Cousin] said on the stand." (R. 86:19.)

After further discussion by the parties, the court recapped Cousin's testimony, concluding that "[t]he only purpose for Mr. Cousin to testify is to take the fall for Mr. Green . . . ." (R. 86:26–28.) The court considered a curative instruction, but it reasoned that an instruction would be ineffective because it would require the jury to disregard approximately 25 minutes of testimony. (R. 86:29.) It also noted that it was not fair to the State for Cousin's testimony to be offered without notice, and that it should have been vetted in advance:

> I'm not sure that I would have allowed Mr. Cousin to testify. I would have needed it to be vetted bit more. I would have wanted to hear more of an argument and briefing from both sides as to the *Denny* issues. It strikes me as very, very problematic, and I agree with the State that it clearly is *Denny* evidence.

(R. 86:30.)

Most importantly, the court reasoned, there was no way "that that bell can be unrung, because of the gravity of the testimony, because of *Denny* evidence, [and] because there

were only three witnesses in this case." (R. 86:31.) Thus, the court concluded, "the circumstances require[d] a mistrial." (R. 86:32.) It said that the matter would be reset for a new trial date, and that the *Denny* issue should be resolved before the second trial. (R. 86:33.)

After the mistrial, Green filed a motion to dismiss the case, arguing that retrial would violate his constitutional right against double jeopardy. (R. 42.) The State responded, arguing that the mistrial was necessary. (R. 46:2–6.) The State also argued that the defense's treatment of Cousin as an uncounseled party should disqualify Green's attorney from continuing on the case. (R. 46:6–10.) The court denied the motion to dismiss at a hearing on June 22, 2020. (R. 88:5.)[2] The court stated that Cousin's testimony had "blindsided" the State, and that "there were no legitimate alternatives at that point in time other than a mistrial." (R. 88:5.)

Following the court's denial of the motion to dismiss, Green's counsel withdrew in light of the State's request to disqualify him. (R. 89:5.) After a delay for a change in counsel, Green moved the circuit court to reconsider its decision regarding the motion to dismiss. (R. 58.) The State filed a response (R. 62), and the circuit court denied reconsideration (R. 63). Green then filed a petition for leave to appeal the circuit court's decision (R. 66), which the court of appeals granted (R. 64).

In an opinion dated March 22, 2022, the court of appeals reversed. (Pet-App. 3.) The court concluded that retrial would violate Green's constitutional right against double jeopardy because there was no "manifest necessity" for the mistrial during his first trial. (Pet-App. 4.) It reasoned that because the circuit court eventually—in a hearing leading up to the

[2] The June 22 hearing took place via videoconference due to the COVID-19 pandemic.

second trial—ruled that Cousin's testimony would be admissible, there was no need to "unring the bell" in the first trial. (Pet-App. 9.) Based solely on the circuit court's citation to *Scheidell*,[3] the court of appeals interpreted the circuit court's pre-trial orders as covering only the introduction of *unknown* third-party perpetrator evidence and that there was no restriction on the introduction of *known* third-party perpetrator evidence. (Pet-App. 10.) The court further concluded that any issue with Cousin's testimony resulting from his being unrepresented by counsel was an issue for Cousin himself, not the State. (Pet-App. 10–11.) The court therefore remanded the case with instructions for the circuit court to dismiss the charges against Green with prejudice. (Pet-App. 11.)

The State petitioned for review, which this Court granted.

STANDARD OF REVIEW

This Court reviews a circuit court's decision to declare a mistrial due to a "manifest necessity" for an erroneous exercise of discretion. *State v. Barthels*, 174 Wis. 2d 173, 183, 495 N.W.2d 341 (1993).

[3] *State v. Scheidell*, 227 Wis. 2d 285, 595 N.W.2d 661 (1999).

ARGUMENT

The circuit court correctly denied Green's motion to dismiss because it properly exercised its discretion to determine that there was a manifest necessity for a mistrial.

A. Double jeopardy does not bar retrial of a defendant where his first trial resulted in a mistrial due to a manifest necessity.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution states: "No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb . . . ." U.S. Const. amend. V. The Wisconsin Constitution contains the same protection in article I, section 8(1): "[N]o person for the same offense may be put twice in jeopardy of punishment." This Court has said these provisions are "identical in scope and purpose," such that they are coterminous. *See State v. Kelty*, 2006 WI 101, ¶ 15, 294 Wis. 2d 62, 716 N.W.2d 886.

The protection against double jeopardy is twofold: It protects a criminal defendant from successive prosecutions and from multiple punishments for the same offense. *United States v. Dixon*, 509 U.S. 688, 696 (1993). Only the former protection is at issue here. "Protection against successive prosecutions precludes both 'a second prosecution for the same offense after acquittal[ ]' and 'a second prosecution for the same offense after conviction.'" *Kelty*, 294 Wis. 2d 62, ¶ 16 (alteration in original) (quoting *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969)).

Jeopardy generally attaches to a criminal prosecution when the jury has been empaneled and sworn in. *See State v. Seefeldt*, 2003 WI 47, ¶ 16, 261 Wis. 2d 383, 661 N.W.2d 822. "The protection against double jeopardy limits the ability of the State to request that a trial be terminated and restarted."

Id. ¶ 17. However, where a "manifest necessity" dictates the need for a mistrial, retrial of the defendant will not violate his right against double jeopardy. *Id.* ¶ 19. It is the State's burden to show the existence of a manifest necessity in such a case. *Id.*

Whether a manifest necessity exists "is a matter of discretion for the trial court" because "[w]hether circumstances warrant the granting of a mistrial can best be ascertained by the trial court judge." *Barthels*, 174 Wis. 2d at 183. As the United States Supreme Court has said,

> [u]nless unscrupulous defense counsel are to be allowed an unfair advantage, the trial judge must have the power to declare a mistrial in appropriate cases. The interest in orderly, impartial procedure would be impaired if he were deterred from exercising that power by a concern that any time a reviewing court disagreed with his assessment of the trial situation a retrial would automatically be barred. The adoption of a stringent standard of appellate review in this area . . . would seriously impede the trial judge in the proper performance of his "duty, in order to protect the integrity of the trial, to take prompt and affirmative action to stop . . . professional misconduct."

Arizona v. Washington, 434 U.S. 497, 513 (1978) (quoting *United States v. Dinitz*, 424 U.S. 600, 612 (1976)).

"In exercising its discretion, the trial court must examine the circumstances leading to the state's motion and should consider the alternatives before depriving the defendant of the right to have the original tribunal render a final verdict." *State v. Collier*, 220 Wis. 2d 825, 835, 584 N.W.2d 689 (Ct. App. 1998). However, a court need not use the words "manifest necessity" when permissibly declaring a mistrial. *Washington*, 434 U.S. at 516–17.

B. The circuit court's determination that there was a manifest necessity for a mistrial was a proper exercise of discretion.

Here, the circuit court soundly exercised its discretion when it determined that a manifest necessity required a mistrial in Green's first trial. The court acted "in a deliberate manner," gave "both parties a full opportunity to explain their positions," and "consider[ed] alternatives such as a curative instruction." *Seefeldt*, 261 Wis. 2d 383, ¶ 36. Despite Green's opposition, the court concluded that it had no choice but to declare a mistrial.

The court's concern was twofold. First, the court noted the distinct possibility that if Cousin received the advice of counsel before testifying—as he should have—the jury would not have heard his testimony because Cousin likely would have been advised not to testify in a manner that suggested he had committed a felony. (R. 86:9; 91:17.) Second, the court was concerned that Green's raising of a *Denny* defense without proper notice to the State was unfair to the State. (R. 86:9; 91:39–40.) For those reasons, and because Cousin had testified for some 25 minutes, the court concluded that there was no way to undo the effect of Cousin's surprise testimony, and that a mistrial was therefore "a manifest necessity." (R. 91:40.)

The court's deliberative process evinced a proper exercise of discretion with regard to the manifest necessity for a mistrial. The court did not abdicate its responsibility by permitting the State to decide whether there would be a mistrial, nor did it fail to consider alternatives to declaring a mistrial. *Cf. State v. Moeck*, 2005 WI 57, ¶¶ 69–72, 280 Wis. 2d 277, 695 N.W.2d 783. It considered issuing a curative instruction or striking Cousin's testimony. (R. 86:21–22, 28–29.) But after weighing all of the circumstances, it concluded that there was no way to "unring that bell"—that is, there was

no possibility to cure the error—mid-trial. (R. 86:29, 31–32.) That decision is entitled to significant deference, *see, e.g. Washington*, 434 U.S. at 513, and the court of appeals should have affirmed it.

C. The court of appeals' reasoning for reversal was flawed.

The court of appeals offered three primary reasons for reversing the circuit court. First, the court stated that the circuit court erred because it did not immediately determine whether the evidence would be properly admissible and because the court eventually determined that Cousin's testimony would be allowed at the second trial. (Pet-App. 8–9.) Second, the court reasoned that Cousin's testimony was not unfair to the State because Cousin was on the defense's witness list and because the State's motion in limine applied only to *unknown* third-party perpetrator evidence, not *known* third-party perpetrator evidence. (Pet-App. 10.) Third, the court concluded that any issue with Cousin not having the advice of counsel would trigger a remedy for Cousin, not the State, and therefore would not justify a mistrial. (Pet-App. 10–11.) The State disagrees with the court's analysis on each of these points.

First, it was reasonable for the circuit court not to conduct an admissibility analysis on Cousin's testimony in the middle of trial. The court of appeals cited *Seefeldt* as the basis for this requirement. Like this case, *Seefeldt* involved the introduction of other-acts evidence without first seeking a ruling on its admissibility in violation of a pretrial order. *Seefeldt*, 261 Wis. 2d 383, ¶¶ 5–6. The evidence in question involved arrest warrants issued for a testifying witness who was present when Seefeldt fled police, which the defense failed to clear in advance of trial. *Id.* ¶¶ 8, 39. This Court held that the court did not exercise sound discretion for two reasons. *Id.* ¶ 38. First, the circuit court failed to consider

whether the evidence would have been admissible. *Id.* Second, the circuit court did not give the parties adequate time to argue whether a mistrial was necessary and what alternatives might be available. *Id.* The defense had immediately offered an alternative basis for admissibility, arguing that the evidence was admissible to show the witness's motive to flee. *Id.* This admissibility determination would have required very little time to make, and this Court held that the circuit court should have made it before deciding whether to declare a mistrial. *See id.* ¶ 40.

Seefeldt should not be read as establishing a bright-line rule that circuit courts *must* make an admissibility determination before declaring a mistrial. Where other types of evidence are concerned, it may be unreasonable to require a circuit court to interrupt trial in order to hold an evidentiary hearing that should have occurred before trial. Testimony bearing on potential third-party perpetrators and expert witness testimony, for example, may require testimony from multiple witnesses, some of whom may need to be subpoenaed in order to guarantee their appearance. In some cases, the court may want to have the benefit of briefing and argument by both parties before deciding as to admissibility. This could delay an ongoing trial with an empaneled jury by days or weeks.

Here, for example, the circuit court stated that it would have wanted briefing on the *Denny* issue in advance of a hearing about the admissibility of Cousin's testimony. (R. 86:30.) Indeed, both parties filed briefs before the hearing at which Cousin's testimony was ruled admissible following the mistrial. (R. 56; 61.) To allow Green to force the circuit court to go without the benefit of that briefing before making an admissibility determination would be unreasonable.

The court of appeals' holding would eviscerate any ability for courts to require defendants to propose *Denny*

evidence through pretrial proceedings. If courts have no ability to declare a mistrial when a defendant presents a viable *Denny* defense with no advance notice, then any requirement courts establish that defendants give pretrial notice of a *Denny* defense means nothing. In other words, what could not be undone in this case—the bell that could not be "unrung"—was not the testimony but the process. There was no alternative for that process; once Green had circumvented it, there was no way to undo it.

Second, the court of appeals interpreted the relevant motion in limine concerning third-party perpetrator evidence too narrowly. The motion in limine sought a prohibition on the introduction of "any other-acts evidence involving a third-party perpetrator, unless and until defendant satisfies his burden and such evidence is ruled admissible by the court pursuant to [*Scheidell*], [*Sullivan*[4]], and [Wis. Stat.] § 904.04(2)." (R. 21:2.) The court of appeals focused on the citation to *Scheidell* to conclude that the motion must apply only to *unknown* third-party perpetrator evidence, and it "disagree[d] with the State that the motion in limine prohibited Cousin's testimony." (Pet-App. 10.) The court of appeals failed to acknowledge that it was also disagreeing with the circuit court's interpretation of its own pre-trial orders; the circuit court itself understood there to be a prohibition on the introduction of *Denny* evidence unless it was properly noticed and ruled on in advance. (R. 86:30.) The court of appeals offered no explanation of why it disregarded the circuit court's interpretation of its own pre-trial orders.[5]

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[4] *State v. Sullivan*, 216 Wis. 2d 768, 576 N.W.2d 30 (1998).

[5] A written or transcribed order does not appear to be present in the record. But the circuit court addressed the motion in

Moreover, the court's analysis was simply wrong. The motion in limine did not distinguish between known third-party perpetrator evidence and unknown third-party perpetrator evidence—it simply discussed third-party perpetrator evidence. The reference to *Scheidell* is not enough to overcome this conclusion. Rather, *Scheidell* is simply a useful reference because it provides a discussion of tests for the admissibility of both known and unknown third-party perpetrator evidence. *See State v. Scheidell*, 227 Wis. 2d 285, 295–97, 595 N.W.2d 661 (1999). The language of a motion—which did not distinguish between the types of third-party perpetrator evidence—and the circuit court's interpretation of that motion should control.

Third, the court of appeals' dismissal of the issue surrounding Cousin's lack of counsel at trial and the fact that Cousin might not have testified was shortsighted. The court of appeals dismissed the circuit court's concern that Cousin may not have testified had he had the benefit of counsel as "specula[tive]." (Pet-App. 11 n.5.) To be sure, speculation is sometimes the province of a trial court. The law requires courts to "speculate" about whether a curative instruction is sufficient to overcome the taint of improper evidence placed before a jury, for example. They "speculate" about whether convicted criminals can be rehabilitated on probation and how much bond is necessary to ensure defendants' appearances at trial. Speculation, alone, does not render a trial court's decision unsustainable.

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limine at a pre-trial conference (R. 73:2), and Green did not seem to dispute in briefing to the court of appeals that the court granted the State's motion in limine described above. This Court accepted that a pre-trial order was in place under similar circumstances in *Seefeldt*. *See State v. Seefeldt*, 2003 WI 47, ¶¶ 6, 9, 261 Wis. 2d 383, 661 N.W.2d 82.

The circuit court's "speculation" here was reasonable. As the court noted, Cousin's testimony alone was arguably enough to establish probable cause that he committed a felony. (R. 86:19.) Given the potential legal exposure he faced because of his testimony, there was actually a very good chance that Cousin would not have testified or simply would have invoked his Fifth Amendment rights.

Moreover, by stating that any remedy would flow to Cousin, not the State, the court of appeals created a larger problem. As the U.S. Supreme Court observed in *Washington*, "[t]he interest in orderly, impartial procedure would be impaired if he were deterred from exercising that power by a concern that any time a reviewing court disagreed with his assessment of the trial situation a retrial would automatically be barred." 434 U.S. at 513. Here, the court of appeals created that problem by tacitly endorsing a legal strategy so dubious that it resulted in trial counsel's withdrawal from representing Green. The court of appeals' decision would incentivize defendants to sandbag by evading notice requirements so that courts cannot conduct a full admissibility analysis with witnesses having the benefit of counsel. The law should not encourage defendants to engage in such strategies.

* * *

In one sense, the issue in this case is narrow: it concerns the contours of one circuit court's exercise of discretion in declaring a mistrial with respect to the occurrences and effects in this single case. In another sense, however, the issue in this case is broad. It implicates the ability of circuit courts to maintain the integrity of their courtrooms and their processes, especially where the treatment of testifying witnesses is concerned.

Green relied on dubious tactics and evaded the normal pretrial procedure. Whether by design or by happenstance,

this resulted in a witness—whom the circuit court otherwise would have advised to retain counsel—testifying in violation of the court's pre-trial orders. By ignoring the circuit court's pre-trial orders and placing it in this difficult position, Green forced the court to choose between handing control of its courtroom over to a litigant and enforcing its orders but taking the chance that the court of appeals might disagree—exactly the sort of choice the U.S. Supreme Court eschewed in *Washington*. The circuit court did what it thought was best, but the court of appeals disagreed. And as a result, Green received a spectacular windfall, escaping all criminal responsibility for the charges he faced.

This Court should not set the stage for defendants to be rewarded for engaging in similar tactics. There is no doubt that a third-party-perpetrator defense is a valid defense. A defendant has the right to present such a defense, but only if he takes the proper steps and adheres to all the pre-trial orders. What he cannot do is ignore a court's pre-trial rulings in order to avoid a witness securing counsel and force the court into an immediate decision on the admissibility of testimony. The court of appeals would allow that; this Court should reverse.

CONCLUSION

For the reasons discussed, this Court should reverse the court of appeals and allow Green's trial to proceed.

Dated this 22nd day of August 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,403 words.

Dated this 22nd day of August 2022.

Electronically signed by:

John A. Blimling
JOHN A. BLIMLING

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court and Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 22nd day of August 2022.

Electronically signed by:

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