STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
CASE NO. 2021AP1504-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOHN DEAN PLEUSS,

Defendant-Appellant.

ON APPEAL FROM THE ORDER, ENTERED IN THE CIRCUIT COURT FOR MONROE COUNTY, CASE NO. 20 CF 603, THE HONORABLE MARK L. GOODMAN, PRESIDING

DEFENDANT-APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

1. Is the 120-day filing limit under Wis. Stat. 968.20(1) mandatory?

The Trial Court Answered: Yes. The trial court found it did not have competency to decide Pleuss' motion for return because it was not filed within 120-days of the initial appearance per Wis. Stat. § 968.20(1).

2. Alternatively, did the State meet its evidentiary burden of proving the shotgun was "contraband" by the greater weight of the credible evidence?

The Trial Court Answered: Yes. The State "establishe[d] probable cause" from the "four corners of the complaint,…." (34:4 (A:7)).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Pleuss does not request oral argument but does recommend that the opinion be published as a decision on the mandatory or directory nature of "shall" in Wis. Stat. § 968.20(1) will likely arise again in future cases.

STATEMENT OF THE CASE AND FACTS

On October 1, 2020, the State of Wisconsin charged Pleuss with three criminal violations: 1) Intentionally Pointing a Firearm at or towards a law enforcement officer, contrary to Wis. Stat. § 941.20(1m)(b) (a Class H felony); 2) disorderly conduct, contrary to Wis. Stat. § 947.01(1) (a Class B Misdemeanor); and, 3) operating a motor vehicle without carrying and displaying license, contrary to Wis. Stat. § 947.01(1) (Forfeiture). (R. 2 at 1).

Pleuss was released on a signature bond. (3:1). An initial appearance was scheduled for November 6, 2020. *Id*. For reasons unexplained in the record, the initial appearance occurred instead on December 9, 2020. (15:1).

Before any further hearings were held, the State moved to dismiss the case. (21:1). The court entered an order of dismissal on March 26, 2021. (23:1 (A:3)).

On April 15, 2021, Pleuss filed a motion for the return of his two firearms pursuant to Wis. Stat. § 968.20. (27). As grounds, he alleged he was entitled to return of the firearms because his case had been dismissed and further, the guns had not been used while committing a crime. (27:1 (A:8)). The State did not file a response.

A hearing on the motion was held on June 8, 2021. (40). The State conceded it had seized the firearms and Pleuss was the rightful owner of both guns. (40:2-3). The State agreed to return the handgun but opposed returning the shotgun. (40:2, 5). The shotgun should not be returned, the State argued, because it had been "used in the commission of a crime" and was therefore "contraband." (40:4, 16-18). To meet its burden of proof, the State relied exclusively on the criminal complaint: "…I believe that the information contained within the Criminal Complaint, which is a sworn document, is sufficient to demonstrate that the property is contraband." (40:7).

As to Count 1, Intentionally Pointing a Firearm at or towards a law enforcement officer, the complaint alleged that on September 30, 2020, at approximately 10:50 a.m., a Deputy of the Monroe County Sheriff's Department received a report from a Diggers Hotline employee that he had seen a man leave a house, get into a truck, and drive away with an uncased shotgun in his hand. He asked that the Deputy check the residence. The Deputy drove to the house and parked in the driveway. No one answered the door, but the Deputy did not see anything out of the ordinary "in or around the house" and was preparing to

leave when a truck pulled up and parked on the roadway behind his squad car. The Deputy got out and approached the driver's side of the truck:

> The driver appeared angry and asked why I was there. I asked the driver if he lived at the residence and he said he did. I began to tell him the reason I was there. As I was speaking to him, the driver reached over to the passenger side of the truck and pulled out a full size black in color 12 gauge shotgun. As he bought up the shotgun, the end of the barrel was pointing towards me. I put my hand up in front of me to deflect the end of the barrel and told the driver to not point the gun at me. He put the gun back into the passenger side of the truck and said, "Tell the guy to mind his own business."

(2:2 (A:14)). Pleuss would not provide the officer with his driver's license but did give him a conceal carry card. (2:2-3 (A:14-15)).

The Deputy returned later that afternoon with four other officers and arrested Pleuss. They found a Rugar .380 handgun on his person and the Winchester 12-gauge shotgun still in the truck. Both were seized, transported to Monroe County Sheriff's Department, and placed into evidence. (2:3 (A:15)).

Pleuss argued, in response, that the complaint is not evidence. The State "has not met their burden that this is contraband in any way, shape or form." (40:9). The case, moreover, was dismissed before any evidentiary hearings took place. *Id*. Nor were there any admissions from Pleuss. His defense was, and always has been, that he did not commit any crime. (40:12, 13).

The court took the matter under advisement and issued a written decision on June 18, 2021. The court allowed return of the handgun since the State did not object. (34:2, 4 (A:5)). The court otherwise denied the motion, on two grounds. First, Pleuss did not file his motion for return within 120 days of the initial appearance and therefore the court lacked "subject matter jurisdiction" under Wis. Stat. § 968.20(1).[1] (34:3 (A:6)). Second, and alternatively, the shotgun is contraband and cannot be returned as it was used in the commission of a crime. See Wis. Stats. §§ 968.13(1)(b); 968.20(1m)(b). The State met its burden of proving the shotgun was used in the commission of a crime "[f]rom the four

[1] The circuit court's competency under Wis. Stat. § 968.20 was neither raised nor discussed prior to or at the motion hearing on June 8, 2021. (40).

corners of the complaint," which "establishes probable cause." (34:4; A:7)). The court ordered the shotgun destroyed. *Id*. The destruction order was stayed pending appeal. (41).

ARGUMENT

I. PLEUSS IS ENTITLED TO THE RETURN OF HIS SHOTGUN UNDER WIS. STAT. § 968.20.

1. The circuit court is competent to decide Pleuss' Wis. Stat. § 968.20 motion as the 120-day time limit for filing a request for return of seized property is not mandatory.

Unless the State has initiated a forfeiture action, "a person claiming the right to property seized by the authorities is limited to the procedures set forth in Wis. Stat. § 968.20." *Return of Property in State v. Jones*, 226 Wis. 2d 565, 569, 579–82, 594 N.W.2d 738 (1999). Wis. Stat. § 968.20(1m)(d)1 addresses the return of a "seized" "firearm" as follows:

> (d)1. If the seized property is a firearm, the property has not been returned under this section, and *a person claiming the right to possession of the firearm has applied for its return under sub. (1)*, the court shall order a hearing under sub. (1) to occur within 20 business days after the person applies for the return. ***If, at the hearing, all conditions under sub. (1) have been met*** and *the person is not prohibited from possessing a firearm under state or federal law as determined by using information provided under s. 165.63,* the court shall, within 5 days of the completion of the hearing and using a return of firearms form developed by the director of state courts, order the property returned if one of the following has occurred:
>
> ….
>
> b. All charges filed in connection with the seizure against the person have been dismissed.

(emphasis added). The conditions an applicant must meet under Wis. Stat. § 968.20(1) are:

> (1) *Any person claiming the right to possession of property frozen or seized* under s. 971.109 or seized pursuant to a search warrant or seized without a search warrant, …, *may apply for its return to the circuit court for the county in which the property was seized* or where the search warrant was returned, except that a court may commence a hearing, on its own initiative, to return property seized

> under s. 968.26. *If an initial appearance under s. 970.01 is scheduled, the application for the return of the property shall be filed within 120 days of the initial appearance.*

(emphasis added). Combining the requirements of Wis. Stat. § 968.20(1) and Wis. Stat. § 968.20(1m)(d)(1) with the facts of this case, return of the seized firearm requires the following: 1) a firearm seized by and in possession of the State; 2) a person claiming the right of possession; 3) an "application" for return of the seized firearm within 120 days of the initial appearance; 4) a person seeking return who is not prohibited from possessing a firearm under state or federal law; 5) dismissal of all charges filed in connection with the seizure; and, 6) a firearm that is not contraband—i.e. was not used in the commission of a crime.[2]

All but 3) and 6) are either conceded or undisputed. The State conceded it had seized the shotgun and Pleuss was the owner. (40:2-3). There was no dispute concerning Pleuss' eligibility to possess a firearm under State and Federal law.[3] The record is clear that all charges in connection with the seizure were dismissed. (23:1 (A:3)). In addition, Pleuss applied for return of the shotgun under Wis. Stat. § 968.20 but not within 120 days of the initial appearance. (27).

The court found that it was not competent to adjudicate Pleuss' application for return because his motion for return was not filed within 120 days of the initial appearance. (34:3 (A:6)). Alternatively, the State met its burden of proving the shotgun was used in the commission of a crime and therefore met the

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[2] The definition of contraband includes "anything" that "has been used in the commission of any crime…." Wis. Stat. § 968.13. Contraband "need never be returned…." *Jones*, at 587. Likewise, under Wis. Stat. § 968.20 if the seized property is a "dangerous weapon or ammunition, the property shall not be returned to any person who committed a crime involving the use of the dangerous weapon or the ammunition." Wis. Stat. § 968.20(1m)(2)(b). As the seized item is a firearm, the definitions under Wis. Stat. § 968.13 and Wis. Stat. § 968.20(1m)(2)(b) are functionally equivalent.

[3] The State did not dispute Pleuss was legally entitled to possess a firearm. The complaint alleged Pleuss handed the officer a conceal carry card. (2:2-3 (A:14-15)). Presumably, the State would not have agreed to return the handgun had Pleuss not been entitled to possess a firearm under state and federal law.

definition of contraband. (34:4 (A:7)). Both of these findings are incorrect and unsupported by evidence. As the circuit court was competent to decide Pleuss' motion for return, and the State failed to prove the shotgun was contraband, the shotgun must be returned to Pleuss forthwith.

Wis. Stat. § 968.20(1m)(d)(1) states that a court "shall…order the property returned" when, among other things, a "person claiming the right to possession of the firearm has applied for its return under sub. (1)" and, "at the hearing, all conditions under sub. (1) have been met,…." There is no dispute Pleuss "applied" for the property's return under sub. (1). Assuming, without conceding, that the requirement in Wis. Stat. § 968.20(1m)(d)(1) that "all the conditions under sub. (1) have been met" includes filing the request for return within 120 days of the initial appearance, the issue becomes whether time limit is mandatory or directory.

A party's failure to comply with a statutory time limit deprives a court of competency to proceed only when the time limit is mandatory. *State v. Schertz*, 2002 WI App 289, ¶5, 258 Wis. 2d 351, 655 N.W.2d 175; *Dodge Cty. v. Ryan E.M.*, 2002 WI App 71, ¶5, 252 Wis. 2d 490, 642 N.W.2d 592. Conversely, when the time limit is merely directory, a lack of compliance does not cause the court to lose competency to proceed. *Schertz*, at ¶14.

Whether "shall" is mandatory or directory is a matter of statutory construction. *Milwaukee Police Ass'n v. City of Milwaukee*, 2017 WI App 71, ¶ 32, 378 Wis. 2d 327, 904 N.W.2d 408 (unpublished authored opinion). Statutory interpretation begins with the language of the statute. The Court gives statutory language its "common, ordinary, and accepted meaning" keeping in mind the context in which it is used. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶¶ 45-46, 271 Wis. 2d 633, 681 N.W.2d 110 ("Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of

surrounding or closely-related statutes....”). The Court must avoid ascribing an unreasonable or absurd meaning to the text. *Id.,* at ¶ 46. Statutory language must be reasonably interpreted to avoid absurd or unreasonable results.” *Id*. A procedural statute should also be interpreted liberally to allow a determination upon the merits of the controversy. *State v. Rosen*, 72 Wis.2d 200, 204-205, 240 N.W.2d 168 (1976).

Use of the word “shall” creates a presumption that the statute is mandatory. *Karow v. Milwaukee County Civil Serv. Comm’n*, 82 Wis.2d 565, 570, 263 N.W.2d 214 (1978); *State v. Fitzgerald*, 2019 WI 69, ¶25 n.8, 387 Wis. 2d 384, 929 N.W.2d 165. That presumption is strengthened where the legislature uses the word “may” in the same or related sections, for such use demonstrates that “the legislature was aware of the different denotations and intended the words to have their precise meanings.” *Karow*, at 571. *Karow* noted, however, that even where “shall” and “may” are used in the same section of the statute, “shall” may nonetheless be construed as directory if such a construction is “necessary to carry out the legislature’s clear intent.” *Id*.

Karow then applied the following factors to determine whether time limitations should be considered mandatory or directory: (1) the omission of a prohibition or a penalty, (2) the consequences resulting from one construction or the other, (3) the nature of the statute, the evil to be remedied, and the general object sought to be accomplished by the legislature, and (4) whether the failure to act within the time limit works an injury or wrong. *Karow,* at 571-573, 263 N.W.2d 214; see also *State v. Olson*, 2019 WI App 61, ¶¶ 10-13, 389 Wis. 2d 257, 936 N.W.2d 178, citing *State v. R.R.E.*, 162 Wis. 2d 698, 708, 711, 470 N.W.2d 283 (1991). Whether a statute is mandatory or directory is a question of law reviewed de novo. *Schertz*, at ¶6.

In this case, the initial appearance was held on December 9, 2020. Pleuss “applied” for the return of his shotgun under Wis. Stat. § 968.20 in a written motion filed on April 15, 2021, some 127 days after the initial appearance. The

circuit court, finding that the statutory language "shall be filed within 120 days of the initial appearance" was mandatory, denied the motion due to a lack of competence ("subject matter jurisdiction") to hear the claim. (34:3 (A:6)).

Applying the *Karow* factors to Wis. Stat. § 968.20(1) and Wis. Stat. § 968.20(1m)(d)1, however, shows the statutory timeline should be interpreted as directory.

First, Wis. Stat. § 968.20(1) does not express a penalty for failing to "apply" for the return of property within 120 days of the initial appearance. "The legislature's failure to state the consequences of noncompliance with the established time limit lends support for construing the statute as directory." *Karow*, 82 Wis.2d at 571–72, 263 N.W.2d 214.

Second, the court must consider the consequences resulting from construing the word "shall" in Wis. Stat. § 968.20(1) as either directory or mandatory in light of the nature of the statute, the evil to be remedied, and the general object sought to be accomplished by the legislature. See *Karow*, at 571-573.

The purpose of Wis. Stat. § 968.20 is "to provide a simplified means of recovery for seized property that is no longer needed as evidence in criminal proceedings." *In re Return of Property in State v. Glass*, 2001 WI 61, ¶¶22, 27, 243 Wis.2d 636, 628 N.W.2d 343. The remedy under Wis. Stat. § 968.20, moreover, is exclusive. When the State has not initiated a forfeiture action, a "person claiming the right to property seized by the authorities is limited to the procedures set forth in § 968.20." *Return of Prop. in State v. Jones,* 226 Wis.2d 565, 569, 585, 594 N.W.2d 738 (1999).

If the purpose of the statute is to provide "a simplified means" for the return of seized property, then interpreting the phrase "shall be filed within 120 days of the initial appearance" as mandatory, rather than directory, is inconsistent with the nature of the statute, the evil to be remedied, and the general object sought to be accomplished by the legislature.

A mandatory 120-day time limit is entirely arbitrary as it bears no logical relationship to the actual time it will take to determine whether property is no longer needed as evidence in a criminal prosecution. Wis. Stat. § 968.20(1m)(d)1, for example, requires that seized property be returned only when certain criteria are met ***and***:

> …one of the following *has occurred*:
>
> a. The district attorney has affirmatively declined to file charges in connection with the seizure against the person.
>
> *b. All charges filed in connection with the seizure against the person have been dismissed.*
>
> c. Ten months have passed since the seizure and no charges in connection with the seizure have been filed against the person.
>
> *d. The trial court has reached final disposition for all charges in connection with the seizure and the person has not been adjudged guilty, or not guilty by reason of mental disease or defect, of a crime in connection with the seizure.*
>
> e. The person has established that he or she had no prior knowledge of and gave no consent to the commission of the activity that led to the seizure.

(emphasis added). In the case of a gun owner who is also a defendant there will never be grounds for return until the case is dismissed under Wis. Stat. § 968.20(1m)(d)(1)b or adjudicated in their favor under Wis. Stat. § 968.20(1m)(d)(1)d. The chances of that happening within 120 days after the initial appearance would be rare, if ever, rendering both sub. (b) and sub. (d) ineffective surplusage.[4] Even if a defendant-property owner could timely "apply" for return under Wis. Stat. § 968.20 before grounds exist under Wis. Stat. § 968.20(1m)(d)(1)(b) or (d), they would never be able to prove those

[4] Statutes should be interpreted so that no provision is rendered meaningless. *Wagner v. Milwaukee County Election Comm'n*, 2003 WI 103, ¶ 33, 263 Wis.2d 709, 666 N.W.2d 816.

grounds at the hearing that must occur within 20 business days[5] of the filing. Wis. Stat. § 968.20(1m)(d)1. A mandatory 120-day filing deadline thus undermines the very purpose of the statute by denying the return of property to rightful owners who would, at a later date outside of their control, be able to prove grounds under the statute.

Interpreting "shall" as directory, on the other hand, permits a property owner to file for a return of property when the grounds for return are met—whether they be sooner or later. It would not arbitrarily cut off the owner's exclusive remedy because the criminal case is yet to be completed or resolved 120 days after the initial appearance as required by Wis. Stat. § 968.20(1m)(d)(1)a-e. The purpose of the statute, to provide a simplified means for the return of seized property, would be served, as those who must wait beyond the 120-day period to establish eligibility for return would still have the means under Wis. Stat. § 968.20 to do so.

For the same reasons, "the failure to act within the time limit works an injury or wrong." *Karow*, at 572. The "wrong" would be to the property owner, who is deprived of property without compensation. The State, on the other hand, would merely by giving up a windfall. The State is not harmed in any conceivable way by having to return property to its rightful owner once it is no longer needed for the criminal case.

Wisconsin courts will not hesitate to find "shall" directory rather than mandatory when the purpose of the statute—i.e. the intent of the legislature—is undermined by an arbitrary deadline.

In *Matlin v City of Sheboygan*, 2001 WI App 179, 247 Wis.2d 270, 634 N.W.2d 115, the court considered whether the circuit court lost jurisdiction when

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[5] A hearing "shall" occur "within 20 business days after the person applies for return." Wis. Stat. § 968.20(1m)(d)(1). Neither of the parties nor the circuit court raised or addressed whether the circuit court loses competency if the hearing is not held within 20 business days or extended per the statute. Alternatively, if this issue was not waived, Pleuss' argument concerning the 120-day requirement would apply with even more force to the hearing timeline.

a hearing on a challenge to the City's raze order was not held within 20 days. The statute requires that a hearing "shall be held within 20 days" of filing the challenge. Wis. Stat. § 66.0413(1)(h). The homeowner challenged the raze order by applying for a temporary restraining order on November 13, 1999, but hearing was not scheduled until May 3, 2020. On March 3, 2020 the City filed a motion to dismiss, claiming that twenty days had elapsed since the application was filed and therefore the court lost jurisdiction. The circuit court granted the City's motion. On appeal, the issue was whether the time limitation for holding a hearing in Wis. Stat. § 66.0413(1)(h) was directory or mandatory. Applying the factors in *Karow*, the court of appeals found the 20-day time limit directory and reversed. *Matlin*, at ¶6.

Among the Court's considerations was the fact that, as here, Wis. Stat. § 66.0413(1)(h) is the homeowner's exclusive means for challenging a raze order. *Matlin*, at ¶7. In addition, there is no specific penalty for failing to adhere to the time provision for a hearing. *Matlin*, at ¶8. The primary consequence from a mandatory 20-day time limit is the homeowner will suffer a complete loss of property without the reasonableness of the raze determination being tested in court. *Matlin*, at ¶9. The City's interests, moreover, are not undermined if the time limit is directory. The City's interest in preventing harm from dilapidated buildings is adequately served by the initial raze order. *Matlin*, at ¶10. The City is not harmed simply because it must prove compliance with Wis. Stat. § 66.0413 and give the homeowners a meaningful opportunity to be heard. *Matlin*, at ¶¶10-11.

In re Estate of Warnecke, 2006 WI App 62, 292 Wis.2d 438, 713 N.W.2d 109, the court found the word "shall" directory because to hold otherwise would undermine the purpose of the statute. Warnecke quit-claimed his son a parcel of undeveloped land enrolled in the DNR's Managed Forest Lands Program (MFL). As a condition of this bequest, the son was required to "take such steps as necessary" to continue the land's enrollment in the MFL. *Warnecke*, at ¶2. One

of those requirements is a certification process whenever land is transferred from one owner to another. This process "shall" be completed within 30 days of the transfer or "the department shall issue an order withdrawing the land" from the program and "shall assess against the transferee" a withdrawal tax. *Warnecke*, at ¶8.

On appeal, the Court found the language of the statute was directory rather than mandatory. *Warnecke*, at ¶13. While there were indeed penalties assessed for non-compliance with the 30-day time frame, the second and third *Karow* factors lent significant support for construing the provisions as directory. The consequence of construing the statute to impose a mandatory time limit is to force the withdrawal of lands from the MFL program that would otherwise continue in the program. This result directly contradicts the DNR policy of maintaining property in the program as a tool to improve forest management throughout the State. Since many new owners simply forget to complete the certification within 30 days, or don't know about it, interpreting the 30-day time limit as directory to allow late certifications benefits the program. *Warnecke*, at ¶¶14-17.

See also *Eby v. J.P. Kozarek*, 153 Wis.2d 75, 79, 450 N.W.2d 249 (1990) (applying *Karow*, held that statutory 15–day time period following filing of medical malpractice action within which plaintiff "shall" make request for mediation or face dismissal is "directory" rather than mandatory. The harsh result of dismissal far outweighed any modest delay in mediation).

Likewise, here, interpreting the 120-day time limit as directory furthers the goals of the return statute. To serve the purpose underlying the statute and avoid surplusage in the statutory language, the 120-day time limit must be viewed as directory. As such, the circuit court did not lose competence to decide Pleuss' motion for return when it was filed 127 days after the initial appearance.

2. The State failed to meet its burden of proving the shotgun was contraband.

The circuit court denied Pleuss' request for return on the alternative grounds that it was contraband. The shotgun was contraband because it was "used in the commission of a crime." See Wis. Stat. § 968.13(1)(b); Wis. Stat. § 968.20(1m)(b); *Jones*, at 587. As proof, the court relied "on the four corners of the complaint" which "establishes probable cause." As the circuit court correctly noted, contraband need never be returned whether criminal charges are ultimately filed or not." *Jones*, at 570. Whether a party has met its burden of proof is a question of law which this Court reviews without deference to the circuit court. *Jones*, at 596.

In order to retain seized property, the state must establish that the property is either contraband or needed as evidence in a case. *Jones*, at 570. For property alleged to be contraband, the state must establish a logical nexus between the seized property and illicit behavior on the part of the petitioning property owner. *Jones*, at 570. Specifically, "when the state contends that property need not be returned under Wis. Stat. § 968.20(1) because it constitutes contraband, the state must establish this by the greater weight of the credible evidence." *Jones*, at 595, In *Jones*, the state met its burden through testimony at an evidentiary hearing. *Id*., at 598.

The State's sole reliance on the complaint does not meet *any* evidentiary standard. A complaint is not evidence. Its "essential function is informative, not adjudicative." *State v. Olson*, 75 Wis. 2d 575, 583, 250 N.W.2d 12, 17 (1977) (emphasis added). As the jury is instructed, a complaint "is nothing more than a written, formal accusation against a defendant charging the commission of one or more acts. You are not to consider it as evidence against the defendant in any way. It does not raise any inferences of guilt." WIS-JI Criminal 145.

As the State presented no evidence, it could not have, as a matter of law,

met its burden of proving the shotgun was used in the commission of a crime. As the State failed to prove the shotgun was contraband, it must be returned to Pleuss. Wis. Stat. § 968.20(1m)(d)(1).

CONCLUSION

Pleuss respectfully requests that for the reasons stated, this Court reverse the circuit court and order the return of Pleuss' shotgun.

Dated this 22nd day of December, 2021.

Respectfully submitted,

Electronically signed by:

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CERTIFICATION BY ATTORNEY

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm) and (c) for a brief. The length of this brief is 4,575 words.

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

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

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

Dated this 22nd day of December, 2021.

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