STATE OF WISCONSIN

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

DISTRICT II

Appeal Case No. 2021AP001654-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

REBECCA SUE FERRARO,

Defendant-Appellant.

On Appeal from a Judgement of Conviction and Order Denying Motion for Postconviction Relief, Entered in the Waukesha County Circuit Court, the Honorable Maria S. Lazar and the Honorable J. Arthur Melvin, III, presiding

# BRIEF OF PLAINTIFF-RESPONDENT

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## ISSUES PRESENTED

Is a blood alcohol test result that indicates a lower blood alcohol concentration than the level indicated by the preliminary breath test a new factor that justifies a sentence modification, when the Defendant-Appellant requested a speedy resolution and entered a plea of no contest to an Operating While Under the Influence charge knowing the blood test result was not available at the time she entered her plea?

The trial court answered, no.

## 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). 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

Defendant-Appellant, Rebecca S. Ferraro, was found guilty of operating a motor vehicle while under the influence (OWI), third offense after entering a plea of no contest. (R. 63:8). Defendant-Appellant was sentenced to 250 days jail with Huber privileges for work, AODA and childcare, in addition to an $1,800 fine, 36 months of license revocation, and 36 months of installation of ignition interlock device requirement. (R. 63:23-24). The Defendant-Appellant appeals the denial of her postconviction motion to modify her sentence, in which she argues that the result of her alcohol blood test is a new factor that justifies the modification of her sentence. (Brief of Defendant-Appellant at 13).

On January 30, 2020, the Defendant-Appellant was charged with one count of operating while under the influence, fourth offense, and one count of felony bail jumping. (R. 3:1).

The Defendant-Appellant was arrested for an OWI on January 28, 2020, after leaving the Pacific Bistro Restaurant in the City of Delafield and driving to La Quinta Hotel also in the City of Delafield. (R. 3:2). The police were called because the Defendant-Appellant had left the restaurant without paying. (R. 3:2).

When Police Officer Joseph Walker made contact with the Defendant-Appellant, she was in the parking lot of La Quinta Hotel, seated in a white Jeep Cherokee. (R. 3:2). While speaking with the Defendant-Appellant, Officer Walker noted that the Defendant-Appellant's speech was slurred and detected a strong odor of intoxicants emanating from her breath. (R. 3: 2). As a result, the Defendant-Appellant was asked to submit to a series of standardized field sobriety tests and she exhibited multiple clues of impairment in each of those tests. (R. 3:2-3). The Defendant-Appellant was also asked to submit to a preliminary breath test (PBT), which indicated a result of .213 grams of alcohol per 210 liters of the her breath. (R. 3:3). Subsequently, the Defendant-Appellant was placed under arrest for an OWI. (R. 3:3). After obtaining a search warrant for her blood, a sample of the Defendant-Appellant's blood was sent for analysis. (R. 3: 3). At the time of her arrest, the Defendant-Appellant was pending on an OWI, third offense with a minor in vehicle charge in Rock County Case Number 2019CF000496, which led to the filing of the felony bail jumping charge. (R. 3:4).

After a $2,500 cash bail was set for the Defendant-Appellant at the Initial Appearance that took place on January 30, 2020, the Defendant-Appellant started filing letters to the trial court. Wis. Circuit Court Access, *Waukesha County Case Number 2020CF0139 State of Wisconsin vs. Rebecca Ferraro*, https://wcca.wicourts.gov/caseDetail.html?caseNo=2020CF000139&countyNo=67&mode=details (last visited April 13, 2022). The first of those letters was filed on February 4, 2020. (R. 7). In that letter, the Defendant-Appellant requested a bail reduction and a sooner court date for a "plea deal to be released," among other requests. (R. 7:2-3). The Defendant-Appellant filed a similar request on February 5, 2020, once again asking for a "plea deal" and proposing a sentencing recommendation of time served. (R. 8:2). On February 6, 2020, the Defendant-Appellant filed a another request for a bail

reduction and a "speedy plea deal." (R. 9:1-3). Then on February 10, 2020, the Defendant-Appellant filed a letter requesting a DPA and a bail reduction. (R. 11:1-2).

On February 11, 2020, the Defendant-Appellant's Attorney, Attorney Zachary Hoff, filed a bail motion requesting a signature bond or lower cash bail. (R. 12:1). Consequently, on February 14, 2020, there was a hearing held to address the Defendant-Appellant's bail motion and the trial court denied the motion. Wis. Circuit Court Access, *Waukesha County Case Number 2020CF0139 State of Wisconsin vs. Rebecca Ferraro*, https://wcca.wicourts.gov/caseDetail.html?caseNo=2020CF000139&countyNo=67&mode=details (last visited April 13, 2022). After the bail motion was denied, the Defendant-Appellant filed several other requests for a bail reduction and release, including a letter filed on February 19, 2020, proposing a resolution to the case through a plea to an OWI third offense and the dismissal of the felony bail jumping charge. (R. 22:1). Subsequently, on February 20, 2020, the Defendant-Appellant entered a plea of no contest to the amended charge of OWI, third offense and the felony bail jumping charge was dismissed and read in. (R. 28:1-2).

At the Plea and Sentencing hearing that occurred on February 20, 2020, the State advised the trial court that the case was resolving that day because the Defendant-Appellant was resolving this case prior to resolving the pending OWI case in Rock County. (R. 63:3). During the plea colloquy, the trial court noted that it had reviewed the letters filed by the Defendant-Appellant during the pendency of the case and asked her if those matters had been discussed with her attorney, to which the Defendant-Appellant indicated that she had. (R. 63:3). Additionally, the trial court advised the Defendant-Appellant that the court was not bound by the recommendations of either side and the Defendant-Appellant indicated that she understood. (R. 63:4). The Defendant-Appellant was also advised of the range of penalties that the trial court could impose for the OWI charge. (R. 63:4-5). Specifically, the trial court advised the Defendant-Appellant that she "could be fined not less than $600, nor more than $2,000, and imprisoned for not less than 45 days, nor more than one year, and the Court shall revoke your operating privileges for not less than two years, nor more than three years." (R.

63:4-5). The Defendant-Appellant acknowledged that she understood the consequences of her plea. (R. 63:10).

During the sentencing portion of the hearing, the State recommended a twelve month jail sentence. (R. 63:12). During its sentencing argument, the State acknowledged that that there were some mitigating factors that the trial court should consider, such as the short distance driven, the Defendant-Appellant's cooperation with the police, and no reported bad driving. (R. 63:13). As to the aggravating factors, the State argued that that that the PBT was .213. (R. 63: 13). The State also argued that the most aggravating factor in this case was that the Defendant-Appellant had another OWI case pending in Rock County and was therefore subject to bail conditions, which should have prevented her from drinking and driving on the date of the offense. (R. 63:14). Specifically, the State argued:

> But we've gotten to the point, with two prior OWIs, a pending OWI, and then this case, where, unfortunately, the needs of the public outweigh Ms. Ferraro's individual needs of rehabilitation. And so at this point, I believe that 12 months of jail is necessary to both deter Ms. Ferraro and others from similar conduct in the future and to protect the public from Ms. Ferraro's decisions.

(R:63:14-15).

During his sentencing argument, the Defendant-Appellant's attorney acknowledged that the blood test results had not been received by stating, ". . . she does admit that it's likely that, you know, had we gotten all of the evidence in this case and what the blood alcohol actually was through testing, that it's likely that she could have been found guilty, so that's why she's here taking responsibility for that." (R. 63:15-16). The defense then recommended that the trial court impose two years of probation, with 45 days condition time. (R. 63:16, 17). The defense also argued that there was an opportunity for the Defendant-Appellant to enter a plea in the Rock County case and be involved in alcohol treatment court in Rock County. (R. 63:17). The defense further indicated that it would be a huge advantage for the Defendant-Appellant to do that and stated, " .

. . having the probation and then being able to go through that programming to be able to help her." (R. 63:17).

Prior to imposing a sentence, the trial court advised that it had looked at the Third Judicial District OWI/PAC Sentencing Guidelines. (R. 63:22). The trial court then agreed with the defense and stated, "there's one big mitigating factor and there's one big aggravating factor, aside from the BAC [sic] of .213." (R. 63:22). The trial court specified that the big aggravating factor was that that the Defendant-Appellant was out on bail on another OWI third, which was pending in another county with a minor. (R. 63:22). The trial court told the Defendant-Appellant that she "should not have been driving and not have been drinking, definitely not drinking and driving." (R. 63:22). As to the mitigating factor, the trial court stated that the Defendant-Appellant only drove .3 miles from one location to another, was very cooperative, performed the field sobriety tests, and there was no bad driving. (R. 63:22). The trial court then repeated, "[a]nd there's the fact that you had the pending case, which is of concern to for the Court." (R. 63:22-23). The trial court consequently imposed 250 days jail with Huber privileges for work, AODA, and childcare, along with 36 months of driver's license revocation, 36 months of the ignition interlock device installation, and an $1,800 fine. (R. 63:23).

Four days after the Defendant-Appellant's sentencing, on February 24, 2020, the Delafield Police Department received the blood test result from the State Crime Laboratory, which indicated a blood alcohol concentration (BAC) of .167 grams per 100 milliliters of the Defendant-Appellant's blood. (R. 97:2).

On March 20, 2020, the Defendant-Appellant filed a motion requesting furlough due in part to the Covid 19 pandemic. (R. 47:1). On April 13, 2020, the trial court granted Defendant-Appellant's request for furlough and ordered that Defendant-Appellant report back on May 29, 2020, to serve the remaining of her sentence. Wis. Circuit Court Access, *Waukesha County Case Number 2020CF0139 State of Wisconsin vs. Rebecca Ferraro*, https://wcca.wicourts.gov/caseDetail.html?caseNo=2020CF000139&countyNo=67&mode=details (last visited April 13, 2022).

The Defendant-Appellant has since filed several motions. On August 13, 2020, the Defendant-Appellant asked the trial court to stay her sentence pending the filing of an appeal. (R. 76:1-5). The trial court then granted the Defendant-Appellant's motion to stay the balance of her sentence pending the filing of an appeal on September 3, 2020. Wis. Circuit Court Access, *Waukesha County Case Number 2020CF0139 State of Wisconsin vs. Rebecca Ferraro*, https://wcca.wicourts.gov/caseDetail.html?caseNo=2020CF000139&countyNo=67&mode=details (last visited April 13, 2022). The Defendant-Appellant did not file an appeal and instead filed a postconviction motion requesting a modification of her sentence on April 28, 2021. (R. 96:1-9). A hearing was held on that motion on August 19, 2021 and the trial court issued a written decision on September 3, 2021, denying the Defendant-Appellant's request to modify her sentence. (R. 108:1-2).

In denying the Defendant-Appellant's motion, the postconviction court held that the BAC result, which was obtained after the Plea and Sentencing hearing, did not constitute a new factor. (R. 108:2). The postconviction court explained that the knowledge that that the Defendant-Appellant was intoxicated at the time of the offense was not new, although it was confirmed with the test result. (R. 108:2). The trial court further held that even if the blood test result was a new factor, it was not a factor that warranted a new sentence. (R. 108:2).

## STANDARD OF REVIEW

"Whether a fact or set of facts presented by a defendant constitutes a 'new factor' is a question of law which [this Court] reviews de novo." *State v. Vesper*, 2018 WI App 31, ¶ 38, 382 Wis. 2d 207, 912 N.W.2d 418. "Whether a new factor warrants a [sentence] modification, however, is a question within the circuit court's discretion, which [this Court] reviews for an erroneous exercise of that discretion." *Id.*

## ARGUMENT

### I. The Defendant-Appellant's blood alcohol test result is not a new factor that justifies the modification of her sentence.

While generally Wisconsin circuit courts have inherent authority to amend criminal sentences, a circuit court cannot modify a sentence on mere reflection and second thoughts. *State v. Harbor*, 2011 WI 28, ¶ 35, 333 Wis. 2d 53, 797 N.W.2d 828. Instead, a circuit court *may* modify a criminal sentence based on the showing of a new factor. *Id.*; *Vesper*, 2018 WI App 31, ¶ 37. (emphasis added).

In order for a circuit court to modify a sentence based on a new factor, a defendant must demonstrate by clear and convincing evidence that a new factor exists. *Harbor*, 2011 WI 28, ¶ 36. The Wisconsin Supreme Court has defined a new factor as:

> a fact or set of facts highly relevant to the imposition of [a] sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.

*Id.* at ¶ 40 (quoting *Rosado v. State*, 70 Wis. 2d, 288, 234 N.W.2d 69, 73 (1975)). However, the existence of a new factor does not make a defendant automatically entitled to a sentence modification. *Harbor*, 2011 WI 28, ¶ 37.

Determining whether the existence of new factor would lead to a sentence modification involves a two-step inquiry. *Vesper*, 2018 WI App 31, ¶ 37. First, the trial court must determine if the fact or set of facts presented by the defendant constitutes a new factor. *Id.* Second, if the trial court determines that the fact or set of facts constitute a new factor as a matter of law, then it must decide if the existence of the new factor justifies modifying the sentence. *See id.*

In determining whether the new factor justifies modifying the sentence, the circuit court exercises its discretion. *Harbor*, 2011 WI 28, ¶ 37. Therefore, for a defendant to prevail on a motion for sentence modification based on a new factor, he or she "must demonstrate both the existence of a new factor and that the new factor justifies the modification of the sentence." *Id.* at ¶ 38.

It is well established that because a circuit court exercises its discretion in determining whether a new factor justifies the modification of a sentence, an appellate review is limited to determining whether that discretion was erroneously exercised. *See Vesper*, 2018 WI App 31, ¶ 9. As such, "[i]f the record 'contains evidence that the circuit court properly exercised its discretion, [the appellate court] must affirm.'" *Id.* (quoting *State v. Kuechler*, 2003 WI App 245, ¶ 8, 268 Wis. 2d 192, 673 N.W.2d 335). Proper discretion is established if the record shows that the facts were examined by the trial court and a reason was stated for the court's findings, using a rational process. *See Harbor*, 2011 WI 28, ¶ 63.

### A. The Defendant-Appellant's blood alcohol test result does not constitute a new factor.

The Defendant-Appellant's blood alcohol test, which indicated that the Defendant-Appellant's BAC was .167, does not constitute a new factor because it is not a fact that is highly relevant to the imposition of the Defendant-Appellant's sentence.

While the test result itself is a new fact that was not known to the trial court, the State, or the Defendant-Appellant at the time of the sentencing, the result would have had limited relevance in the sentence the trial court imposed. This is demonstrated by the fact that the trial court in imposing its sentence only mentioned the .213 PBT result once, stating "[t]he defense is correct that there's one big mitigating factor and there's one big aggravating factor, aside from the BAC [sic] of .213." (R. 63:22). Instead, the trial court focused on the fact that the Defendant-Appellant was out on bail while pending on the OWI third with minor in Rock County. (R. 63:22). Specifically, the trial court stated, "[t]he aggravating factor is at the time of the arrest in this case, you were out on another

pending charge for an OWI third in another county, driving with a minor. Should not have been driving and not have been drinking and definitely not drinking and driving." (R. 63:22). This is a fact that the trial court emphasized twice while imposing its sentence, "[a]nd there's the fact that you had the pending case, which is of concern for the Court." (R. 63:22-23).

Moreover, as the postconviction court correctly pointed out, the blood test result is not highly relevant to the sentence imposed because the knowledge of intoxication is not new, it is only confirmed by the test. (R. 108:2). This is because the Defendant-Appellant was not charged with Operating with a Prohibited Alcohol Concentration, she was only charged with Operating While Under the Influence, which did not require that the trial court make a specific finding regarding the Defendant-Appellant's level of intoxication. The trial court only had to make a finding and consider whether the Defendant-Appellant was under the influence of an intoxicant in imposing its sentence. *See* WIS JI-Criminal 2669 (2020). As such, the Defendant-Appellant's blood test result only confirmed what the postconviction court already knew and the trial court had considered at sentencing, which was that the Defendant-Appellant was under the influence at the time of the offense.

In her brief, the Defendant-Appellant argues that her blood test result is highly relevant to the sentence imposed because "[t]he State cited Ms. Ferraro's preliminary breathalyzer test measuring as an aggravating factor to the circuit court's sentencing analysis." (Brief of Defendant-Appellant at 14). The Defendant-Appellant also argues that the trial court concurred that her blood alcohol level was an aggravated factor. *Id.* The fact that the State cited the PBT result as a basis for its sentencing recommendation and that the trial court recognized that the PBT result to be an aggravating factor, does not automatically make the blood test result highly relevant to the imposition of the trial court's sentence.

First, although, the State made reference to the high PBT result, the State's statements do not prove that the PBT result was highly relevant to the imposition of the sentence because the State does not have the authority to sentence criminal

defendants. Instead, the focus of this analysis is on whether the trial court that imposed the sentence would have found the new information highly relevant to the sentence imposed. Additionally, a review of the sentencing transcript shows that the State found this to be an aggravated OWI primarily because the Defendant-Appellant was out on bail for another OWI in Rock County. (R. 63:14-15).

Second, as mentioned above, the record made by the trial court at sentencing does not indicate that there was an extensive emphasis placed on the PBT result or the lack of the blood test results not being available. On the contrary, the trial court focused on the fact that the Defendant-Appellant had an OWI pending in Rock County when she was arrested in this case. (R. 63:22, 23). Thus, the recognition that the PBT was high, simply meant that it was a factor that the trial court considered in reaching its decision. However, it does not demonstrate that the blood test result is a fact that is highly relevant to the imposition of the sentence.

To further bolster her argument, the Defendant-Appellant argues that the Third Judicial District OWI/PAC Sentencing Guidelines (Guidelines) "are based on a defendant's blood alcohol content to calculate the recommended sentencing range and the circuit court relied on the Guidelines to determine Ms. Ferraro's sentence." (Brief of Defendant-Appellant at 14). However, a close review of the Guidelines shows that the sentence imposed by the trial court does not align with the Defendant-Appellant's PBT result of .213.

The Guidelines show that a defendant with a BAC of .213 in the mitigated category could be sentenced between three to seven months in jail, have 30 months of driver's license revocation and the ignition interlock device requirement imposed, and receive an $1,800 fine. Third Judicial District OAWI Sentencing Guidelines, http://www.wisbar.org (last visited April 13, 2022) (follow "Directories" hyperlink; then follow "Wisconsin Circuit Court Rules" hyperlink; then follow "Washington County Third District OWI Sentencing Guidelines" hyperlink). In the aggravated category with a BAC of .213, a defendant could be sentenced between 7 months to a year in jail, have 33 months of driver's license revocation and

the ignition interlock device requirement imposed, and receive an $1,950 fine. *Id.*

In this case, the trial court imposed 250 days jail, 36 months of driver's license revocation and the ignition interlock device requirement, and an $1,800 fine. (R. 63:23-24). The sentence imposed shows that the trial court was not trying to follow the Guidelines with a particular focus on the Defendant-Appellant's PBT result. Instead, the trial court's sentencing remarks demonstrate it used its discretion to reach a sentence it believed was most appropriate, considering all of the circumstances, not just the PBT result.

As mentioned above, the Defendant-Appellant must demonstrate by clear and convincing evidence that a new factor exists in order for the trial court to modify her sentence. *Harbor*, 2011 WI 28, ¶ 36. In this case, the Defendant-Appellant has failed to show that had the trial court known her blood test result, that fact would have been highly relevant to the sentence imposed. Thus, the Defendant-Appellant has failed to establish that a new factor exists.

### B. The postconviction court appropriately exercised its discretion in holding that even if the blood test result was a new factor, it was not a factor that justified the modification of the Defendant-Appellant's sentence.

In its written decision, the postconviction court held that the Defendant-Appellant's blood test result did not justify the modification of her sentence. (R. 108:2). In doing so, the postconviction court indicated that in this case, the Defendant-Appellant had requested to resolve this case speedily, knowing that the blood test result was outstanding. (R. 108:2). The postconviction court's assessment was accurate and its holding supported by the Defendant-Appellant's numerous letters to the trial court while the case was pending. The record for this case indicates that while the Defendant-Appellant was in custody due to being unable to post the bail set, she filed at least six letters to the trial court between February 4 and February 19, 2020, regarding her release and/or requesting a "speedy plea deal." Wis. Circuit Court Access, *Waukesha County Case Number 2020CF0139 State of Wisconsin vs. Rebecca Ferraro*,

https://wcca.wicourts.gov/caseDetail.html?caseNo=2020CF000139&countyNo=67&mode=details (last visited April 13, 2022).

The first letter was filed on February 4, 2020 and in that letter the Defendant-Appellant requested a bail reduction and a sooner court date for a "plea deal" to be released, among other requests. (R. 7:2-3). The Defendant-Appellant filed a similar request on February 5, 2020, once again asking for a "plea deal" and proposing a sentencing recommendation of time served. (R. 8:2). On February 6, 2020, the Defendant-Appellant filed a another request for a bail reduction and a "speedy plea deal." (R. 9:1-3). Then on February 10, 2020, the Defendant-Appellant filed a letter requesting a DPA and a bail reduction. (R. 11:1-2). Next on February 11, 2020, the Defendant-Appellant's Attorney, Attorney Hoff, filed a bail motion requesting a signature bond or lower cash bail. (R. 12:1). Lastly, on February 19, 2020, the Defendant-Appellant filed a letter proposing a resolution to the case through a plea to an OWI third charge and the dismissal of the felony bail jumping charge. (R. 22:1). The multiple letters to the trial court demonstrate that the Defendant-Appellant was desperate to resolve this case rapidly so she could be released, as it appears she believed that she could be sentenced to time served. (*See* R. 8:2).

Additionally, the postconviction court's holding that "the defendant asked for a speedy disposition for her own benefit, so she could get her Rock County case concluded," is supported by the sentencing remarks made by the Defendant-Appellant's Attorney. (R. 108:2). Specifically, her Attorney stated:

> So if she did plea in the Rock County case, there's an opportunity for her that has been made available and likely would still be available, is for her to get involved in alcohol treatment court in Rock County, which I think would be a huge advantage for her, again, you know, having the probation and then being able to go through that programming to be able to help her.

(R. 63:17). In this regard, Defendant-Appellant's attorney further stated, " . . . she wouldn't have been able to take

advantage of any alcohol treatment court here in Waukesha County because she does reside in Green County and potentially could be able to reside in Rock County." (R. 63:17). These statements have to be considered in the context that the Defendant-Appellant's attorney was recommending for the trial court to impose a two year probation sentence with 45 days of condition time. (R. 63:16-17). The statements made by the Defendant-Appellant's attorney thus seem to indicate that the Defendant-Appellant wanted to resolve this case with a probation sentence in order to then be able to take advantage of alcohol treatment court in Rock County.

Furthermore, at the sentencing hearing, the Defendant-Appellant's attorney acknowledged on her behalf that she was aware that the blood alcohol test was not available. Specifically, the Defendant-Appellant's attorney stated that " . . . she does admit that it's likely that, you know, had we gotten all the evidence in this case and what *the blood alcohol actually was through the testing*, that it's likely that she could have been found guilty, so that's why she's here taking responsibility for that." (R. 63:15-16) (emphasis added). This statement further supports the postconviction court's ruling that the Defendant-Appellant knew the test was outstanding and still agreed to resolve the case. (R. 108:2).

Because the postconviction court's written decision outlines the facts that were examined by the court and its reasons for concluding why the Defendant-Appellant's blood test result did not justify a modification of her sentence, this Court should find that proper discretion was exercised. *See Harbor*, 2011 WI 28, ¶ 63.

The purpose of allowing circuit courts to modify sentences based on a new factor is to allow courts to correct unjust sentences, while at the same time trying to promote the policy of finality of sentences. *Id.* at ¶ 51. In this case, the sentence imposed by the trial court is within the permissible statutory punishment for the offense. *See* Wis. Stat. § 346.65(2)(am)3 (2019-20). Therefore, even if this Court were to determine that the blood test result constitutes a new factor, it should find that it is not a factor that justifies the modification of the Defendant-Appellant's sentence.

## CONCLUSION

The Defendant-Appellant has failed to establish that her blood alcohol test result is a new factor that justifies a modification of her sentence. Therefore, the State is respectfully requesting that this Court affirm the postconviction court's decision.

Dated this 14 day of April, 2022.

Respectfully submitted,

SUSAN LEE OPPER
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Waukesha County

*Electronically signed by Claudia Ayala*
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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 2,492.

April 14, 2022
Date

Electronically signed by
Claudia Ayala
Claudia P. Ayala
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## CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

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

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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

April 14, 2022
Date

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