STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appellate Case No. 2022AP162-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

MICHAEL J. SCHWERSINSKE, JR.,

Defendant-Appellant.

APPEAL FROM AN ORDER OF JUDGMENT ENTERED IN THE CIRCUIT COURT FOR FOND DU LAC COUNTY, BRANCH V, THE HONORABLE ROBERT J. WIRTZ PRESIDING, TRIAL COURT CASE NO. 18-CT-495

BRIEF OF DEFENDANT-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Court of Appeals Decisions

Wisconsin Supreme Court Cases

Wisconsin Court of Appeals Cases

Other Authority

STATEMENT OF THE ISSUE

WHETHER THE LAW ENFORCEMENT OFFICERS IN THE INSTANT CASE LACKED SUFFICIENT GROUNDS TO ENLARGE THE SCOPE OF MR. SCHWERSINSKE'S DETENTION CONTRARY TO *STATE v. BETOW*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999), AND IN VIOLATION OF MR. SCHWERSINSKE'S RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, § 11 OF THE WISCONSIN CONSTITUTION?

> Trial Court Answered: NO. The trial court concluded that the detaining officer permissibly extended the scope of Mr. Schwersinske's detention principally upon three facts, to wit: (1) Mr. Schwersinske operated his vehicle on the "wrong side of the road," (2) he admitted that "he had two to three beers," and (3) there was "an odor of intoxicants coming from the vehicle." R55 at 12:8-15; D-App at 104.

STATEMENT ON ORAL ARGUMENT

The Defendant-Appellant will NOT REQUEST oral argument as this appeal presents a question of law based upon an uncontroverted set of facts which can be addressed by the application of legal principles the type of which would not be enhanced by oral argument.

STATEMENT ON PUBLICATION

The Defendant-Appellant will NOT REQUEST publication of this Court's decision as the issue before this Court is premised upon the unique facts of the case and is of such an esoteric nature that publishing this Court's decision would likely have little impact upon future cases.

STATEMENT OF THE CASE

Mr. Schwersinske was charged in the Fond du Lac County with, *inter alia*, Operating a Motor Vehicle While Under the Influence of an Intoxicant, contrary to Wis. Stat. § 346.63(1)(a), and Operating a Motor Vehicle with a Prohibited Alcohol

Concentration, contrary to Wis. Stat. § 346.63(1)(b), arising out of an incident which occurred on November 10, 2018. R10.

Mr. Schwersinske retained private counsel who entered a plea of Not Guilty on his behalf on January 14, 2019. R15. Thereafter, Mr. Schwersinske's counsel filed a pretrial motion challenging the reasonableness of his arrest given the conditions under which the field sobriety tests had been administered. R22 & R23. An evidentiary hearing on Mr. Schwersinske's motions was held on June 4, 2019, at which time the State offered the testimony of a single witness, the arresting officer in the instant matter, Deputy Zach Bohlman of the Fond du Lac County Sheriff's Office. R26.

At the conclusion of the hearing, counsel for Mr. Schwersinske indicated that an additional issue had arisen of which the parties were not aware until after Deputy Bohlman proffered his testimony. R26 at 32:10 to 33:22. After identifying the issue on the record, the circuit court established a briefing schedule for the parties. R26 at 34:16-24.

The unanticipated issue discovered during the course of the evidentiary hearing related to whether Mr. Schwersinske's detention had been unreasonably enlarged beyond its original purpose in violation of the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution. R27.

Once the parties had submitted their supplemental briefs, the court entertained oral argument on July 15, 2019, and then issued its decision from the bench, denying all of Mr. Schwersinske's pretrial motions. R55 at 11:22 to 14:8; D-App. at 103-06.

Subsequent to the adverse decision of the court, Mr. Schwersinske waived his right to a jury trial and changed his plea to one of No Contest, upon which he was found guilty on January 3, 2022. R48 & R52.

It is from the adverse decision of the lower court that Mr. Schwersinske appeals to this Court by Notice of Appeal filed on January 31, 2022. R57.

STATEMENT OF FACTS

On November 10, 2018, Mr. Schwersinske was detained in the Town of Taycheedah, Fond du Lac County, by Deputy Zachary Bohlman of the Fond du Lac County Sheriff's Office for allegedly operating his motor vehicle southbound in the northbound lane on U.S. 151. R1; R26 at 5:2-14. According to Deputy Bohlman, Mr. Schwersinske was not speeding or otherwise operating his vehicle improperly. R26 at 16:24 to 17:2. Once Deputy Bohlman activated his emergency lights to signal Mr. Schwersinske to stop his vehicle, Mr. Schwersinske immediately pulled over and parked safely and properly off of the highway. R26 at 17:4-6.

After Deputy Bohlman approached the Schwersinske vehicle, he observed that there were two additional passengers in the vehicle along with Mr. Schwersinske. R26 at 6:5-7; 7:3-6. The deputy confronted Mr. Schwersinske about his driving behavior, and Mr. Schwersinske explained that he was distracted by the fact that the deputy was following him. R26 at 16:14-18.

Upon speaking with Mr. Schwersinske, Deputy Bohlman noted that there was an odor of intoxicants emanating *from the vehicle*, but at that time he did not directly link the odor to Mr. Schwersinske. R26 at 7:3-6. Beyond the odor emanating from the vehicle, Deputy Bohlman admitted that he observed no other typical indicia of impairment of Mr. Schwersinske's person, such as slurred speech or bloodshot or glassy eyes. R26 at 26:23-24; 28:25 to 29:1. When the deputy asked Mr. Schwersinske to produce his driver's license, he had no difficulty producing it. R26 at 29:2-4.

During the course of the evidentiary hearing held on Mr. Schwersinske's initial pretrial motion, Deputy Bohlman admitted that Mr. Schwersinske's driving behavior was **not what led him to suspect that he was under the influence of an intoxicant**,[1] rather, Deputy Bohlman only suspected that Mr. Schwersinske might have been operating while intoxicated **after** he asked him out of the vehicle. R26 at 27:6-12.

Based upon the foregoing facts, Deputy Bohlman directed Mr. Schwersinske to exit his vehicle, whereupon a battery of field sobriety tests was administered to Mr. Schwersinske and he was ultimately arrested for operating a motor vehicle while intoxicated.

[1]R26 at 27:4-10.

STANDARD OF REVIEW ON APPEAL

The question presented to this Court concerns whether an undisputed set of facts establishes that Mr. Schwersinske's detention was unconstitutionally enlarged beyond the scope of its original purpose in violation of the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution. Constitutional questions of this nature, based upon undisputed facts, merit *de novo* review by this Court. *State v. Jahnke*, 2009 WI App 4, ¶ 4, 316 Wis. 2d 324, 762 N.W.2d 696.

ARGUMENT

I. MR. SCHWERSINSKE'S DETENTION WAS EXPANDED BEYOND WHAT IS CONSTITUTIONALLY PERMISSIBLE UNDER *STATE v. BETOW*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999).

A. The Constitutional Perspective on the Permissible Scope of Investigatory Detentions.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. It has long been recognized that "[t]he Fourth Amendment's purpose is to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals." *State v. Riechl*, 114 Wis. 2d 511, 515, 339 N.W.2d 127 (Ct. App. 1983). Capricious or arbitrary police action is not tolerated under the umbrella of the Fourth Amendment. "The basic purpose of this prohibition is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *State v. Boggess*, 115 Wis. 2d 443, 448-49, 340 N.W.2d (1983); *Michigan v. Tyler*, 436 U.S. 499, 504 (1978); *see also Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

The appropriate measure of whether a detention is constitutionally reasonable is an *objective* test which examines the totality of the circumstances.

> **The test is an objective test.** Law enforcement officers may only infringe on the individual's interest to be free of a stop and detention if they have a suspicion

> grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime. **An inchoate and unparticularized suspicion or 'hunch'. . . will not suffice.**

State v. Guzy, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987)(internal quotations omitted; emphasis added); *United States v. Pavelski*, 789 F.2d 485, 489 (7th Cir. 1986). "When determining if the standard of reasonable suspicion [is] met, those facts known to the officer must be considered together as a totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990)." *State v. Powers*, 2004 WI App. 143, ¶ 7, 275 Wis. 2d 456, 685 N.W.2d 869.

Once a person is detained for Fourth Amendment purposes, *State v. Betow*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999), holds that the person's detention may not be enlarged beyond its original purpose unless new facts come to light which justify an enlargement of the detention. *Id*. at 93-95. *Betow* held that once a driver is stopped for a traffic violation, he or she may not be detained for purposes apart from those which justified the initial stop unless additional observations are made which give rise to a reasonable inference that other crimes have been committed. *Id*. More specifically, the *Betow* court noted:

> The key is the "reasonable relationship" between the detention and the reasons for which the stop was made. If such an "articulable suspicion" exists, the person may be temporarily stopped and detained to allow the officer to "investigate the circumstances that provoke suspicion," as long as "the stop and inquiry [are] reasonably related in scope to the justification for their initiation." **If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun**. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.

Id. at 94-95 (quotations in original; emphasis added), citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1975).

It is important to note that the foregoing holding in *Betow* can be distilled down into one critical statement, to wit: The detaining officer must become aware of "*additional suspicious factors*" which are "*sufficient to establish* that the person has committed *a separate violation*." These components of the *Betow* test will be examined below, and upon this examination, it will become evident that the circuit court's ruling in this case was erroneous.

B. Application of the Law to the Facts.

The first question this Court must examine is whether any "additional suspicious factors" existed in this case which would have alerted the officer to the possibility that Mr. Schwersinske may have done more than operated his vehicle outside its designated lane of travel.[2] This inquiry involves the examination of what facts existed under the "*totality* of the circumstances" because it is this "*totality* of the circumstances" which underlies the Fourth Amendment's reasonableness standard.

As it turns out, the "additional factors" in the instant case were far from "suspicious." The two additional suspicious factors observed by the deputy after he detained Mr. Schwersinske for his illegal lane deviation violations were (1) an odor of intoxicants emanating from the Schwersinske ***vehicle***, and (2) Mr. Schwersinke's admission that he "had two or three beers." For the reasons set forth below, neither one of these facts, whether taken together or examined independently of one another, justifies the enlargement of the scope of Mr. Schwersinske's detention.

With respect to the foregoing observations, this court has previously examined similar circumstances in a series of unpublished decisions which, while not of precedential value, are at least instructive in the instant matter. These include *State v. Gonzalez*, No. 2013AP2535-CR, 2014 WI App 71, 354 Wis. 2d 625, 848 N.W.2d 905 (Ct. App. May 8, 2014)(unpublished); *State v. Meye*, No. 2010AP336-CR, 2010 WI App 120, 329 N.W.2d 272, 789 N.W.2d 755 (Ct. App. July 14, 2010)(unpublished), and *County of Sauk v. Leon*, No. 2010AP 1593, 2011 WI App 1, 330 Wis. 2d 836, 794 N.W.2d 929 (Ct. App. Nov. 24, 2010)(unpublished).[3]

In *Gonzalez*, 2014 WI App 71, the court of appeals examined whether the extension of Ms. Gonzalez's detention to include an investigation for impaired driving was justified under the circumstances of her case. *Id*. ¶ 1. More specifically, Gonzalez was initially detained for having a defective headlight. *Id*. ¶ 3. After the detaining officer approached Gonzalez's vehicle, he observed that Ms. Gonzalez had an odor of intoxicants about her person, **but he did not observe any slurred speech or bloodshot eyes** (which is also true of Mr. Schwersinske's case). *Id*. ¶ 4. Nevertheless, the officer had Gonzalez alight from her vehicle to perform field sobriety tests. *Id*. ¶ 5.

Gonzalez moved to suppress the evidence obtained after the enlargement of

[2]Deviating from one's designated lane of travel can be cited as a violation of any number of statutes, but is principally governed by Wis. Stat. § 346.05 (2021-22).

[3]The foregoing decisions are limited precedent opinions which may be cited for their persuasive value pursuant to Wis. Stat. § 809.23 (2021-22).

the scope of her initial detention. *Id*. ¶ 6. The circuit court denied Ms. Gonzalez's motion to suppress evidence on the ground that (1) she had an odor of intoxicants emanating from her person, and (2) she had "told an untruth" to the officer because she denied consuming intoxicants yet the odor was not coming from her vehicle but rather from her person. *Id*. ¶¶ 1, 7.

The court of appeals reversed the decision of the lower court. *Id*. ¶ 26. In so doing, the court of appeals began its analysis by observing that:

> "Not every person who has consumed alcoholic beverages is 'under the influence' …." Wis JI—Criminal 2663. Instead, reasonable suspicion of intoxicated driving generally requires reasonable suspicion that the suspect is "[u]nder the influence of an intoxicant . . . to a degree which renders him or her incapable of safely driving." *See* Wis. Stat. §§ 346.63(1)(a) and 346.01(1).

Gonzalez, 2014 WI App 71, ¶ 13. The court then went on to note that "[a]part from the odor of intoxicants, the officer observed no *physical* indicators of intoxication, such as slurred speech or bloodshot eyes." *Id*. ¶ 14 (emphasis added).

In addressing the question before it, the *Gonzalez* court examined other decisions of a similar nature which reached the same conclusion as it did. It is worth quoting the *Gonzalez* court at length here because the cases which the *Gonzalez* court examined are relevant to the issue raised by Mr. Schwersinske:

> There appears to be no published case law addressing reasonable suspicion on similar facts. As to the odor of intoxication alone, neither Gonzalez nor the State cites a published case addressing whether the smell of alcohol coming from a driver is sufficient to provide reasonable suspicion of intoxicated driving. Gonzalez does, however, identify two unpublished cases that support the conclusion that the odor of alcohol alone is not enough: *State v. Meye*, No. 2010AP336-CR, 2010 WI App 120, 329 N.W.2d 272, 789 N.W.2d 755, unpublished slip op. (WI App July 14, 2010), and *County of Sauk v. Leon*, No. 2010AP 1593, 2011 WI App 1, 330 Wis. 2d 836, 794 N.W.2d 929, unpublished slip op. (WI App Nov. 24, 2010). Both cases, in terms of the odor of alcohol and the time of day, are as suspicious or more suspicious than the facts here.
>
> In *Meye*, at 3:23 a.m., a police officer detected a "strong" odor of intoxicants coming from two individuals who had just exited a vehicle, but the officer could not determine whether the odor was coming from the driver or the passenger. *Meye*, No. 2010AP336-CR, 2010 WI App 120, ¶ 2, 329 Wis. 2d 272, 789 N.W.2d 755. The officer initiated an investigatory stop of the driver on this basis. *See id*., ¶¶ 2-3. **The court in *Meye* rejected the proposition that the odor was enough to provide reasonable suspicion. *Id*., ¶ 6. The court indicated that there were no cases, published or unpublished, in which a court has held that "reasonable suspicion to seize a person on suspicion of drunk driving arises simply from smelling alcohol on a person who has alighted from a vehicle after it has stopped."** *Id*.; *see also, State v. Resch*, No. 2010AP2321-CR, 2011 WI App 75,

> 334 Wis. 2d 147, 799 N.W.2d 929, unpublished slip op., ¶ 19 (WI App Apr. 27, 2011)("In *Meye*, this court held that the mere odor of intoxicants does not constitute reasonable suspicion that a driver is intoxicated ...."). **So far as I can tell, the *Meye* court's decision did not hinge on the ambiguity of whether the odor was coming from the driver or passenger. Rather, the court concluded that this ambiguity "exacerbated" "[t]he weakness of this seizure."** *See Meye*, 2010AP336-CR, 2010 WI App 120, ¶ 9, 329 Wis. 2d 272, 789 N.W.2d 755.
>
> In *Leon*, at approximately 11:00 p.m., a police officer detected alcohol on the breath of a suspect who admitted to consuming one beer with dinner an hour or two earlier. *See Leon*, No. 2010AP 1593, 2011 WI App 1, ¶¶ 2, 9-10, 330 Wis. 2d 836, 794 N.W.2d 929. **The court in *Leon* concluded that the "admission of having consumed one beer with an evening meal, together with an odor [of intoxicants] of unspecified intensity," was not sufficient to provide reasonable suspicion of intoxicated driving.** *Id.*, ¶ 28.

Gonzalez, 2014 WI App 71, ¶¶ 18-20 (footnotes omitted; emphasis added).

Based upon the foregoing, the court of appeals clearly did not conclude that one's admission that they consumed alcohol or that they had an odor of alcohol emanating from their vehicle were the *sine qua non* which constitutionally justified removing a person from their vehicle for the purpose of conducting an operating while intoxicated investigation. Quite to the contrary, the *Gonzalez* court recognized that it is *not* illegal to consume intoxicants and operate a motor vehicle in Wisconsin. It is only illegal to do so if one's ability is impaired. *Gonzalez*, 2014 WI App 71, ¶ 13. Thus, the *Gonzalez* holding renders Mr. Schwersinske's admission to having consumed two to three beers of *de minimus* value, especially considering the record is devoid of any information regarding when those beverages were consumed, what types of beer they were, or what size they were.

Similarly in *Meye*, just as the officer's actions were not justified because of the officer's inability to discern from whom the odor of an intoxicant was emanating, so too in Mr. Schwersinske's case, there is nothing in the record which links the deputy's nebulous observation of an odor of intoxicants to Mr. Schwersinske himself. *Cf. Meye*, No. 2010AP336-CR, 2010 WI App 120, ¶ 6. There were three passengers in the Schwersinske vehicle and the deputy could do nothing more than link the odor to the vehicle and not to Mr. Schwersinske prior to having him step out of the vehicle.

The *Leon* court concluded that even if the two foregoing factors are taken together, *i.e.*, odor and an admission to drinking, these are still insufficient to establish a reasonable suspicion to expand the scope of a detention. *Leon*, No. 2010AP 1593, 2011 WI App 1, ¶ 28.

Perhaps Mr. Schwersinske's analysis of the issue he places before this Court

could end with the foregoing, however, the appropriate test is an objective "*totality* of the circumstances" test and, therefore, this Court cannot consider only those facts favorable to the State as though they existed in a vacuum. This Court should consider all of the facts which mitigated against a conclusion that further investigation was justified in the instant case just as it should account for those to be proffered by the State. Mr. Schwersinske's point in this regard is best made by analogy. Assume, *arguendo*, there is a housefire and arson is suspected. While officers are establishing a perimeter for the fire department, they observe an individual holding a cigarette lighter watching the housefire burn. If these were the only facts known to a reviewing court, it might conclude under the totality of the circumstances that the detention of the individual for questioning regarding the housefire was justified. If, however, two more facts which were known to the detaining officers were revealed, the detention of the individual may no longer have been constitutionally justified, to wit: (1) the person was the neighbor of the house which was ablaze and he was standing in his own yard, and (2) the person was found to have had a recently lit cigarette in his mouth and is a known chain smoker. Suddenly, an examination of the *totality* of the circumstances undercuts the notion that a reasonable suspicion existed to detain this individual. This Court should, therefore, give close and careful consideration to *all* of the "additional factors" known to Deputy Bohlman at the time he encountered Mr. Schwersinske. To this end, it is relevant to note that the evidentiary record is devoid of any proof, testimony, or evidence that Mr. Schwersinske:

> Slurred his words;
>
> Had bloodshot or glassy eyes;
>
> Delayed responding to the officer's signal to stop;
>
> Parked his vehicle improperly;
>
> Was uncooperative with officers;
>
> Was confused or disoriented;
>
> Had any alcoholic beverages in his vehicle;
>
> Had any difficulty appropriately answering the officer's questions; and
>
> Displayed any problems with his coordination, such as fumbling for his driver's license or having slow/lethargic movements.

Of the foregoing, one point is worth closer examination. It is telling that the record does not demonstrate that Mr. Schwersinske's mentation was impaired. More specifically, it is part of the "common stock of knowledge" that alcohol does not discriminate. That is, alcohol impairs *both* mentation and coordination. This is

precisely why field sobriety tests are meant to be *divided* attention tasks, *i.e.*, they are deliberately designed to assess both a person's physical coordination ***and*** their ability to think clearly and appropriately process instructions. Throughout the course of his interrogation by Deputy Bohlman, Mr. Schwersinske appropriately responded to the questions put to him about where he had been, what he had been drinking, why he deviated from his lane of travel, *etc*.. This conduct clearly demonstrates that Mr. Schwersinske had both an awareness of his surroundings and what was expected of him during a traffic stop. This is evidence of the fact that Mr. Schwersinske's ability to think clearly was not impaired, which undermines the notion that sufficient facts existed to justify an enlargement of the scope of his detention.

In the end, the lower court's decision to deny Mr. Schwersinske's motion was erroneously made in light of all of the foregoing. This Court should, therefore, reverse the lower court's order and remand this case for further proceedings not inconsistent with such a ruling.

C. Other Considerations.

The Fourth Amendment context in which Mr. Schwersinske raises the issue relating to the constitutionality of his extended detention must not be overlooked for it is well-settled that Fourth Amendment "provisions for the security of persons and property should be **liberally construed**." *Mapp v. Ohio*, 367 U.S. 643, 647 (1961)(citation omitted; emphasis added). "A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. **It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon**." *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973)(emphasis added). Whether an investigatory detention is constitutionally reasonable turns upon "'a particularized and objective basis' for suspecting **the person stopped [is engaged in] criminal activity**." *Ornelas v. United States*, 517 U.S. 690, 696 (1996)(citation omitted); *State v. Powers*, 2004 WI App. 143, ¶ 7, 275 Wis. 2d 456, 685 N.W.2d 869. Absent proof of any wrongdoing, a detention is constitutionally unreasonable. *United States v. Cortez*, 499 U.S. 411, 418 (1981); *Brown v. Texas*, 443 U.S. 47, 51 (1979); *Delaware v. Prouse*, 440 U.S. 648, 661-63 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). Because proof of any wrongdoing is absent in the instant case, this Court has a "duty" to "liberally construe" the Fourth Amendment to guard Mr. Schwersinske against "stealthy encroachments" on his right to be free from unreasonable searches and seizures, and should, therefore, reverse the decision of the lower court.

CONCLUSION

Mr. Schwersinske respectfully requests that this Court reverse the decision of the court below on the ground that objective facts to enlarge the scope of his detention under the totality of the circumstances did not exist in violation of Mr. Schwersinske's Fourth Amendment right to be free from unreasonable searches and seizures, contrary to *State v. Betow*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999).

Dated this 22nd day of April, 2022.

Respectfully submitted:
MELOWSKI & SINGH, LLC

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CERTIFICATION OF LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 4,247 words.

I also certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains a (1) Table of Contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues. I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Finally, I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12). The electronic brief is identical in content and format to the printed form of the brief. Additionally, this brief and appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on April 22, 2022. I further certify that the brief and appendix was correctly addressed and postage was pre-paid.

Dated this 22nd day of April, 2022.

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