STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appellate Case No. 2022AP189-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

BENJAMIN G. CHURLEY,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR DANE COUNTY, BRANCH XI, THE HONORABLE ELLEN K. BERZ PRESIDING, TRIAL COURT CASE NO. 17-CT-866

BRIEF OF DEFENDANT-APPELLANT

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STATEMENT OF THE ISSUE

WHETHER MR. CHURLEY WAS DENIED HIS RIGHT TO A SPEEDY TRIAL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Trial Court Answered: NO. The trial court concluded that Mr. Churley failed to establish that the test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972), regarding the determination of whether the right to a speedy trial has been violated, was satisfied. R79 at 14:8 to 19:6; D-App. at 103-08.

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 such that publishing this Court's decision would likely have little impact upon future cases.

STATEMENT OF THE CASE

Mr. Churley was charged in Dane County with Operating a Motor Vehicle While Under the Influence of an Intoxicant, contrary to Wis. Stat. § 346.63(1)(a) [hereinafter "OWI"], and Operating a Motor Vehicle with a Prohibited Alcohol Concentration, contrary to Wis. Stat. § 346.63(1)(b) [hereinafter "PAC"], arising out of an incident which occurred on October 6, 2017. R2 & R3. On November 2, 2017, a formal Criminal Complaint was filed against Mr. Churley. R1.

An Initial Appearance was held on November 6, 2017, at which Mr. Churley was represented by private counsel, Melowski & Associates, LLC,[1] and at which he entered pleas of Not Guilty to all counts. R10.

During the early stages of the case, pursuant to § 343.305(7)(a), Mr. Churley's operating privilege was to be administratively suspended on November 30, 2017, as a result of his allegedly having a prohibited alcohol concentration. R14 at p.1. Mr. Churley moved the court for a stay of his administrative suspension and filed a request for a judicial review of the administrative judgment on November 30th. R13.

On January 9, 2018, shortly after receipt and review of discovery, counsel for Mr. Churley filed four pretrial motions challenging the admissibility of certain evidence in the case. R22, R23, R24 & R25. An additional motion requesting suppression of evidence was filed on January 22, 2018. R28. An evidentiary hearing on Mr. Churley's motions was held on May 16, 2018. R33. During the course of the hearing, the arresting officer's testimony gave rise to an additional unforeseen issue. Based upon the discovery of this unanticipated issue, Mr. Churley filed another motion on July 9, 2018. R39.

At the conclusion of the May 16th evidentiary hearing, the court made findings on one of Mr. Churley's motions, denying the same. R33 at 78:22 to 80:21. The court then ordered the parties to file supplemental briefs on the remaining issues, setting July 9, 2018 as the deadline by which briefing was to be completed. R33 at 80:22 to 83:6; R34. As ordered, the parties submitted their respective briefs by the court-imposed deadline. R35 to R42.

No further action was taken by the court to decide the issues for which it requested additional briefing until such later time as Mr. Churley received an electronic order from the Court's judicial assistant requiring the parties to file a further supplemental brief relating solely to the issue raised by Mr. Churley regarding the constitutionality of the seizure of his breath at roadside. R79 at 11:6-17; 12:16-18; D-App. at 111-12. This brief was to be filed by April 1, 2019, and the Defendant complied with the court's order by filing his brief eleven days early on March 19, 2019. R43. For reasons unknown, the State elected not to comply with the Court's Order to file a supplemental brief nor did it notify the court that it

[1]Melowski & Associates, LLC, has since become Melowski & Singh, LLC.

would not be filing a brief at all. R79 at 15:14-19; D-App. at 104. The State's failure to file its brief caused a ten-month delay in the proceedings during which there was no activity on the case. R79 at 12:21 to 13:4. It was not until a hearing held on October 14, 2020 that the State offered an explanation, and its apology, for not having notified the court that it would not be filing anything. R79 at 6:3-9. In the interim, on January 22, 2020, the Court entered an order denying all of Mr. Churley's motions. R44.

Beyond the foregoing, an additional unexplained delay occurred in the case when a period of approximately eight months expired between the time the court-ordered briefing was completed on July 9, 2018 and the court sending its electronic mail request to the parties for the further supplemental briefing. R79 at 11:6-17; 12:23 to 13:3; D-App. at 111-12.

In total, the court noted that Mr. Churley's case had been pending for a period of approximately thirty-five months prior to the October 20, 2020 hearing. R79 at 14:18-23; D-App. at 103. Because of the significant delay in his case, Mr. Churley filed a motion to dismiss the charges pending against him based upon a violation of his Sixth Amendment right to a speedy trial on March 31, 2020. R50.

The court denied Mr. Churley's motion,[2] whereupon he changed his plea to one of No Contest on November 23, 2021, and was found guilty and sentenced on January 20, 2022. R65 & R66. It is from the adverse decision of the lower court that Mr. Churley appeals to this Court by Notice of Appeal filed on February 7, 2022. R73.

STATEMENT OF FACTS

On October 6, 2017, Benjamin Churley was stopped and detained in the City of Madison, Dane County, by Officer Nicole Zautner of the UW-Madison Police Department for allegedly operating his motor vehicle with unbelted passengers and a suspended registration. R28 at p.2.

After making contact with Mr. Churley, Officer Zautner observed that he had an odor of intoxicants about his person and had bloodshot eyes. *Id*. Based upon

[2]R79 at 14:8 to 19:6; D-App. at 103-08.

these and other observations, Officer Zautner asked Mr. Churley to submit to a battery of field sobriety tests and a preliminary breath test. *Id.*

Based upon his performance on the field sobriety tests, Mr. Churley was placed under arrest for Operating a Motor Vehicle While Under the Influence, contrary to Wis. Stat. § 346.63(1)(a). R1. Thereafter, Mr. Churley was read the Informing the Accused form and asked to consent to an evidentiary chemical test of his blood. R28 at p.3. A subsequent analysis of Mr. Churley's blood specimen yielded a result of .110 g/100 mL of ethanol. R1 at p.2. Based upon this result, Mr. Churley was additionally charge with Operating a Motor Vehicle with a Prohibited Alcohol Concentration, contrary to Wis. Stat. § 346.63(1)(b). R1.

STANDARD OF REVIEW ON APPEAL

The question presented to this Court relates to whether Mr. Churley's Sixth Amendment right to a speedy trial was violated. This is a question of law, and because it is based upon an undisputed set of facts, it merits *de novo* review by this Court. *State v. Rogers*, 70 Wis. 2d 160, 164, 233 N.W.2d 480 (1975).

ARGUMENT

I. INTRODUCTION TO THE ISSUES PRESENTED.

In the instant case, Mr. Churley's filing of a "judicial review request" regarding his administrative suspension constitutes a demand for a speedy trial because the review is required to be conducted "as expeditiously as possible," and furthermore, because Wis. Stat. § 343.305(8)(c)1. requires the review to be conducted *at the time of trial*, the joining of these two processes makes the filing of the judicial review request the functional equivalent of a demand for a speedy trial. *Thomas v. Fielder*, 884 F.2d 990, 992 (7th Cir. 1989). More specifically, § 343.305(8)(c)1. expressly provides that "[t]he judicial review **shall be conducted** at the time of the trial of the underlying offense under s. 346.63." Wis. Stat. § 343.305(8)(c)1. (2021-22)(emphasis added).[3] Moreover, sec. 343.305(8)(c)2 requires the Court to notify the Department of Transportation (DOT) of the result

[3]Throughout his brief, Mr. Churley refers to the 2021-22 version of the Wisconsin Statutes. It should be noted that references to this biennium are made for purposes of convenience as there have been no substantive changes to any of the statutes involved in the instant matter since the occurrence of Mr. Churley's 2017 offense.

of the judicial review **within sixty (60) days of the filing of the request**. Clearly, the marriage of the need to conduct judicial reviews as expeditiously as possible and notify the DOT of the result within sixty days with the statutory requirement that these reviews be conducted at the time of trial makes the filing of a judicial review request the functional equivalent of a speedy trial demand. In essence, to comply with the statutory provisions when a judicial review has been requested, the Court would need to conduct the trial of the underlying offense within sixty days.

The Sixth Amendment to the United States Constitution guarantees the accused in all criminal cases the right to a "speedy trial." It provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ..." U.S. Const. amend. VI. Similarly, the Wisconsin Constitution provides that [i]n all criminal prosecutions the accused shall enjoy the right . . . to a speedy public trial . . . ." Wis. Const. art. I, § 8(1). Having submitted his demand for a speedy trial, the government failed to expeditiously prosecute Mr. Churley's case to the detriment of: his Sixth and Fourteenth Amendment rights; his concomitant rights under Article I, §§ 1, 7, & 8(1) of the Wisconsin Constitution; and in derogation of *Barker v. Wingo*, 407 U.S. 514 (1972).

The seminal United States Supreme Court case establishing the standard by which a violation of an accused's right to a speedy trial is to be measured is *Barker*, 407 U.S. 514. In *Barker*, the Supreme Court examined whether the speedy-trial rights of Barker, who was being charged with two counts of homicide, had been violated when a twenty-month delay was interposed between his indictment and his trial due to various delays in the prosecution of his co-defendant, continuances requested by the State, and the illness of the principal investigating sheriff. *Id*. at 516-19. Before undertaking a legal analysis of Barker's circumstances, the Court observed that none of its prior precedent had established a clear standard for examining whether an accused's right to a speedy trial had been violated. *Id*. at 515-16.

The High Court began its analysis by recognizing that:

> It is impossible, for example, to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial.

Id. at 521. Despite this difficulty, the Court nevertheless developed a four-pronged test to determine when the right to a speedy trial has been impermissibly infringed. Justice Powell, writing for a unanimous Court, held:

> The approach we accept is a balancing test, in which the conduct of both the defendant and prosecution are weighed.
>
> A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some factors which courts should assess when determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.

Id. at 530.

It is important to note that the *Barker* Court admonished that it is the responsibility of the government to bring the defendant to trial and not the defendant to ensure a speedy process. The *Barker* Court stated it succinctly:

> The nature of the speedy trial right does make it impossible to pinpoint a precise time in the process when the right must be asserted or waived, **but that fact does not argue for placing the burden of protecting the right solely on defendants. A defendant has no duty to bring himself to trial; the State has that duty** as well as the duty of insuring that the trial is consistent with due process.

Id. at 527 (emphasis added). Ultimately, the Court concluded that the only permissible remedy for a violation of the right to a speedy trial is the "severe remedy of the dismissal of the indictment." *Id*. at 522.

Wisconsin has adopted the *Barker* test without modification for determining whether a violation of a defendant's rights under Art. I, § 8(1) of the Wisconsin Constitution has taken place. *Day v. State*, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973).

II. APPLICATION OF THE LAW TO THE FACTS.

A. Length of the Delay.

First among the *Barker* criteria to be considered is the length of the delay. The instant case had been pending for thirty-five (35) months between the time of the filing of the criminal complaint on November 2, 2017, and the time Mr. Churley's motion to dismiss based upon a denial of his right to a speedy trial was heard. R79 at 14:18-23; D-App. at 103. When compared to other periods of delay found to be prejudicial, the thirty-five months in this case is grossly prejudicial. As the Wisconsin Supreme Court observed in *State v. Ziegenhagen*, 73 Wis. 2d 656, 245 N.W.2d 656 (1976):

> [o]n an *ad hoc* basis this court has found, in *Hadley v. State* (1975), 66 Wis. 2d 350, 363, 225 N.W.2d 461, that an eighteen-month delay was "so excessive that it leads *prima facie* to the inquiry of whether there was a denial of speedy trial." In *Watson v. State* (1974), 64 Wis. 2d 264, 219 N.W. 398, a seventeen-month delay was held to be presumptively prejudicial.

Ziegenhagen, 73 Wis. 2d at 666. Tellingly, the delays in the foregoing cases, including the *Ziegenhagen* case itself where there had been a twenty-five month delay, were found to be **presumptively** prejudicial. *Id.* Given that there was an acknowledged thirty-five month delay in the instant case, there can be little doubt, based upon the foregoing authority, that the delay itself was presumptively prejudicial.

Beyond the foregoing, however, it is important to note that at least ten months of the delay was caused by the inaction of the State in failing to comply with the court's February 2019 order to submit its supplemental brief regarding the issue raised by Mr. Churley in his motion challenging the illegal seizure of his breath. R79 at 11:6-17; 12:16-18; D-App. at 111-12. Whether through its own negligence or by deliberate effort, this factor weighs against the State as a failure to comply with a court order is presumptively dilatory. The government's delay in complying with the court's order not only adversely affected Mr. Churley, but additionally, prevented the circuit court from complying with its obligation under SCR 70.36 to issue a decision on Mr. Churley's motions within ninety days of the completion of briefing. Its effect was thus pervasive.

In *State v. Leighton*, 2000 WI App 156, 237 Wis. 2d 709, 616 N.W.2d 126, the Wisconsin Court of Appeals addressed the issue of what constitutes a "presumptively prejudicial" delay in the right of the accused to a speedy trial. The *Leighton* court stated:

> The first factor, the length of the delay, is a threshold consideration—the court must determine that the length of the delay is presumptively prejudicial before inquiry can be made into the remaining three factors. *See Doggett*, 505 U.S. at 651-52 ("To trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay."); *Hatcher v. State*, 83 Wis. 2d 559, 566-67, 266 N.W.2d 320 (1978). If the length of the delay is presumptively prejudicial and the court determines that, under the totality of the circumstances, the defendant has been denied the right to a speedy trial, the charges must be dismissed. *See Barker*, 407 U.S. at 522.
>
> In *Doggett*, the United States Supreme Court recognized that "depending on the nature of the charges, the lower courts have generally found post-accusation delay 'presumptively prejudicial' at least as it approaches one year." *Doggett*, 505 U.S. at 652 n.1. Here, there was a twenty-six-month delay from the filing of the criminal complaint in June of 1996 to Leighton's trial in August 1998. *See Doggett*, 505 U.S. at 655 (speedy trial inquiry triggered by arrest, indictment, or other official accusation). We conclude that this amount of time is presumptively prejudicial, *see Doggett*, 505 U.S. at 652 n.1, and turn to the remaining three factors.

Leighton, 2000 WI App 156, ¶¶ 7-8; *see also, Green v. State*, 75 Wis. 2d 631, 250 N.W.2d 305 (1977)(one year delay is presumptively prejudicial). The delay between the time Mr. Churley was indicted and the time at which his motion to dismiss was finally heard was *nine months longer than* the twenty-six month delay to which Leighton was exposed.

B. Reason for the Delay.

The second *Barker* criteria requires this Court to examine the reason for the underlying delay. In this instance, there is no explicable reason for the State-induced ten-month delay between the time of the lower court's order for additional briefing and the time of the court's January 22, 2020 decision on Mr. Churley's motions. R79 at 12:21 to 13:4. It was not until a hearing held on October 14, 2020 that the State offered an explanation, and its apology, for not having taken any

action. R79 at 6:3-9. If the State never intended to comply with the circuit court's order to file a supplemental brief regarding the issue for which the lower court sought additional information, then it should have so informed the court. It would have been easy enough for the State to notify the circuit court and opposing counsel *vis a vis* a one-sentence letter that it never intended to file additional authorities on the issue. Yet, the record in this case is utterly devoid of any such notification. Without any explanation, the State's election not to notify the court or Mr. Churley of its intentions can only be viewed as deliberately dilatory at worst or, at best, inexcusably negligent.

Similarly, the delay which occurred between the time the court-ordered briefing was completed on July 9, 2018 and the court sending its electronic mail request to the parties in February of 2019 for the further supplemental briefing is unexplained. R79 at 11:6-17; 12:23 to 13:3; D-App. at 111-12. This additional eight month delay only compounded the problem. The circuit court offered a partial explanation for this delay by asserting that it was "dealing with breast cancer." R79 at 21:3-4. Certainly, Mr. Churley is not so crass as to assert that the court's "dealing with breast cancer" is not a serious matter. It is, and Mr. Churley sympathizes with what the court had to address in its personal life. Nevertheless, if the court's personal matters were impacting upon, or interfering with, its ability to administer justice, it was under an affirmative obligation to notify either the chief judge for the judicial district or the Director of State Courts so that arrangements could be made to protect the rights of those accuseds who had matters pending before it. By failing to do so, only adverse consequences could befall those citizens awaiting their "day in court."

C. Did Mr. Churley Assert His Right.

The *Barker* Court held that a defendant is *not* obligated to affirmatively assert his right to a speedy trial in order for the trial court to find that there has been an unconstitutional interference with the same. *Barker*, 407 U.S. at 529 ("We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right."). The Supreme Court held:

> **[W]e do not depart from our holdings in other cases concerning the waiver of fundamental rights, in which we have placed the entire responsibility on the prosecution to show that the claimed waiver was knowingly and voluntarily made.** Such cases have involved rights which must be exercised or waived at a

> specific time or under clearly identifiable circumstances, such as the rights to plead not guilty, to demand a jury trial, to exercise the privilege against self-incrimination, and to have the assistance of counsel. We have shown above that the right to a speedy trial is unique in its uncertainty as to when and under what circumstances it must be asserted or may be deemed waived. **But the rule we announce today, which comports with constitutional principles, places the primary burden on the courts and the prosecutors to assure that cases are brought to trial.**

Id. (emphasis added).

The *Barker* Court stated that when a defendant does affirmatively assert the right, such a factor would weigh heavily in favor of the defendant and against the State. *Id.* In this case, as noted in Section I., *supra*, Mr. Churley's filing of his judicial review request on November 30, 2017, constituted a demand for a speedy trial. Section 343.305(8) provides that when judicial review is sought from the adverse decision of an administrative suspension hearing examiner, the judicial review "shall be conducted at the time of the trial of the underlying offense . . . ." Wis. Stat. § 343.305(8)(c)1. (2021-22).

Among the many procedural due process challenges to the massive revisions to Wisconsin's Implied Consent Law enacted in the mid-1980s was an allegation that there was undue delay in having the administrative deprivation of one's Sixth Amendment property interest in maintaining an operating privilege judicially reviewed. *See, Thomas v. Fiedler*, 700 F. Supp. 1527 (E.D. Wis. 1988). In prevailing on this and all of its other due process claims, the State was forced to amend the implied consent statute in order to make it conform with the requirements of due process, and it did so through 1988 Wis. Act 3. *Thomas*, 884 F.2d at 991. As part and parcel of these changes, a demand for judicial review, which was to be conducted at the time of trial and within sixty days of the date of the request, was to be held "as expeditiously as possible" thereby making the judicial review request the equivalent of a demand for a speedy trial. *Id.* at 992. Thus, Mr. Churley has satisfied the third criteria under *Barker*.

Notably, however, as the *Barker* Court recognized, the demand for a speedy trial is **not** the *sine qua non* of the allegation that a defendant's Sixth Amendment rights have been violated. Even if Mr. Churley had not filed the functional equivalent of a speedy trial demand in the form of a judicial review request, the *Barker* Court still recognized that such claims may lie because the Constitution

"places the primary burden on the courts and the prosecutors to assure that cases are brought to trial." *Barker*, 407 U.S. at 529. Thus, any rebuttal argument by the State premised upon a theory that no speedy trial demand was made by Mr. Barker is either going to be a non-starter or a red-herring.

D. Was Mr. Churley Prejudiced by the Delay.

The final criteria for this Court to examine is whether the presumptively undue delay in this case prejudiced Mr. Churley. It did. Among the criteria to consider when determining whether there has been prejudice to a defendant are, *inter alia*: (1) have the witnesses' memories been impaired; (2) has there been a loss of witnesses; (3) has there been financial harm; (4) has there been a disruption of employment; (5) has the delay affected the defendant's association with other people; (6) has the delay increased the defendant's anxiety; and (7) has there been an ongoing harm to the defendant's reputation? *United States v. Marion*, 404 U.S. 307, 321 (1971); *Klopfer v. North Carolina*, 386 U.S. 213, 222 (1967); *Dickey v. Florida*, 398 U.S. 30, 38 (1970); *Hatcher v. State*, 83 Wis. 2d 559, 569, 266 N.W.2d 320 (1978).

In this case, Mr. Churley suffered significant harm. First and foremost, there cannot be any doubt that the witnesses' memories were adversely impacted by the passage of thirty-five-***plus*** months of time. Mr. Churley wants to emphasize the "plus" portion of his assertion because it is likely that his case would have continued to pend for a significantly longer period of time based upon the lower court's forewarning him that if he did not want to waive his right to a jury trial in favor of a trial to the court, "speedy trial cases involving homicide are going to be the first ones that are tried." R79 at 31:24-25. In addition to the four passengers who were present when Mr. Churley was stopped, there were also other witnesses who were out with Mr. Churley on the evening of his detention. None of these individuals will be able to recall the events of that night with the same clarity as they could have had not so much time passed in the lower court.

Second, there has doubtless been financial harm to Mr. Churley. Mr. Churley's employer informed him that it was taking a "wait-and-see" approach with respect to where Mr. Churley might be able to grow within the company position-wise. R50 at p.9, ¶ 21. This wait-and-see approach is a direct function of the fact that his employer remained uncertain about Mr. Churley's future as it pertained to

him being unavailable for work due to incarceration and unable to drive over a large geographic area to meet with customers due to any future waiting periods for an occupational license and other restrictions upon his occupational privilege. *Id*. Obviously, this not only affected Mr. Churley's employment, but added to his anxiety as well.

Third, there was *both* a significant reputational impact upon Mr. Churley because of the uncertainty in the pending outcome of his case *and* undue ongoing anxiety. As the General Manager for an alcoholic beverage company, Mr. Churley was responsible for meeting directly with the Madison Police Department, the Alcohol License and Review Committee, and the City Attorney's Office. *Id*. at p.9, ¶ 22. Every time Mr. Churley entered into a meeting with any of the foregoing, his anxiety about having a long-pending allegation against him of operating a motor vehicle while intoxicated caused him significant stress. Mr. Churley spent a not insignificant amount of time wondering whether his next meeting would begin with the question, "So what's this about you being charged with drunk driving?" Employment-wise, his stress was understandable as it had been made clear to him that if his pending case interferes with his ability to perform his job, he will no longer be able to be retained as an employee of the business. *Id*.

Based upon the foregoing, it is evident that there was significant harm to Mr. Churley's ability to mount his defense at trial, to him financially, to his employment, to his reputation, to his associations, and to his stress—all of which are relevant considerations for this Court when determining whether his right to a speedy trial has been violated. Mr. Churley has suffered the numerous hardships described in *Barker*, *Marion*, *Klopfer*, *Dickey*, and *Hatcher* and their progeny and, as a direct result, the unconstitutional interference with his right to a speedy trial merits dismissal of the charges against him.

CONCLUSION

Mr. Churley respectfully requests that this Court reverse the decision of the court below and grant his motion to dismiss on the ground that his Sixth Amendment right to a speedy trial was violated by the delay interposed in the instant case through no fault of his own.

Dated this 21st day of April, 2022.

Respectfully submitted:
MELOWSKI & SINGH, LLC

Electronically signed by:
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Benjamin G. Churley

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 4,572 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 21, 2022. I further certify that the brief and appendix was correctly addressed and postage was pre-paid.

Dated this 21st day of April, 2022.

MELOWSKI & SINGH, LLC

Electronically signed by:
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