STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2023AP351 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WAYNE L. TIMM,

Defendant-Appellant-Petitioner.

ON PETITION FOR REVIEW OF A DECISION OF THE COURT OF APPEALS, DISTRICT IV, AFFIRMING A JUDGMENT OF CONVICTION, AND THE FINAL ORDER DENYING POST-CONVICTION RELIEF, ENTERED IN THE CIRCUIT COURT FOR CLARK COUNTY, THE HONORABLE TODD P. WOLF PRESIDING

PETITION FOR REVIEW

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The Defendant-Appellant, Wayne L. Timm, petitions this Court for review of the Court of Appeals' decision in ***State v. Timm***, No. 2023AP351-CR (WI App. Jan. 19, 2024) (one judge). The Court of Appeals affirmed the circuit court's decision denying suppression of evidence and postconviction relief.

ISSUES PRESENTED FOR REVIEW

1. Did the circuit court err in denying Mr. Timm's motion to suppress the search of his vehicle?

The circuit court answered: No. The court found that the officer had reasonable suspicion to stop Mr. Timm's vehicle for speeding and probable cause to search his vehicle based on ***Ohio v. Robinette*** and ***State v. Williams***. Further, the court found, solely based on the officer's testimony, that Mr. Timm consented to the search of his vehicle. The Court of Appeals affirmed not based upon the case law cited by the circuit court, nor briefed by either side, but based upon finding reasonable suspicion under ***State v. Anderson***.

2. Was trial counsel ineffective for failing to call Mr. Timm as a witness at the suppression hearing to testify that he did not give the officer consent to search his vehicle when Mr. Timm wanted to testify?

The circuit court answered: No. Without holding a postconviction hearing, the court found that the trial strategy is under the control of the defendant's attorney, that Mr. Timm would be giving up his right to self-incrimination if he had testified and that happens very rarely in criminal cases,

and that Mr. Timm's credibility would have been easily impeached because of his past convictions and his pending cases at the time of the suppression hearing. The Court of Appeals affirmed on other grounds. It found that the officer had reasonable suspicion under ***State v. Anderson***; therefore, it did not address consent.

3. Did the circuit court err in denying Mr. Timm's postconviction motion and motion to reconsider postconviction decision without a ***Machner*** hearing when it does not know the trial attorney's strategy for telling Mr. Timm he could not testify, made errors in fact finding, and assumed Mr. Timm would be incredible because of his prior record and cases pending at the time of the suppression hearing?

The Court of Appeals answered: No.

STATEMENT OF CRITERIA SUPPORTING REVIEW

Review is sought to develop and clarify the interplay between Badger Stop case law (probable cause) and ***State v. Anderson***[1] (reasonable suspicion) when an officer conducts a warrantless search of a person's vehicle. Wis. Stat. § (Rule) 809.62(1r)(c). All people have a constitutional right to be free from unreasonable searches. ***State v. Dearborn***, 2010 WI 84, ¶ 14, 327 Wis.2d 252, 786 N.W.2d 97. This protection is provided by Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin

[1] ***State v. Anderson***, 2019 WI 97, 389 Wis.2d 106, 935 N.W.2d 285.

Constitution. ***Id.*** This also presents a significant question of federal constitutional law. Wis. Stat. § (Rule) 809.62(1r)(d).

In addition, review is appropriate because this Case presents a claim of ineffective assistance of counsel based on the denial by counsel of the defendant's right to testify at a suppression hearing. Both ineffective assistance of counsel and the right to testify present a real and significant question of federal constitutional law. *See* Wis. Stat. § (Rule) 809.62(1r)(d).

STATEMENT OF THE CASE

Wayne L. Timm pled no contest to nine misdemeanor offenses. The court accepted his plea and found him guilty of three counts of misdemeanor Entry into a Locked Building, contrary to Wis. Stat. § 943.15(1); three counts of misdemeanor Theft Less Than $2,500 contrary to Wis. Stat. § 943.20(1)(a); and three counts of misdemeanor Criminal Damage to Property contrary to Wis. Stat. § 943.01(1). R127; R129.

Suppression Issue

An officer of the Spencer Police Department pulled over Wayne Timm on April 19, 2015, at approximately 11:40 p.m. R1. The officer testified that "My assignment was to keep an eye out for a white Pontiac Grand Prix." R38:6. He was told by Spencer Police Chief that the driver of the Pontiac Grand Prix was "possibly involved – or the vehicle was involved in possible burglaries in the – in Spencer area." ***Id.*** The officer who conducted the stop had no further information about the

possible burglaries, whether the Pontiac Grand Prix' was used in the crimes, or whether the driver of Pontiac Grand Prix' was involved in the possible burglaries. *See* ***id.*** at 6-13.

The Spencer Police Chief testified that he became aware of Mr. Timm when he arrested him in 2010 for burglary, and he had interviewed him in the past. ***Id.*** at 14-15. Years ago, on an unspecified date, the chief testified that he interviewed either Mr. Timm or his brother in the Wood County Jail, and either Mr. Timm or his brother said that they would not stop committing burglaries. ***Id.*** at 16. The chief knew there were burglaries occurring in Clark and Marathon Counties before this April 19, 2015 traffic stop. ***Id.*** He also knew that Mr. Timm drove a white Pontiac, because the car was involved in an unrelated traffic accident the month before this traffic stop. ***Id.*** 16-17. On cross examination, the chief admitted that he was not aware of Mr. Timm or the white Pontiac Grand Prix' being involved in any of the recent burglaries. ***Id.*** at 17-18.

The officer who conducted the traffic stop testified that, based on his radar, the white Pontiac that his chief told him to look for was traveling at 31 mph in a 25-mph zone. ***Id.*** at 5. He did not issue Mr. Timm a speeding citation or written warning. *See* ***id.*** As this officer walked up to Mr. Timm's car, he "shined the flashlight in the back seat [he] saw a tire iron... on the back seat..." ***Id.*** at 7. There is no evidence in the record that a tire iron was used in the possible burglaries in the area or other counties. *See* ***id*** & R1. The officer testified at the suppression hearing that he obtained Mr. Timm's driver's license, returned to his squad car, called dispatch, and ran Mr.

Timm through his mobile data computer. ***Id.*** He found Mr. Timm "was on probation for burglary and had a history of burglary charges." ***Id.*** At no point during either witnesses' testimony did they assert that Mr. Timm's probationary status gave reasonable suspicion to search his vehicle. R38. The officer further testified that when he returned to Mr. Timm's car, he retained possession of Mr. Timm's driver's license and asked for consent to search his car. ***Id.*** at 12.

This officer testified that Mr. Timm gave consent to search his vehicle while the officer had possession of Mr. Timm's driver's license. ***Id.*** In his post-conviction affidavit, Mr. Timm disputed that he gave consent. R181:4-8. He asserted that the officer never asked for consent. ***Id***. at 2. The officer testified that he did not tell Mr. Timm he was free to leave before asking for consent. R38:13. Mr. Timm was not arrested or taken to the police station. *See* ***id***. After the search, none of the items in Mr. Timm's vehicle were seized, and he was allowed to drive away from the stop. *See* ***id.***

The circuit court denied Mr. Timm's motion to suppress (R34) and later his trial attorney's Motion to Reconsider Ruling Denying Defendant's Motion to Suppress Fruits of Vehicle Search (R47). Mr. Timm also moved to suppress this same stop in Taylor County Case No. 2015CF52 and, after hearing the testimony of the same witnesses, suppressed the stop. R178; R179.

Postconviction Proceedings

Undersigned counsel filed a no-merit report, which was rejected because of the suppression issue that is the focus of this Appeal. R169. Subsequently, a postconviction motion was timely filed alleging that the circuit court erred in denying the defendant's suppression motion and that trial counsel was ineffective for denying her client the right to testify at the suppression hearing. R178. The circuit court denied the motion by written decision without a hearing. R180. A motion to reconsider the postconviction decision was filed alleging that the circuit court denied a hearing in error when it found that Mr. Timm was not entitled to a hearing because he did not file an affidavit with his postconviction motion, amongst other issues (R181), and the circuit court denied the motion to reconsider the postconviction decision without a hearing by written decision (R184).

Court of Appeals

A notice of appeal was timely filed. The Court of Appeals affirmed in a one-judge decision. App. 3-19. It found that even though the circuit court denied the suppression motion and motion to reconsider based upon a finding of probable cause and consent, the appropriate standard was the lower standard of reasonable suspicion under ***State v. Anderson***, 2019 WI 97, 389 Wis.2d 106, 935 N.W.2d 285. App. 7-8. It also found that no deficient performance existed on the part of Mr. Timm's trial counsel, because reasonable suspicion exists to search the vehicle under ***State v. Anderson***. App. 16. The defendant petitions this Court for review.

ARGUMENT

I. This Court should grant review to help develop and clarify case law related to the Badger Stop and *Anderson.*

When deciding the defendant's suppression motion, the circuit court relied upon ***State v. Williams***. When the Taylor County Circuit Court decided this same defendant's suppression motion for this same traffic stop, it relied upon ***State v. Lefler***, to reach the opposite decision and grant suppression. The Court of Appeals rejected a no-merit report in this Case, because it found, in part, that undersigned counsel's reliance upon ***State v. Anderson***, was misplaced and, even applying the lower standard, reasonable suspicion may not have existed based on the record. When denying Mr. Timm's postconviction motion, the circuit court again relied upon the Badger Stop case – ***State v. Williams***. On appeal, the state abandoned ***State v. Williams*** and argued consent under ***Ohio v. Robinette*** and the collective knowledge doctrine under ***U.S. v. Williams***. On appeal, neither side argued nor cited ***State v. Anderson***. The Court of Appeals decided to not address the consent issue, as it found that vehicle search was supported by reasonable suspicion under ***State v. Anderson***. (App. 8-9), which is exactly the opposite position the Court of Appeals took in the order rejecting the no-merit report.

The circuit court relied on two cases to support the denial of the suppression motion. Those cases being ***State v. Williams***[2] and ***Ohio v. Robinette***.[3]

[2] ***State v. Williams***, 2002 WI 94, 255 Wis. 2d 1, 646 N.W.2d 834.

It held that under ***State v. Williams***, Mr. Timm's consent to search was voluntary. R180:1-2. In ***Williams***, the officer used the Badger technique; specifically, he gave the driver his license back, told him that he was free to go, and took a few steps away from the vehicle before he turned around and asked the driver about illegal activity and asked for consent to search the vehicle. The Court determined a reasonable person in the driver's position would have felt free to leave under the totality of the circumstances. 2002 WI 94, ¶¶ 5-12, 255 Wis. 2d 1, 8, 646 N.W.2d 834.

The stop in this Case is distinctly different from the stop in ***Williams***. Mr. Timm was not given his license until after the search was completed. The officer gave no verbal or physical action to clearly convey to Mr. Timm that the speeding matter had concluded, as the officer did in ***Williams***. Unlike the officer in ***Williams***, the officer who conducted the traffic stop in this Case did not use the Badger technique. Based on the officer's testimony, he did not give Mr. Timm his driver's license back, tell Mr. Timm he was free to go, give Mr. Timm a warning or a citation for speeding, or physically move away from Mr. Timm's vehicle as though the stop had ended. R38. To uphold the lower court's ruling requires a finding that that any driver can leave the stop without their driver's license, contrary to Wis. Stat. § 343.18(1), which requires all drivers to possess a license while operating a vehicle.

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[3] ***Ohio v. Robinette***, 519 U.S. 33 (1996).

Second, relying on ***Ohio v. Robinette***, the circuit court denied Mr. Timm's suppression motion in part, because the officer was not required to advise Mr. Timm he was "free to go" before asking for consent to search. R180:1-2. In ***Robinette***, the defendant was stopped for speeding, the officer performed a license check, asked Robinette to step out of his car, issued him a verbal warning for speeding and handed back his license, before asking Robinette "One question before you get gone: [A]re you carrying any illegal contraband in your car? Any weapons of any kind, drugs, anything like that?," and then asking for consent to search his vehicle. 519 U.S. 33, 35- 36. Even though the officer did not tell Robinette he was free to go, by giving Robinette the verbal warning and handing back his driver's license, a reasonable person in Robinette's situation would have believed he was no longer seized for purposes of the traffic stop and was free to leave.

The facts of ***Robinette*** are dissimilar to the facts leading up to the search of Mr. Timm's vehicle in this Case. Mr. Timm was still seized at the time the officer asked for consent to search Mr. Timm's vehicle. The officer testified that he retained Mr. Timm's driver's license at the time that he asked for consent. R38:12.

This Case bears more factual similarity to ***State v. Lefler***, in which a driver was pulled over for failing to stop at a stop sign and had a screwdriver hanging out of his pocket. 2013 WI App 22, 346 Wis. 2d 220, 827 N.W.2d 650. The driver told the officer that he needed the screwdriver to open his car

door, but the officer was able to open the car door without assistance. ***Id.*** at ¶ 3. The officer saw prying-type tools in plain view and asked the driver about them. The driver said that the tools were for work. ***Id.*** However, the officer knew the driver's occupation and that he did not need such tools for work. ***Id.*** The officer also knew the driver was having financial problems that might motivate him to commit burglary. Id. at ¶ 13. In addition, the driver was already a known suspect in a burglary. ***Id***. Unlike the officer in ***Lefler***, the officer who performed the traffic stop in this Case did not ask Mr. Timm any questions about the tire-iron in the backseat. R38:4-13. He did not know Mr. Timm's occupation, and he did not ask. ***Id.*** He did not know if Mr. Timm had a motive to commit the possible burglaries. The officer only knew his assignment was to look out for the white Pontiac, that Mr. Timm had a prior burglary conviction based on his background check after pulling over the vehicle, and that Mr. Timm was on supervision based on the background check. ***Id.*** Unlike the defendant in ***Lefler***, Mr. Timm was not a known suspect. The officer had no specific, articulable facts that made Mr. Timm a suspect. Further, the police chief had no specific, articulable facts to support giving the officer his assignment. Using the collective knowledge doctrine, the officer was permitted to rely upon any additional facts his chief provided, but his chief had no additional facts to support probable cause existed. There was no reason to believe Mr. Timm or his white Pontiac was involved in the possible burglaries. The chief told his officer to watch for Mr. Timm's white Pontiac on a hunch. The

officer who conducted the traffic stop lacked probable cause to search Mr. Timm's vehicle.

As explained in the Taylor County Court ruling when it suppressed this stop:

> This case is different [from ***Lefler***] because the only reason Timm was a suspect in recent burglaries was because of his prior conviction for burglary, the fact that he had been in prison and that he was now on supervision in the community. There are no specific, articulable facts that make Timm a suspect in the burglaries. Further, while it is unusual to see a tire iron on the back seat of a vehicle, there was no explanation from Timm about that fact, nor were there any additional things in plain view of the officer that would provide probable cause that Timm had committed or was in the commission of a burglary. R47:5.

In the Court of Appeals' March 1, 2022 order regarding the no-merit rejection, it explained that:

> Additionally, it appears that there may be at least arguable merit to an argument that the facts from the suppression hearing did not amount to reasonable suspicion of criminal activity to support the search. *See* ***Anderson***, 389 Wis. 2d at 121-22 (reasonable suspicion exists if "the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime," and "must be based on specific and articulable facts" (quoted sources omitted)). R178:1-2.

While 2013 Act 79 went into effect on December 14, 2013 and ***State v. Anderson*** was decided on November 15, 2019, it simply did not apply to this Case. The officer who conducted the traffic stop, on April 19, 2015, did not believe it formed the basis to conduct a vehicle search under the lesser standard of reasonable suspicion. R38:4-13. He did not invoke it. The

police chief who testified never invoked, let alone mentioned it in his instruction to the officer or his testimony. ***Id***. at 13-18. Prosecutors and defense attorneys from Clark County and Taylor County did not argue or brief ***Anderson*** in relation to this stop, because ***Anderson*** did not exist in 2016 and 2017 when suppression was litigated in the circuit courts. Neither the judge in this Clark County case nor the Taylor County Case could have mentioned ***Anderson*** in deciding whether to grant Mr. Timm's suppression motions. While briefing this Case in the Court of Appeals neither the state nor Mr. Timm cited ***Anderson***.

II. Review is appropriate because Mr. Timm was deprived of his constitutional right to effective counsel.

The Wisconsin and the United States Constitutions guarantee defendants the right to the effective assistance of counsel. U.S. CONST. amend. VI, XIV; WIS. CONST. art. I, § 7. Trial counsel in this Case made a significant error in refusing to allow her client to testify at the suppression hearing when he informed her that he wished to testify that he did not consent to the search of his vehicle. That deficiency was prejudicial as trial counsel in no other way refuted the officer's testimony that Mr. Timm consented to the vehicle search. Failing to refute the officer's testimony was not strategic. Review is appropriate considering the real and significant issues of constitutional law in this case. See Wis. Stats. (Rule) 809.62(1r)(a) & (c)(3).

A. Mr. Timm must show that trial counsel's performance was deficient and that deficient performance was prejudicial.

The standard, two-pronged test for ineffective assistance of counsel requires that the defendant first show "that counsel's performance was deficient" and second show that "the deficient performance prejudiced the defense." ***Strickland v. Washington***, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). An attorney's performance is deficient if counsel's representation "'fell below an objective standard of reasonableness.'" ***State v. Johnson***, 133 Wis.2d 207, 217, 395 N.W.2d 176 (1986) (*quoting* ***Strickland***, 466 U.S. at 688); ***Kimmelman***, 477 U.S. at 375. "The reasonableness of counsel's performance is to be evaluated from counsel's perspective at the time of the alleged error and in light of all the circumstances." ***Id.*** at 381 (*citing* ***Strickland***, 466 U.S. at 689).

Prejudice exists when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Strickland***, 466 U.S. at 694. "The defendant is not required, however, to show 'that counsel's deficient conduct more likely than not altered the outcome of the case." ***State v. Moffett***, 147 Wis.2d 343, 354, 433 N.W.2d 572 (1989) (*quoting* ***Strickland***, 466 U.S. at 693)).

Ineffective assistance of counsel claims present mixed questions of law and fact. *See* ***State v. Pitsch***, 124 Wis.2d 628, 633-634, 369 N.W.2d 711 (1985). A trial court's factual

findings must be upheld unless they are clearly erroneous, see ***State v. Harvey***, 139 Wis.2d 353, 376, 407 N.W.2d 235 (1987), but whether counsel's performance was deficient and prejudiced the defendant is a question of law, which this Court reviews de novo, *see* ***Pitsch***, 124 Wis.2d at 634.

B. Trial counsel's performance was deficient for not allowing Mr. Timm to testify at the suppression hearing.

In his postconviction motion (R178) and affidavit in support of his postconviction motion to reconsider defendant's postconviction motion (R181:4-8), Mr. Timm asserted that he was not speeding prior to the traffic stop, and he did not give consent for police to search his car (R181:4-6). Mr. Timm asserts that he would have testified to those facts at the suppression hearing, but that his counsel did not give him the opportunity to testify. R181:4-6. We cannot disregard Mr. Timm's available testimony as not fitting with trial counsel's strategy, because trial counsel offered absolutely no evidence to contradict the officer's testimony that Mr. Timm consented to the search of his vehicle. R34; R38; R47; R52. In evaluating performance, a court should "not construct strategic defense which counsel does not offer" just at it should not second-guess counsel's strategic decisions. ***Davis v. Lambert***, 388 F.3d 1052, 1064 (7th Cir. 2004) (*quoting* ***Harris v. Reid***, 894 F.2d 871, 878 (7th Cir. 1990)); *see also* ***Kimmelman***, 477 U.S. at 386-87. This is not second-guessing trial counsel's strategic decision not to have Mr. Timm testify at the suppression motion, because there is nothing in the record to show that it was a strategic decision.

Further, trial counsel had no evidence to contradict the officer's testimony that Mr. Timm consented to the search without Mr. Timm's testimony.

C. Trial counsel's refusal to allow Mr. Timm to testify coupled with her failure to counter the alleged consent was deficient and prejudicial.

Few errors are more prejudicial than failing to offer available evidence that can lead to the suppression of evidence and, ultimately, the dismissal of a case before trial. At the close of state's witness testimony, the Court asked trial counsel "Do you intend to call any witnesses?" and trial counsel responded that she did not. R38:18. The court did not inquire as to whether or not Mr. Timm wished to testify or if his attorney informed him of his right to testify. *See* ***id***. The defense did not call any witnesses. The deficiency of trial counsel's decision is clear from the circuit court's ruling. When issuing its oral ruling at the end of the hearing, the circuit court found:

> …[T]here's been no contrary evidence given to this Court at all that, in fact, the officer's testimony was incorrect that he asked permission to search the vehicle and Mr. Timm gave him permission. *There's clearly nothing contrary, no evidence contrary to that.* ***Id.*** at 27 (emphasis added).

D. The circuit court's denial of a *Machner* hearing, in part due to a lack of supporting affidavit from the defendant and prejudgment of his testimony warrants review.

Mr. Timm maintains that he established that he is entitled to a ***Machner*** hearing. Mr. Timm's postconviction motion sufficiently alleged facts that, if true, would entitle him to

relief. In this regard, the motion alleged specific deficiencies by trial counsel, Mr. Timm specifically alleged in his postconviction pleadings how such deficiencies caused him prejudice. R178:6-13; R179; R181. The circuit court was required to accept as true the facts alleged in these postconviction motions (R178 & R181). *See* ***State v. Bentley***, 201 Wis.2d 303, 310, 548 N.W.2d 50 (1996).

The circuit court's written decision (R180) contains erroneous findings of both fact and law. Factually, the court found that the postconviction motion claimed that trial counsel informed Mr. Timm that he should not testify at the suppression hearing. R180:2. That is inaccurate; Mr. Timm's postconviction motion (R178:6-10) motion to reconsider postconviction decision (R181:1-2) and Mr. Timm's affidavit (R181:4-8) all assert that trial counsel told Mr. Timm that he could not testify. Trial counsel had an obligation to advise her client of the risks of testifying, but the decision itself was Mr. Timm's to make. In ***Simmons v. United States***, the United States Supreme Court concluded that "…a defendant should not be "obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or, in legal effect, to waive his Fifth Amendment privilege against self-incrimination." 390 U.S. 377, 394, 88 S. Ct. 967, 976 (1968). This decision makes clear it is a defendant's choice whether or not to testify at a suppression hearing.

When denying Mr. Timm a ***Machner*** hearing, the circuit court also erred in its finding of law in its written decision when it held: "Whereas, the defendant would be giving up his

right to self-incrimination upon taking the stand during a suppression hearing and happens very rarely in criminal case," without citation to authority. R180:2. When the case involves a possessory crime, that is untrue. The U.S. Supreme Court held that "when a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection." ***Simmons***, 390 U.S. at 394, 88 S.Ct. at 976. There was no risk that if Mr. Timm testified at the suppression hearing that he was required to waive his right to self-incrimination or that his testimony put him at a strategic disadvantage.

Finally, the circuit court assumed, without holding a ***Machner*** hearing, that Mr. Timm's testimony could not be credible. R180:2. The postconviction motion to reconsider was denied in part because "[w]hereas, the credibility of the defendant would easily be challenged based upon past conviction and the pending cases against the defendant at the time of the motion hearing." R180:2. This prejudgment of the testimony could be made of all defendants with prior convictions. It is well established that criminal convictions presumptively weigh against a witness' credibility; however, a court cannot, consistent with due process guarantees, reach a credibility determination before it hears a witness' testimony. Mr. Timm's testimony, found in his affidavit (R181:4-8) would have been bolstered by the squad car video that the circuit court never viewed – an important fact that was not considered by the circuit court. R180. Furthermore,

pending cases that a defendant has not been convicted of should not impact a defendant's credibility.

CONCLUSION

The defendant-appellant-petitioner, Wayne L. Timm, respectfully requests that the Court grant this petition to review.

Dated this 19th day of February, 2024.

Respectfully submitted,

Electronically Signed by Katie Babe

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in Rules §§ 809.19(8)(b) and 809.62(4) for a petition for review produced in proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the petition is 4,457 words.

Dated this 19th day of February, 2024.

Electronically Signed by Katie Babe

Attorney for Defendant-Appellant-Petitioner