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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II**

Appeal No. 2025AP000183
Fond du Lac County Circuit Court Case No. 2023TR6363

FOND DU LAC COUNTY,

Plaintiff-Respondent,

v.

ANDREW JOSEPH LUDWIG,

Defendant-Appellant.

**AN APPEAL FROM THE CONVICTION STATUS
REPORT AND THE COURT’S DENIAL OF THE
DEFENDANT’S MOTION FOR SUPPRESSION OF
EVIDENCE IN THE CIRCUIT COURT FOR FOND DU
LAC COUNTY, THE HONORABLE DOUGLAS R.
EDELSTEIN, JUDGE, PRESIDING**

**THE BRIEF OF THE DEFENDANT-APPELLANT
ANDREW JOSEPH LUDWIG**

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	4
STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION.....	4
STATEMENT OF THE CASE/FACTS.....	5
STANDARD OF REVIEW.....	13
ARGUMENT	14
 THE TRIAL COURT ERRED WHEN IT FOUND THE DETENTION AND MOVING OF MR. LUDWIG FROM THE SCENE OF THE INITIAL TRAFFIC STOP REASONABLE AND CONSTITUTIONAL UNDER BOTH <i>STATE V. QUARTANA</i>, 213 Wis.2d 440 AND WIS. STAT. § 968.24 	
CONCLUSION.....	22
FORM AND LENGTH CERTIFICATION.....	23
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).....	24
APPENDIX CERTIFICATION.....	26

TABLE OF AUTHORITIES

Page No.

CASES

United States Supreme Court

<i>Delaware v. Prouse</i> , 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)	15,20
<i>Florida v. Royer</i> , 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed 229 (1983)	18-20
<i>Rodriguez v. United States</i> , 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492.	20
<i>Whren v. United States</i> , 517 U.S. 806, 809, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)	16

Wisconsin Supreme Court

<i>State v. Arias</i> , 2008 WI 84, 311 Wis.2d 358, 752 N.W.2d 748.	16
<i>State v. Blatterman</i> , 2015 WI 46, 362 Wis 2d 138, 864 N.W.2d 26.	17,22

Wisconsin Court of Appeals

<i>State v. Kramer</i> , 2008 WI App 62, 311 Wis.2d 468, 750 N.W.2d 941.	13
<i>State v. Quartana</i> , 213 Wis.2d 440, 570 N.W. 2d 618 (Ct.App. 1997)	16-20
<i>State v. Wilkens</i> , 159 Wis.2d 618, 625-26, 465 N.W.2d 206 (Ct.App. 1990)	15

STATEMENT OF THE ISSUES

Did Deputy Multer unconstitutionally detain Mr. Ludwig when he transported Mr. Ludwig from the scene of the traffic stop to the Fond du Lac County Sheriff's department restricted access garage for field sobriety testing?

The trial court found the detention was reasonable.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Because this is an appeal within Wis. Stat. §752.31(2), the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

STATEMENT OF THE CASE/FACTS

The defendant-appellant, Andrew Joseph Ludwig (Mr. Ludwig) was charged in Fond du Lac County Circuit Court with operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited alcohol concentration in violation of Wis. Stat. Sec 346.63(1)(a) and (b). The defendant by counsel originally demanded a jury trial on December 11, 2023. Defense counsel additionally filed a motion for suppression of evidence on October 18, 2024. On October 21, 2024, the defendant, by counsel, withdrew his request for a jury trial but preserved his right to a Court Trial. (R.43:3-4/App.4-5). The Court heard arguments on the motion and conducted the Court Trial on October 24, 2024. Testimony was received from the two officers involved in the stop. On January 14, 2025 the Court orally denied the defendant's motion and found Mr. Ludwig guilty of both charges. (R.44:17-21/App.36-40).

Mr. Ludwig, by counsel timely filed a Notice of Appeal on January 29, 2025. Mr. Ludwig specifically appeals from the Conviction Status Report and the Court's denial of his motion for suppression of evidence.

The pertinent facts are as follows and were provided at the court trial and motion hearing through the testimony of both of

the County's witnesses, Fond du Lac County deputies Andrew Kraft and Adam Multer.

However, before the testimony, the parties stipulated to the testimony of the analyst who tested the blood. (R.43:6/App.6). The Court found the blood test result to be conclusively proven.

Deputy Kraft testified that he was a four-year veteran of the Fond du Lac County Sheriff's Department, and was on duty on December 3, 2023 at 2:03 a.m. Kraft explained in the early morning hours on that date he conducted a traffic stop of Mr. Ludwig. Kraft testified that he observed Mr. Ludwig's vehicle traveling on Harbor View Road as Deputy Kraft was driving southbound on Winnebago Drive. (R.43:10/App.7).

The vehicle driven by Mr. Ludwig appeared to be traveling faster than the posted speed limit. The weather was sleeting and the roads were slippery. As the vehicle approached the intersection, the vehicle had a stop sign. The vehicle slid through the stop sign and stopped about halfway through the intersection, then accelerated causing the tires to spin or lose traction. (R.43:11/ App.8). The County introduced video footage of driving that Deputy Kraft observed.

Deputy Kraft identified the driver as Mr. Ludwig. (R.43:12/App.9). During the initial contact, Mr. Ludwig

“dropped” the name of a deputy that Deputy Kraft worked with. (R.43:13/App.10). He also observed Mr. Kraft to have slurred speech, glassy eyes and a strong odor of intoxicant coming from the vehicle. Furthermore, Kraft observed an open 12-ounce Busch Light bottle in the rear passenger cup holder. (R.43:13/App.10).

Kraft requested an additional squad to respond to the scene. (R.43:14/App.11). Deputy Multer, who was an officer trainee, and his training officer, arrived on the scene about thirteen minutes after the stop. (R.43:17/App.12). Because Multer was training, Kraft’s intention was to allow Multer to perform the OWI investigation. Kraft believed that he had an OWI investigation but had not written any citation for a traffic violation. (R.43:18/App.13).

On cross-examination, Kraft admitted he detained Mr. Ludwig for 13 minutes before doing anything inasmuch as he wanted the trainee officer (Multer) to conduct the OWI investigation. (R.43:19/App.14).

Mr. Ludwig is subsequently placed into a deputy squad car and transported to the Fond du Lac County Sheriff’s Department in the back of Deputy Multer’s squad. (R.43:21/App.15). They transported Mr. Ludwig to a restricted access portion of the garage at the Fond du Lac County Sheriff’s Department.

(R.43:21/App.15). Kraft admitted you need to be granted access to enter or to leave the garage, and that it was not open to the public. (R.43:21/App.15).

At this location, Deputy Multer performed the field sobriety tests.

Deputy Multer testified that on December 3, 2023 he was a trainee (R.43:24/App.16), and had been training for about four months. (R.43:25/App.17). His field training officer was Deputy Devin Simon.

Multer testified on December 3, 2023, he received a call from Deputy Kraft to respond to the scene of Mr. Ludwig's traffic stop. (R.43:25/App.17). Prior to arriving at the scene, Deputy Kraft had advised Deputy Multer of the reason for the stop. Additionally, Multer was advised that Deputy Kraft would be conducting an OWI investigation and requested Multer's presence for training purposes. (R.43:26/App.18).

Multer arrived on scene 13 minutes after the initial stop, at 2:16 a.m. (R.43:27/ App.19). The weather conditions were snowy and cold. Multer described the roads as slick with a sleet, snow and rain mixture "coming down." (R.43:27/App.19). The snow had been falling for several hours.

Upon contact with Mr. Ludwig, Deputy Multer observed Mr. Ludwig's eyes to be bloodshot and glassy. Mr. Ludwig also exhibited slurred speech, and there appeared to be an odor of intoxicant coming from the vehicle. (R.43: 28/App.20).

Due to the inclement weather, Deputy Multer made the decision to transport Mr. Ludwig to the Fond du Lac County Sheriff's office for field testing. (R.43:29/ App.21). Multer said he was trained to do the tests at this location . (R.43:30/ App.22).

Multer acknowledged the sheriff department was two to three miles away from the scene. (R.43:30/App.22). Multer testified he asked Mr. Ludwig to travel to the Fond du Lac County Sheriff's Department for field sobriety testing but Mr. Ludwig requested they perform the tests at his residence. (R.43:31/ App.23). Multer told Mr. Ludwig performing the tests at his residence would not be possible and eventually transported Mr. Ludwig to the Sheriff's Department. (R.43:31/ App.23).

According to Deputy Multer, Mr. Ludwig did not appear to be dressed for the weather inasmuch as he was wearing a sweatshirt and jeans, but was not wearing gloves, a hat or an outer coat. (R.43:32/App.24).

Deputies conducted a search of Mr. Ludwig's person and placed him, unhandcuffed, in the rear of a deputy's squad. (R.43:32/App.25).

At approximately 2:31 a.m., Mr. Ludwig arrived at the Fond du Lac County Sheriff Department with Deputy Multer. (R.43:33/ App.25). At 2:33 a.m. Deputy Multer drove his squad car into the locked area of the parking garage.

On cross-examination, Deputy Multer agreed the rear of his squad car was locked, and an occupant in the rear could not open the doors and exit. (R.43:35/App.26). Furthermore, because of the configuration of the vehicle it would be impossible for a suspect to get from the back seat to the front. (R.43:35/ App.26). Multer acknowledged that once a person is in the rear seat of his squad, that person could not get out until the officer allowed it. *Id.*

Multer testified that despite the above, Mr. Ludwig was not in officer custody, but deputies were simply providing Mr. Ludwig a "courtesy" ride to the Sheriff's department. (R.43:36/App.27)

Deputy Multer also testified that three officers were present at the scene in two squad cars. The squad cars were

marked and all deputies were in full-dressed uniforms with side arms. (R.43:36-37/App.27-28).

Multer also agreed the area where the field sobriety tests were performed was in a restricted access area not accessible to the public.

The parties stipulated to the deputy's testimony as to the field sobriety testing and to the fact that at one point while performing the field sobriety tests Mr. Ludwig said "I'm fucked" and discontinued performance on the test.

The Court permitted the parties to submit briefs on the motion and scheduled an Oral Decision for the motion and as to the decision of guilt on the underlying charges on January 14, 2025.

Both sides filed briefs in support of their respective positions. The County argued because the movement was reasonable, without restrictions, within the vicinity of the stop and consensual, the movement was constitutional. (R:24:1-2). Defense argued the movement was unconstitutional (R:25:1-5)

The Court made the following findings of fact. At 2:03 a.m. Deputy Kraft stopped Mr. Ludwig's vehicle for sliding through a stop sign in the vicinity of Winnebago Drive and Taft Ave. (R.44:4/App.29). The vehicle approached the intersection

too fast, suddenly stopping and sliding halfway through the intersection. The front tires of the vehicle then lost traction and spun. (R.44:4-5/App.29-30).

The Court found these facts supported reasonable suspicion to stop Mr. Ludwig's vehicle. (R.44:5/App.30). Subsequent to the stop, Deputy Kraft observed Mr. Ludwig to have slurred speech, glassy eyes and an odor of intoxicant present in the vehicle. (R.44:6/App.31). Kraft also observed an open beer in the rear seat cup holder. *Id.*

At 2:04 a.m. Deputy Kraft requested another unit, and trainee Deputy Multer started toward the scene. The Court found the time it took for Multer to arrive on scene was part of the continuation of the stop, and was acting within the scope of the stop. By 2:16 a.m., Deputy Multer arrived on scene.

The Court found that from the time of the traffic stop to the time of arriving at the parking garage it took thirty-one minutes. (R.44:10/App.32). Mr. Ludwig was not restrained or told he was under arrest, however, he was placed in the rear of a locked squad car. *Id.* The Court also found the garage area of the Sheriff's Department was not open to the public.

The Court found Mr. Ludwig was moved within the vicinity of the stop, and due to the weather conditions, it was

reasonable for the officer to transport Mr. Ludwig to the Sheriff's Department for field testing.

The Court also found Mr. Ludwig consented to being transported to the Sheriff's Department for field sobriety testing (R.44:12/App.33).

The Court denied the defendant's motion. Furthermore, based on the testimony of the deputies and the additional stipulation of the attorneys, the Court found Mr. Ludwig guilty of operating a motor vehicle while under the influence of an intoxicant, and entered a Judgment of Conviction. (R.44:15-17/App.34-36). A signed Order was filed on February 3, 2025.

Mr. Ludwig by counsel filed a Notice of Appeal on January 29, 2025. The defendant appeals from the Conviction Status Report and the Court's denial of his motion for suppression of evidence.

STANDARD OF REVIEW

When reviewing the denial of a motion to suppress, the reviewing court upholds the lower court's finding of fact unless clearly erroneous, however, the application of constitutional principles to those facts is reviewed de novo. *State v. Kramer*, 2008 WI App 62, ¶8, 311 Wis.2d 468, 750 N.W.2d 941.

ARGUMENT

THE TRIAL COURT ERRED WHEN IT FOUND THE DETENTION AND MOVING OF MR. LUDWIG FROM THE SCENE OF THE INITIAL TRAFFIC STOP REASONABLE AND CONSTITUTIONAL UNDER BOTH *STATE V. QUARTANA*, 213 Wis.2d 440 AND WIS. STAT. § 968.24

The Fourth Amendment and Article I, Section 11 of the Wisconsin Constitution protects individuals against unreasonable seizures. “The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of ‘reasonableness’ upon exercise of discretion by ... law enforcement agents...” *Delaware v. Prouse*, 440 U.S.648, 653-54, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). The issue herein is not whether the initial stop of Mr. Ludwig was proper, but rather was the continued detention of Mr. Ludwig reasonable and permissible under the Fourth Amendment.

In assessing whether Mr. Ludwig’s detention violated the Fourth Amendment, we must examine the length of detention and the reasonableness and circumstances of moving Mr. Ludwig from the scene to the secured access location at the Sheriff’s Department.

Mr. Ludwig argues that the continued detention for thirty-one minutes and transport to a locked portion of the Sheriff

Department for field sobriety testing violated his Fourth Amendment rights.

A traffic stop is an investigative detention that triggers the protections of the Fourth Amendment. *State v. Arias*, 2008 WI 84, 311 Wis.2d 358, 752 N.W.2d 748. A temporary detention of an individual “during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure” within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

“For the stop of a person to pass constitutional muster as investigatory, the detention must be temporary and last no longer than is necessary to effect the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” A hard and fast time limit rule has been rejected. In assessing a detention for purposes of determining whether it was too long in duration, a court must consider “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it is necessary to detain” the suspect. In making this assessment, courts “should not indulge in unrealistic second-guessing.” In assessing a detention’s validity, courts must consider the “totality of the circumstances—the whole picture,” because the concept of reasonable suspicion is not “readily, or even usefully, reduced to a neat set of legal rules.”

State v. Wilkens, 159 Wis.2d 618, 625-26, 465 N.W.2d 206 (Ct.App. 1990).

In certain circumstances, transporting an individual to a location within the vicinity of the stop to continue an investigation is permissible. However, when an individual is transported outside the vicinity of the stop, the Court must determine whether moving the individual was reasonable. See *State v. Quartana*, 213 Wis.2d 440, 570 N.W.2d 618, (Ct. App 1997) and *State v. Blatterman*, 2015 WI 46, ¶¶27-28, 362 Wis.2d 138, 864 N.W.2d 26. Additionally, Wis. Stat. §968.24 also requires the detention must be within the vicinity of the stop.

The *Quartana* Court addressed this issue. *Quartana* was involved in a one vehicle accident and had left the scene of the accident and was subsequently found at his home. *Quartana* at 444. *Quartana* admitted to driving. The officer observed various signs of potential intoxication. *Id.* The officer told *Quartana* he was being temporarily detained, kept his driver's license, and transported him back to the scene of the accident. *Id.*

The Court found under the circumstances, transporting Mr. *Quartana* to the scene of the accident was not violative of the Fourth Amendment. The Court found significance in the fact that *Quartana* was transported back to the scene of the accident rather than a more "institutional setting". *Quartana* at page 450. "We conclude that a reasonable person in *Quartana's* position would

not have believed he or she was under arrest. Quartana was not transported to a more institutional setting, such as a police station or interrogation room...Instead, Quartana was transported back to the scene of the accident that he had earlier left, and his detention was “brief in duration and public in nature.” (Citations omitted).

Id.

At the federal level, the Court also addressed the issue of whether moving an individual to a non-public location violated the Fourth Amendment in *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed 229 (1983). “Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place.” *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed 229 (1983). Seizures short of probable cause are permitted, however, “the investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Id.* at 500.

In *Royer*, the officers believed Mr. Royer’s “appearance, mannerisms, luggage and actions fit the so-called ‘drug courier profile’”. *Id.* at 494. Detectives approached him and requested his ticket and baggage information. Both showed a different name, and officers told Royer they were detectives investigating illegal drug transporting. Royer became visibly nervous. All of

the above led detectives to suspect Royer was transporting narcotics. *Id.*

Detectives requested Royer to “accompany” them to a room 40 feet away from the public concourse. Royer said nothing but simply went with the officers. The luggage Royer possessed was searched and marijuana was found. *Id.* at 495.

The Court found Royer’s detention violated the Fourth Amendment. The decision was predicated in part on the fact that detectives moved Mr. Royer to a private location 40 feet away from the concourse. *Id.* at 504-505.

Both *Quartana* and *Royer* establish that the location of the detention does have constitutional implications.

Similarly, the length of a detention can have constitutional implications. In determining whether the length of detention passes constitutional muster, courts examine whether “police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the person.” *State v. Quartana*, 213 Wis.2d 440, 570 N.W. 2d 618 (Ct.App.1997). “A seizure justified only by a police-observed traffic violation, therefore, ‘becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission’ of issuing a ticket for the violation”

Rodriguez v. United States, 575 U.S. 348,350-351, 135 S.Ct. 1609, 191 L.Ed.2d 492 (citations omitted). The mission of the stop includes “[t]ypically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. See *Delaware v. Prouse*, 440 U.S. 648, 658-660, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). See also 4 W. LaFave, Search and Seizure sec 9.3(c), pp. 507-517 (5th ed. 2012).” *Rodriguez* at 355.

The *Quartana* Court found that the officers diligently pursued the investigation, and the detention lasted no longer than necessary to confirm or dispel the officer’s suspicions. *Id.* at 448.

To pass constitutional muster, a detention “must at all times be temporary and last no longer than necessary to effectuate the purpose of the stop.” *Royer* at 499.

Here, Deputy Kraft stopped Mr. Ludwig at 2:03 a.m. Rather than continuing his investigation, he made the decision to call another deputy, Multer, a deputy trainee, to complete the OWI investigation. For several minutes, Deputy Kraft did nothing to further his OWI investigation, he simply waited for Deputy Multer to arrive. It took 13 minutes from the time of the initial stop for Multer to arrive on the scene. Once on scene,

Multer made the decision to transport Mr. Ludwig to the Fond du Lac County Jail, arriving thirty-one minutes after the initial stop.

The detention was unconstitutionally extended when the officer stopped his investigation and simply waited for a training officer to arrive and then resumed the investigation after transporting Mr. Ludwig to the jail garage thirty-one minutes after the initial stop.

Furthermore, unlike *Quartana*, Mr. Ludwig was transported to a locked restricted access garage two to three miles from the scene of the initial traffic stop. Three officers were present in two squad cars. Deputy Multer placed Mr. Ludwig into the rear of his squad. Because of the configuration, Mr. Ludwig was locked in the vehicle and not able to open either door to exit. In order for Mr. Ludwig to exit, a deputy had to open the door from the outside.

The County argued in part that the consent was voluntary. However, Mr. Ludwig did not want to go to the Sheriff's Department. In fact, Mr. Ludwig asked if they could perform testing at his house. His request was rebuffed by officers who denied that request. The officers told him it was not possible. Deputies never advised Ludwig he was free to leave. Further, he was detained for 13 minutes before Deputy Multer even arrived

on scene, and thirty-one minutes before Multer continued the OWI investigation. While he eventually agreed to travel to the Sheriff's Department, he really was left with no other choice. The deputies made it clear he could not go home, and because of the configuration of the squad he could not simply exit and walk away.

Once at the jail, thirty-one minutes after the initial stop, Deputy Multer continued the OWI investigation by performing field sobriety testing on Mr. Ludwig. "In Wisconsin, the test for whether a person has been arrested is whether a reasonable person in the defendant's position would have considered himself or herself to be in custody, given the degree of restraint under the circumstances." *State v. Blatterman*, 2015 WI 46, ¶30, 362 Wis 2d 138, 864 N.W.2d 26.

Here, while the reason for moving Mr. Ludwig (weather conditions) is arguably reasonable, the location and the manner in which he was moved, and the time it took to continue the investigation wasn't. A reasonable person in Mr. Ludwig's position would have considered himself to be in custody. Thus, moving the defendant to the secured area of the jail garage combined with the thirty-one minute delay violated Mr. Ludwig's constitutional rights under the Fourth Amendment.

CONCLUSION

Because of the above, the Court erred in denying the defendant's motion for suppression. This Court should reverse the trial court's finding and vacate the Judgment of Conviction.

Dated this 19th day of May, 2025.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 26 pages. The word count is 4913.

Dated this 19th day of May, 2025.

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**CERTIFICATION 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.

Dated this 19th day of May, 2025.

Respectfully submitted,

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a 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 this appeal is taken from a circuit court order or a judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using 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.

Dated this 19th day of May, 2025.

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