

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov



Before The
State Of Wisconsin
Medical Examining Board

In the Matter of the Disciplinary Proceedings
Against **GERHARD WITTE, M.D.**, Respondent

FINAL DECISION AND ORDER
Order No. 0000258

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 16 day of June, 2010.

Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **GERHARD WITTE, M.D.**, Respondent

NOTICE OF FILING
PROPOSED DECISION
Case No. DRL-09-0030

Division of Enforcement Case No. 05 MED 341

To: Gerhard Witte
Dodge Correctional Institution
P.O. Box 700
Waupun, WI 53963

Attorney Arthur Thexton
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Medical Examining Board by the Administrative Law Judge Amanda Tollefsen. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. **Your objections and argument must be received at the Department of Regulation and Licensing, Division of Board Services, Medical Examining Board, 1400 East Washington Avenue, Room 116, P.O. Box 8935, Madison, Wisconsin 53708, on or before May 24, 2010.** You must also provide a copy of your objections and argument to all other parties by the same date.

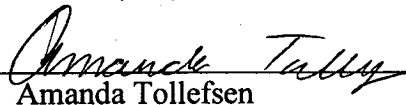
You may also file a written response to any objections to the Proposed Decision. Your response must be received at the Medical Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Medical Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin on May 5, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7644
FAX: (608) 264-9885

By: _____


Amanda Tollefsen

Administrative Law Judge



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **GERHARD WITTE, M.D.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-09-0030

Division of Enforcement Case No. 05 MED 341

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Gerhard Witte
Dodge Correctional Institution
P.O. Box 700
Waupun, WI 53963

Wisconsin Medical Board
P. O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

On May 27, 2008, the Department of Regulation, Division of Enforcement (the Division) filed a Second Amended Complaint against Respondent Dr. Gerhard Witte alleging that:

(1) despite having been involuntarily detained as an inpatient at the Milwaukee County Behavioral Health Division three times between approximately July of 2005 and April 24, 2006¹, Respondent Witte requested that he be permitted to pursue the practice of medicine as a physician for the Wisconsin Department of Corrections, in violation of Wis. Adm. Code § Med 10.02(2)(h) and (i).

(2) despite having failed to purchase (or self-insure for) liability insurance for his former private practice of medicine, in violation of Wis. Stat. § 655.23(3)(a), which rendered him

¹ This timeframe has been calculated using the original Complaint, which states that Respondent Witte was so detained "...three times in the past nine months." Said Complaint was file on or about April 24, 2006.

ineligible to exercise practice privileges pursuant to Wis. Stat. § 655.23(7), Respondent Witte attempted to resume the practice of medicine, in violation of Wis. Admin. Code Med. Sec. 10.02(g) and (z);

(3) despite having signed a statement that he had completed 30 hours of continuing education between January 1, 2004 and December 31, 2005, – and that he had evidence of this that he would provide to the Medical Examining Board upon request, Respondent Witte failed to demonstrate that he had completed the above-stated continuing education in spite of numerous requests by the Medical Examining Board, in violation of Wis. Admin. Code §§ Med 10.02(2)(a) and 13.05(2); and,

(4) on or about May 25, 2008, Respondent Witte intentionally caused the death of Elisabeth Witte (his former wife) by stabbing her with a knife, in violation of Wis. Stat. § 940.01(1)(a) and Wis. Admin. Code. § Med. 10.02(2)(z).

Respondent Witte filed a timely Answer denying all of the above allegations.

A prehearing conference was held on April 30, 2009, Peter C. Anderson, Administrative Law Judge presiding. At this conference, ALJ Anderson determined that because; (1) Respondent Witte's criminal case² was scheduled to begin August 10, 2009, (2) Respondent Witte was in custody, and (3) the resolution of Respondent Witte's criminal case could effectively dispose of the pending disciplinary action, any disciplinary action would be postponed until the criminal proceedings concluded.

A second prehearing conference was held on August 27, 2009, ALJ David H. Schwarz presiding. Because further criminal proceedings regarding Respondent Witte were scheduled beyond August 2009, postponing his trial, ALJ Schwarz scheduled no additional proceedings at this time.

Respondent Witte's criminal trial was ultimately rescheduled to commence on March 22, 2010.

Per the certified copy of the Judgment of Conviction Division Attorney Arthur Thexton sent to the undersigned ALJ on April 14, 2010 (attached), Respondent Witte was convicted of first degree intentional homicide, in violation of Wis. Stat. § 940.01(a), on March 24, 2010. On March 26, 2010, he was sentenced to life in prison without the possibility of parole, per Wis. Stat. § 973.014.

CONCLUSIONS OF LAW

On the evidence presented, the undersigned ALJ makes the following conclusions of law:

² Respondent Witte was charged with first degree intentional homicide for the allegations contained in count four of the Division's complaint.

1. The Wisconsin Medical Examining Board has jurisdiction over this matter, pursuant to Wis. Stat. § 448.02.

2. Pursuant to Wis. Stat. § 448.02(3)(c), the Medical Examining Board has authority to “limit, suspend or revoke any license, certificate or limited permit granted by the board to [a physician],” if the board finds that the physician holding that license has engaged in “unprofessional conduct.”

3. Wis. Admin Code § 10.02(z) defines unprofessional conduct to include “violating... any law... the circumstances of which substantially relate to the circumstances of the practice of medicine.”

4. Wis. Admin. Code § 10.02(2)(r) further defines unprofessional conduct to include the “[c]onviction of any crime which may relate to the practice under any license....”

5. Per Wis. Admin. Code § 10.02(2)(r) “[a] certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence thereof.”

6. On March 24, 2010, a jury found the respondent, Gerhard Witte, M.D., guilty of first degree intentional homicide, in violation of Wis. Stat. § 940.01(a), for stabbing his Elisabeth Witte (his former wife) to death on the evening of May 25, 2008. (See certified copy of Judgment of Conviction, attached).

7. On March 26, 2010, the court sentenced said respondent to life in prison, without the possibility of parole, per Wis. Stat. § 973.014. (See certified copy of Judgment of Conviction, attached).

8. The respondent’s conviction of first degree intentional homicide, as described in paragraph 1 of the findings of fact, (and in the attached certified Judgment of Conviction), provides presumptive evidence that Respondent Witte both violated a law (Wis. Stat. § 940.01(a)), and was convicted of a crime substantially related to the practice of medicine, in violation of Wis. Admin. Code. §§ Med. 10.02(2)(r) and (z).

9. Respondent Witte is thus subject to discipline, pursuant to Wis. Stat. 448.02(3)(c).

DISCUSSION

Count IV – Intentional Homicide

Violations of Wisconsin Administrative Code:

The Judgment of Conviction against Respondent Witte establishes that he intentionally killed his former wife. Such conduct is clearly unprofessional under Wis. Admin Code §§ Med. 10.02(r) and (z) (*see supra*) and, thus, subjects the respondent to discipline pursuant to Wis. Stat. 448.02(3)(c). The only question that remains with respect to this count is what sort of discipline is appropriate.

Appropriate Discipline:

On the above facts, the criminal court sentenced Respondent Witte to life in prison without the possibility of parole. This sentence effectively bars the respondent from ever practicing medicine again. Nevertheless, Respondent Witte's criminal sentence is not definitive with respect to license to practice medicine, nor is it conclusive with respect to the disciplinary proceedings the Division has brought against him. As such, the undersigned ALJ finds it necessary to revoke Respondent Witte's medical license.

The purpose of discipline is to (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976).

Respondent Witte's utter disregard for human life shows that he is a grave danger to the public and patients alike. Such disregard for life cannot be tolerated in the practice of medicine. Revocation of Respondent Witte's license is thus appropriate and necessary.

Counts I - III

Respondent Witte's conduct in intentionally killing his former wife has resulted in him being sentenced to serve the remainder of his life in prison without the possibility of parole. Moreover, it has led the undersigned ALJ to conclude that revocation of Respondent Witte's medical license is necessary. In light of these facts, there is no need to consider the Division's other, less serious charges against Respondent Witte. There is no further discipline that can be allocated.

Costs

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties

- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

Based on the above considerations, Respondent Witte should be assessed the full amount of recoverable costs. His alleged conduct is of a very serious nature, there is no argument that certain factual findings were investigated and litigated unnecessarily (on the contrary, the Judgment of Conviction shows that they were not), and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Witte on Respondent Witte and not fellow members of the medical profession who have not engaged in such conduct.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Gerhard Witte, M.D. to practice medicine in the State of Wisconsin be and is hereby **REVOKED**.

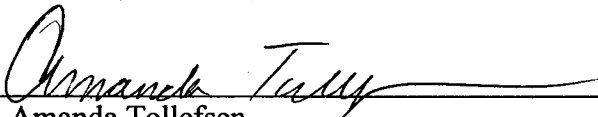
IT IS FURTHER ORDERED that Respondent Witte shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Gerhard Witte, M.D.

Dated at Madison, Wisconsin on May 5, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 
Amanda Tollefsen
Administrative Law Judge

CIRCUIT COURT
STATE OF WISCONSIN CRIMINAL DIVISION MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff

CRIMINAL COMPLAINT

vs.

WITTE, Gerhard NMI
2370 South 107th Street
West Allis, Wisconsin 53227
(D.O.B.: November 21, 1937)

Complaining Witness:

Detective Steven Caballero

DA Case Number: 08XF3770

Defendant(s)

Circuit Court Case Number:

THE ABOVE NAMED COMPLAINING WITNESS BEING DULY SWORN SAYS THAT THE ABOVE NAMED DEFENDANT(S) IN THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

COUNT 01: INTENTIONAL HOMICIDE, FIRST DEGREE

On May 25, 2008, at 1000 North Water Street, City of Milwaukee, did cause the death of Elisabeth Witte, another human being, with intent to kill Elisabeth Witte, contrary to Wisconsin Statutes Section 940.01(1)(a).

AS TO COUNT 01:

Upon conviction of this charge, a Class A Felony, the maximum possible penalty is imprisonment for life.

Complainant is a City of Milwaukee Police Detective and bases this complaint upon the reports and investigation of several City of Milwaukee Police Officers and Detectives and also upon the reports and findings of the Milwaukee County Medical Examiner's Office, whose reports and investigations stated the following:

Detective Steven Caballero spoke with a Sandra Ammon who reported that on the night that Elisabeth Witte was killed that she had dinner with Ms. Witte at Eagan's Restaurant after Mrs. Witte had finished performing with the Milwaukee Symphony Orchestra at the Performing Arts Center. Mrs. Ammon said that she and her husband, after having dinner with the victim, said their good-bye's while still at Eagan's Restaurant and that they then went to their vehicle, which was located in the adjoining parking structure. As they were going to their car, Mrs. Ammon recalls that they saw a vehicle that they recognized as belonging to the defendant, Gerhard Witte. As they got in their car and began to drive out of the parking structure, her husband saw the defendant standing in the parking garage itself. At that time, both Mrs. Ammon and her husband came to the conclusion that they needed to try to contact Mrs. Witte because they knew that Mrs. Witte had a history of problems with her ex-husband, the defendant. Mrs. Ammon stated that they called Eagan's Restaurant to try to warn the victim, but was told that the victim had already left. At that time, Mrs. Ammon got out of her vehicle and got on the elevators and went down to the second floor. At that time, when the elevator door opened, she looked to her left and observed the victim crouching down in the corner and that she was yelling, "Don't do it! Don't do it!" Mrs. Ammon also heard the victim screaming. At that time she also observed the defendant standing approximately 1 yard away from the victim. It appeared to her that the defendant was starting to grab onto the victim's throat. At this time, Mrs. Ammon yelled to the victim, "Elisabeth, get on! Get on!" Mrs. Ammon was

referring to the elevator hoping that the victim could leave with her. Eventually the elevator door closed and she went back up to the 5th floor where she once again met up with her husband and she was then able to call 911 and ask for police assistance to what she feared was going on. Mr. and Mrs. Ammon then exited the parking structure and parked on Water Street in front of the doors to the lobby and waited for police. When the police arrived, she explained to the police what she had seen.

Police Officers Mark Kubicek and Corstan Court were dispatched to a battery complaint at 1000 North Water Street in the parking structure located at that address, which is in the City and County of Milwaukee, State of Wisconsin. Upon arrival, the two officers spoke with Sandra Ammon who indicated that she had called 911 and informed the officers that she was concerned for the safety of Elisabeth Witte given the past troubled and confrontational relationship that she had had with the defendant. Given this information the two police officers took the elevator to the 2nd floor and when the elevator opened, they observed a white female in a kneeling position on the floor with her head and torso slumped forward and her left side up against the wall. The officers observed that the victim was not moving or speaking at the time. The two officers also observed the defendant kneeling against her right side and observed him hugging her over her backside as if he was grieving. The officers observed a large pool of blood directly forward of where the victim's forehead was lying on the ground and they also observed a knife in a pool of blood approximately 7 to 8 feet from the defendant's reach. Police Officer Kubicek then heard the defendant stated, "She's dead. I killed her. I'm a doctor so I know." At that time, the officers called for medical attention and detained the defendant. Police Officer Kubicek did check the victim for a pulse and breathing, but found that she had neither one. Upon tilting the victim's head slightly, Police Officer Kubicek did observe that she suffered a severe stab wound to her neck.

Elisabeth Witte was later transported to the Milwaukee County Medical Examiner's Office where an autopsy post mortem was performed by Doctor Wieslana Tlomak, who is a medical doctor licensed to practice medicine in the State of Wisconsin and one who has specialized training in the area of forensic pathology. Dr. Tlomak, upon examining the victim, determined that the victim to a reasonable degree of medical certainty had died as a result of multiple stab and incised wounds. The victim suffered a stab wound to the abdomen area, a stab wound to the left breast area, a slash or incisor wound to the bottom lip area and a large slash or incise wound to her neck, which exposed the larynx. Finally she had a defensive wound on one of her hands.

The defendant, after his arrest, was subsequently interviewed by Detectives Steven Caballero and Daniel Thompson. The defendant at first talked about the circumstances surrounding the divorce from his wife, the victim Elisabeth Witte. The defendant denied that there was any infidelity between the two and was unable to provide a reason as to why she divorced him. The defendant indicated that he was upset with the judicial system indicating that he received approximately 10% of the estate while his wife received 90%. The defendant claimed that he continually told his wife, "Don't do this Elisabeth, I have treated you fairly all my life." The defendant stated that the divorce between the two of them drug on for nearly 3 years and at one pointed stated, "Listen, I'm a party to a murder, which involves the court system and I'm never going to leave prison, I'm going to die in here, my life is over, my family is ruined." The

defendant further stated that this was a sad ending to a happy family and indicated that his wife had one problem and that was that she said no to everything.

The defendant stated that on May 24, 2008, he went to the concert where his wife performed with a friend and that he came back on today's date to give her some flowers. During this portion of the interview the defendant stated that he loved his wife and that he'll regret this to his last breath and then stated, "I did this, I murdered my wife." The defendant stated he knew the concert would end at approximately 10:15pm and that the victim would go out with her buddies which he knew she did every time after she had a concert. The defendant claimed that he parked in the parking garage and just happened to see her car in the garage and decided to wait for her, indicating that he waited approximately an hour and $\frac{3}{4}$. The defendant stated that when he finally did see his ex-wife, that she looked extremely frightened, but at that time he was not displaying the knife, which he had under his jacket. The defendant stated that he did see someone come up the elevator who he identified as Mrs. Ammon and that at that time when the elevator was coming up was when he pulled out the knife and he does recall that at that time the victim was yelling, "Help, help." The defendant stated that when his wife began to yell, he reacted, and stabbed her and then stated that he was going to hell. The defendant stated after he stabbed her, he put his arms around her and held onto her and that he observed blood was leaking all over the floor. The defendant stated, "I initially put the knife into her stomach, then she was down and I cut her neck, that's the quickest way to bleed to death, cut the artery in her neck and your gone."

****End of Complaint****

Subscribed and sworn to before me
and approved for filing on this 28th
day of May 2008.



ASSISTANT DISTRICT ATTORNEY
Kevin R. Shomin\KK



Complainant Witness

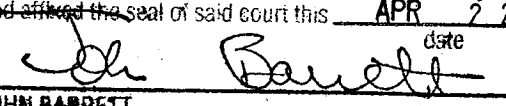


FELONY COMPLAINT --

STATE OF WISCONSIN }
MILWAUKEE COUNTY } SS.

I, the undersigned Clerk of the Circuit Court of Milwaukee County, Wisconsin do hereby certify that I have compared this document with the original on file and that the same is a true and correct copy of said original and of the whole thereof, as the same remains of record in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court this APR 2 2010 date



JOHN BARRETT
Clerk of Circuit Court

J:\REVIEW\08XF\03500 - 03999\08XF3770\20080528 COMP COMPLAINT - WITTE GERHARD - 08XF3770.DOC
TYPYST: KK

State of Wisconsin vs. Gerhard Witte

Judgment of ConvictionSentence to Wisconsin State
Prisons

Date of Birth: 11-21-1937

Case No.: 2008CF002682

BEST COPY
DO NOT REMOVE

The defendant was found guilty of the following crime(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	1st-Degree Intentional Homicide	940.01(1)(a)	Not Guilty	Felony A	05-25-2008	Jury	03-24-2010

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Agency	Comments
1	03-26-2010	State prison	1 LF		Defendant to be imprisoned for life in the WSP system with 670 days credit and is not eligible for release to extended supervision per 973.014 (1g)(a)3 Court orders defendant to provide a DNA analysis and pay sur charge if not already done. Court orders forensic reports to accompany JOC.

Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:

The Defendant is ☐ is not ☐ eligible for the Challenge Incarceration Program.The Defendant is ☐ is not ☐ eligible for the Earned Release Program.

IT IS ADJUDGED that 0 days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department.

BY THE COURT:

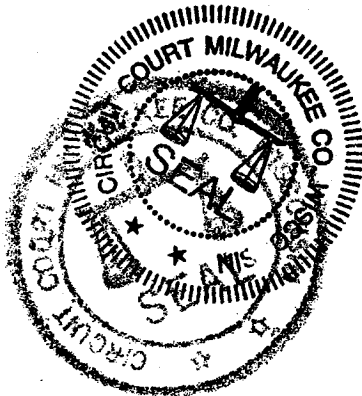
Distribution:

Daniel L. Konkol⁴⁴, Judge
Kevin Shomin, District Attorney
Scott F Anderson, Defense Attorney

Circuit Court Judge/Clerk/Deputy Clerk

March 26, 2010

Date

STATE OF WISCONSIN }
MILWAUKEE COUNTY } SS.

I, the undersigned Clerk of the Circuit Court of Milwaukee County, Wisconsin do hereby certify that I have compared this document with the original on file and that the same is a full, true and correct copy of said original and of the whole thereof, as the same remains of record in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court this APR 2 2010 date

JOHN BARRETT
Clerk of Circuit Court