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## STATEMENT OF JURISDICTION

This matter is an appeal from a decision of the Honorable John W. Sims, Circuit Judge of the Webster County Circuit Court, Juvenile Division, 30<sup>th</sup> Judicial Circuit sustaining an objection from N.D.C. (Respondent). Respondent was objecting to the testimony of Amy Cook (“Cook”). Cook is the mother of four year old J.C. and step-mother of Respondent. Respondent is alleged to have sodomized J.C. pursuant to Section 566.062, RSMo.<sup>1</sup> Cook was asked what statements J.C. made to her after the alleged incident. J.C. did not testify at the hearing and Respondent objected on the basis of hearsay, and the fourth, fifth, sixth, and fourteenth Amendments to the United States Constitution. The Court decided that *Crawford v. Washington*, 516 U.S. 36 (2004) was applicable to the case and that although the testimony would normally be admissible under 491.075 RSMo, *Crawford*, prohibited their admittance. This case does not involve the validity of the Constitution or a statute of this State nor any other categories reserved for the exclusive appellate jurisdiction of this Court and therefore does not invoke the exclusive jurisdiction of this Court pursuant to Article V, Section 3 of the Constitution therefore proper jurisdiction lies in the Missouri Court of Appeals, Southern District.

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<sup>1</sup> All statutory references are to RSMo. 2000, unless otherwise indicated.

## STATEMENT OF FACTS

On September 10, 2006 a juvenile delinquency action was filed pursuant to Section 211.031, RSMo., alleging that N.D.C. (“Respondent”) sodomized his four year old step-sister, J.C. (L.F. 6). An adjudication hearing was scheduled on the matter for October 20, 2006 (L.F. 8). Prior to any presentation of evidence, the Juvenile Office orally advised the court that although J.C. would ordinarily be competent to testify pursuant to section 491.060 RSMo., J.C. was refusing to speak to anyone about the alleged incident and sought permission to introduce J.C.’s statements through her mother, Amy Cook (“Cook”), under the provisions of section 491.075 RSMo. (L.F. 8). Respondent argued that the admission of such testimony would be considered inadmissible hearsay. (L.F. 8).

The Court then tried to decide whether J.C. was competent or available to testify (L.F. 8). In an in-chambers hearing was held in the presence of the Court, the court reporter, J.C.’s parents and the parties’ attorneys (L.F. 8). During the hearing the Court attempted to question J.C. about the incident (L.F. 8). The only response that the Court was able to elicit was the nod of J.C.’s head when asked if she was four years old as she refused to speak (L.F. 8).

After the in-chambers hearing, the Court determined that although Section 491.060 RSMo., would permit J.C. to testify, her refusal to do so caused her to be unavailable for testimony (L.F. 8). A discussion followed as to whether section 491.075 RSMo., applied to juvenile proceedings given that juvenile proceedings in

the State of Missouri are governed by equity as opposed to criminal proceedings (L.F. 9). The Court granted time to both parties to research the issue. (L.F. 9).

The matter was addressed again on October 31, 2006 and the parties presented their evidence (L.F. 9). The Juvenile Office first called Children's Division worker, Amanda Macrelli ("Macrelli"), who testified that she responded to the house in response to a hotline call regarding the alleged incident (Tr.4-6). Macrelli also offered that she attempted to speak to J.C. but J.C. wasn't very communicative and that J.C. did not want to talk about the alleged incident with her (Tr. 7).

The Juvenile Office then called Cook to the stand to testify (Tr. 16). Cook testified that both Respondent and J.C. resided with her and her husband (Tr. 17). The Juvenile Office then asked Cook if she made a referral regarding Respondent (Tr. 18). Respondent then objected on the basis that it is a violation of his Sixth Amendment right to confront and cross-examine its witnesses and the Fourteenth Amendment (Tr. 18). Respondent further elaborated that he felt that any answer Cook would give would be hearsay and therefore his due process rights would be violated (Tr. 18-19). Respondent offered *Crawford v. Washington*, 541 U.S. 36 in support of his position that since he had no prior opportunity to cross-examine J.C., her statements should be inadmissible (Tr. 19). Finally, Respondent suggested that the Court look at the applications of *In Re Gault*, 387 U.S. 1 (1967) to determine his due process rights (Tr. 19). The Court ruled that the question asked did not call for a hearsay answer and overruled the objection (Tr. 19-20).

Cook continued to testify offering that she went to check on the children and when she opened the door, they were lying in bed, watching a movie (Tr. 20). Cook stated that she noticed that Respondent's pajama pants were pulled about half-way down his bottom (Tr. 21). Cook also offered that J.C. was wearing a dress with no other clothes underneath it and that this was different than what she was wearing when she went upstairs (Tr. 22). Cook stated that each child was lying on a pillow on a full-sized bed but that she didn't feel right about the situation (Tr. 22). Cook asked Respondent what was going on and Respondent said that J.C. had been laughing about his butt-crack (Tr. 23). Cook then left the room and called J.C. into the hall with her (Tr. 22). Cook was asked what J.C. told her in the hall and Respondent objected on the basis of his previous objection and the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution (Tr. 23).

The Court went into a lengthy explanation and stated that on its face Section 491.075 RSMo., did not apply because it was a criminal statute and that there was no available case law to show that juvenile delinquency hearings were criminal (Tr. 26). Therefore, the Court sustained the objection of Respondent (Tr. 36-37). The Juvenile Office disagreed with this ruling and requested a continuance for the purposes of filing an appeal (Tr. 37).

The parties held a telephone conference on November 2, 2006 (Tr. 40). It was discussed the parties' discovery of Section 491.699 RSMo., which designates the use of Section 491.075 RSMo., in juvenile proceedings (L.F. 11). Based on this discovery, on November 3, 2006 the Court issued a docket entry that read:

“Rulings of the Court evidenced by the docket entry of 10/31/06 are set aside, except the Juvenile is ordered to remain in secure detention.” (Tr. 40). The Court then reopened the original case for the presentation of evidence (Tr. 40). The Juvenile Office then re-called Cook to the stand (Tr. 40). The Court then offered that it found during the hearing on October 31, 2006 when a question was asked concerning the statements made by J.C. to Cook that the testimony would not be allowed pursuant to the objection made by Respondent, raising *Crawford v. Washington*, 541 U.S. 36 (2004)(Tr. 41). The Juvenile Office stated that it would be questioning Cook as an offer of proof to show what the statements would be if they were allowed (Tr. 41-42).

Cook then began to testify, reiterating the same testimony that she gave on October 31, 2006 (Tr. 42-45). Cook then was allowed for the purposes of the offer of proof to tell the Court what J.C. had told her in the hall (Tr. 46). J.C. told her Cook that Respondent “is putting his thing in my butt” (Tr. 46). Cook yelled for her husband to come upstairs and J.C. made the same statement to him (Tr. 46). Cook asked J.C. what she meant by “his thing” and J.C. responded the thing he pees out of (Tr. 46). Cook then took J.C. downstairs and did not question Respondent about the statement (Tr. 47). Cook stated that though J.C. has told stories in the past, for the most part she believed her to be truthful and that J.C. had never made statements like these before (Tr. 47). Cook also said that she believed J.C. made statements to her stepdaughter and her eight year old daughter

but never expanded on her previous statements (Tr. 48). After those statements, J.C. has not spoken about the incident (Tr. 49).

The Juvenile Office stated that this ended their offer of proof and asked the Court to admit the evidence under Section 491.075, RSMo. (Tr. 49). The Court stated that it was walking a fine line and although this was a juvenile case, it has quasi-criminal implications because jeopardy attaches and the liberty interest of Respondent was at stake (Tr. 50). The Court found the holdings of *Crawford v. Washington*, 541 U.S. 36 (2004) to apply and refused the offer of proof (Tr. 50). The Juvenile Office asked for a ruling with regards to Section 491.075 RSMo. (Tr. 50). The Court made the ruling, “but for *Crawford v. Washington*, with 491.075, the statements made by the victim to this witness would be admissible, pursuant to that statute.” (Tr. 50). The Juvenile Office then requested that the Court prepare Findings of Fact and Conclusions of Law and the Court granted the parties till November 14, 2006 to prepare proposed Findings (Tr. 51).

The Court filed its Findings of Fact, Conclusions of Law and Judgment on November 14, 2006 (L.F. 7-14). The Court found that proper application of Section 491.075 RSMo., would permit the admission of J.C.’s statements into evidence (L.F. 13). The Court also found that *Crawford v. Washington*, 541 U.S. 36 (2004), does not make the statements inadmissible inasmuch as it sets a standard for the right to confrontation by requiring an opportunity at some point for cross-examination (L.F. 13). The Court concluded that J.C.’s statements would ordinarily be admitted, but since there was no prior opportunity for cross-

examination, *Crawford* would not allow their admission (Tr. 13). This appeal by the Juvenile Office followed.

## ARGUMENT

### I.

THE TRIAL COURT DID NOT ISSUE AN ORDER SUPPRESSING THE STATEMENTS OF J.C., INSTEAD THE TRIAL COURT SIMPLY SUSTAINED AN OBJECTION TO THE ADMISSION OF J.C.'S STATEMENTS THROUGH AMY COOK AND THE SUSTAINING OF AN OBJECTION IS NOT A RULING THAT IS APPEALABLE THROUGH AN INTERLOCUTORY APPEAL THEREFORE APPELLANT'S APPEAL SHOULD BE DISMISSED.

Throughout Appellant's points relied and argument, Appellant uses words such as excluding, suppressing, unconstitutional, and then would muddy the waters by inserting Section 491.075 RSMo and an analysis of civil versus criminal proceedings. However, the record provided by Appellant would not support these terms. The simple truth is that the trial court merely sustained an objection on the basis of hearsay and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. The trial court went no further than that. The sustaining of an objection is not the same as an order suppressing evidence and is therefore not appealable.

Section 211.261 RSMo, permits the juvenile officer an interlocutory appeal from any order suppressing evidence, a confession, or an admission in juvenile

delinquency cases. Section 542.296 RSMo<sup>2</sup> lists the five bases for a motion to suppress evidence. *State v. Holzschuh*, 670 S.W. 2d 184, 185 (Mo. App. 1984). Statutory grounds for a motion to suppress involve illegal or warrantless searches or seizures. “The ‘suppression of evidence is not the same thing as the exclusion of evidence on the basis of some rule of evidence. Suppression is a term used for evidence which is not objectionable as violating any rule of evidence, but which has been illegally obtained.” *State v. Dwyer*, 847 S.W. 2d 102, 103 (Mo. App. 1992).

In this situation, the trial court did not order the suppression of any evidence. When Appellant sought to admit J.C.’s statements through Cook, Respondent objected on the basis of hearsay and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitutions. The trial court sustained the objection. The Appellant, upon the ruling of the trial court then decided it would pursue appellate relief. Should this Court grant Appellant an appeal, this Court would open the gates for the State in any criminal proceeding or a juvenile office to seek appellate relief for every evidentiary ruling that did not go in their favor. This infringes upon the intent of the statute governing motions to suppress. The

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<sup>2</sup> The statute says, “The motion to suppress may be based upon any one or more of the following grounds: (1) That the search and seizure were made without warrant and without lawful authority; (2) That the warrant was improper upon its face or was illegally issued, including the issuance of a warrant without proper showing of probable cause; (3) That the property seized was not that described in the warrant and the officer was not otherwise lawfully privileged to seize the same; (4) That the warrant was illegally executed by the officer; (5) That in any other manner the search and seizure violated the rights of the movant under section 15 of article I of the Constitution, or the fourth and fourteenth amendments of the Constitution of the United States.

statute is intended to apply only to those orders “suppressing evidence” and should not be expanded. *State v. Holzschuh*, 670 S.W. 2d 184 (Mo. App. 1984).

Therefore, because the juvenile office is not appealing the suppression of evidence, it has no grounds for this interlocutory appeal and therefore the appellate courts lack jurisdiction to consider this appeal and it should be dismissed.

## II.

THE TRIAL COURT DID NOT ERR IN SUSTAINING AN OBJECTION, ON THE BASIS OF HEARSAY AND *CRAWFORD V. WASHINGTON*, TO THE TESTIMONY OF AMY COOK AS ALLEGED IN APPELLANT’S FIRST POINT RELIED ON BECAUSE *CRAWFORD V. WASHINGTON* IS APPLICABLE TO JUVENILE DELINQUENCY PROCEEDINGS IN THAT *CRAWFORD V. WASHINGTON* ADDRESSES THE SIXTH AMENDMENT RIGHT TO CONFRONTATION AND IT HAS BEEN LONG ESTABLISHED THAT JUVENILES ARE ENTITLED TO THE PROTECTION OF THE SIXTH AMENDMENT.

### **A. Standard Of Review**

Juvenile proceedings are in the nature of civil proceedings, and the standard of review is the same as in a court-tried case. *In Re J.M.*, 847 S.W.2d 911, 913 (Mo. App. 1993). The trial court’s order will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Id.*; *Murphy v. Carron*, 536 S.W. 2d 30, 32 (Mo. banc 1976).

An appellate court will review the trial court’s exclusion of testimony for an abuse of discretion, while granting substantial deference to its decision to exclude the testimony. *Aliff v. Cody*, 26 S.W. 3d 309, 314 (Mo. App. W.D. 2000). In reviewing the alleged error, “the focus is not on whether the evidence was admissible but on whether the trial court abused its discretion in excluding the

evidence.” *Id.* Regardless of the rationale offered for the objection to the evidence or for the trial court’s exclusion of it, if this Court can discern from the record any recognizable ground for the trial court’s exclusion of the testimony, it should uphold the ruling. *Id.* at 314-315. Moreover, even if this Court determines that the exclusion was in error, it should not reverse the trial court’s judgment absent a finding that the error “materially affect(ed) the merits of the action.” *Thornton v. Gray Auto. Parts Co.*, 62 S.W.3d 575,583 (Mo. App. W.D. 2001). Rule 84.13(b).

**B. Appellant’s Brief Not In Compliance With Rule 84.04(d)(1)(A)**

The Appellant alleges in its first point relied on that the trial court abused its discretion in excluding J.C.’s statements by suppressing the testimony of Cook when the trial court sustained an objection to the application of Section 491.075 RSMo as unconstitutional due to the application of *Crawford v. Washington*. The Appellant is complaining about a trial court ruling that never occurred.

A thorough reading of the record would reveal that Respondent made an objection to Cook’s testimony on the basis of hearsay and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Not once did Respondent base an objection on the constitutionality of Section 491.075 RSMo. It was undisputed by all parties that Section 491.075 RSMo., did specifically apply to juvenile proceedings due to Section 491.699 RSMo. Appellant’s brief is in violation of Rule 84.04(d)(1)(A). Rule 84.04(d)(1)(A) requires that the point relied shall identify the trial court’s ruling or action that the appellant challenges.

This Rule gives notice to the opposing parties of the precise matters that must be contended with and to inform the court of the issues presented for review.

*Thummel v. King*, 570 S.W. 2d 679, 686 (Mo. banc 1978). Appellant asks this Court for relief on a basis that was never ruled on by the trial court and is mistaken in her account of the record while seeking relief. It is unreasonable to expect Respondent to address a ruling that never occurred.

### **C. Label Of Juvenile Proceeding As Civil Or Criminal Unnecessary**

It has long been established that juveniles are entitled to the protection of the Sixth Amendment. *In Re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Despite this Appellant goes on to argue that *Crawford v. Washington* does not apply in juvenile proceedings. Appellant contends that the confrontation clause only applies in criminal proceedings and not in juvenile proceedings as they are considered civil. The fallacy of Appellant's argument is apparent.

First, Appellant cites in criminal cases her standard of review and asks this Court for relief under a criminal standard. Secondly, Appellant asks the trial court for admittance of the testimony under Section 491.075 RSMo., which is a criminal statute. Therefore, Appellant is asking that the testimony be let in under a criminal statute but then asks that criminal case-law which governs the applicability of such statute should not be considered because once the testimony is allowed in under the statute, then juvenile proceedings are considered civil.

It is unnecessary and irrelevant for this Court to put a label on juvenile proceedings as the label does not necessarily determine which procedural rules

apply. From a constitutional perspective, the question turns on the interests at stake for the affected individual. From a statutory perspective, the answer depends on what the statute requires when construed to effectuate the legislative intent. *In re Link*, 713 S.W. 2d 487, 495 (Mo., 1986).

#### **D. Juveniles Are Afforded Sixth Amendment Protection**

In *In Re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 l.Ed.2d 527 (1967), the Court ruled that the Fourteenth Amendment's procedural due process protection applied to juvenile delinquency proceedings. *Gault* went on further to state that juvenile proceedings must be in conformity with the essentials of due process and fair treatment as guaranteed by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. The Court likened in seriousness a proceeding in which a juvenile may be found to be delinquent and subjected to the loss of his liberty to a felony prosecution and the juvenile must be afforded many, if not most, of the rights afforded to adult criminal defendants. Included among these rights are the right to notice of the charges, the rights to counsel, the rights to confrontation and cross-examination of witnesses, and the privilege against self-incrimination. *Id.* at 31-56, 87 S.Ct. 1428.

#### **E. Section 491.075 RSMo Is Subject To The Confrontation Clause**

The Missouri Supreme Court recently decided in *State v. Justus*, 205 S.W. 3d 872 (Mo. banc 2006) that the application of Section 491.075 RSMo is subject to the Confrontation Clause. The Court went on to reason that *Crawford v. Washington*, 541 U.S. 36 (2004) established a new framework for addressing a

criminal defendant's confrontation rights under the Sixth Amendment. *Id.* *Crawford* mandated that in order to allow testimonial hearsay statements of an unavailable witness, the accused must have had an opportunity to confront, i.e., cross-examine the witness. *Crawford* at 42, 68.

All parties, Appellant included, acknowledge that Section 491.075 RSMo applies but Appellant would like this Court to ignore their previous determination in *Justus*, 205 S.W. 3d 872 (Mo. banc 2006) that application of the statute is subject to the confrontation clause. *In Re Gault* 387 U.S. 1, 87 S.Ct. 1428, 18 l.Ed.2d 527 (1967), instructs courts to apply due process rights to juveniles during delinquency hearings including the right to confrontation. Because Section 491.075 RSMo applies to juvenile hearings, and that statute is subject to the confrontation clause and juveniles are afforded the right to confrontation, *Crawford v. Washington* 541 U.S. 36 (2004), applies in juvenile proceedings.

#### **F. Appellant Fails To Meet Burden Of Showing Material Affect**

In addition, Appellant fails to show how this ruling by the trial court materially affected the outcome of the case. This is due to the premature halting of the proceeding. Appellant cannot show how the ruling affected the outcome because there was no outcome. As such, Appellant should not be granted reversal under the standard of review that this Court must adhere to.

### III.

THE TRIAL COURT DID NOT ERR IN SUSTAINING AN OBJECTION TO THE TESTIMONY OF AMY COOK AS ALLEGED IN APPELLANT'S SECOND POINT RELIED ON BECAUSE APPELLANT FAILED TO ESTABLISH HOW THE EXCLUDED TESTIMONY WAS ADMISSIBLE IN THAT APPELLANT SOUGHT TO HAVE THE TESTIMONY ADMITTED UNDER SECTION 491.075 RSM<sub>o</sub> AND NEVER OFFERED THE TRIAL COURT THE OPPORTUNITY TO DETERMINE IF THE STATEMENTS WERE NON-TESTIMONIAL.

#### **A. Standard Of Review**

Juvenile proceedings are in the nature of civil proceedings, and the standard of review is the same as in a court-tried case. *In Re J.M.*, 847 S.W.2d 911, 913 (Mo. App. 1993). The trial court's order will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *Id.*; *Murphy v. Carron*, 536 S.W. 2d 30, 32 (Mo. banc 1976).

An appellate court will review the trial court's exclusion of testimony for an abuse of discretion, while granting substantial deference to its decision to exclude the testimony. *Aliff v. Cody*, 26 S.W. 3d 309, 314 (Mo. App. W.D. 2000). In reviewing the alleged error, "the focus is not on whether the evidence was admissible but on whether the trial court abused its discretion in excluding the evidence." *Id.* Regardless of the rationale offered for the objection to the

evidence or for the trial court's exclusion of it, if this Court can discern from the record any recognizable ground for the trial court's exclusion the testimony, it should uphold the ruling. *Id.* at 314-315. Moreover, even if this Court determines that the exclusion was in error, it should not reverse the trial court's judgment absent a finding that the error "materially affect(ed) the merits of the action."

*Thornton v. Gray Auto. Parts Co.*, 62 S.W.3d 575,583 (Mo. App. W.D. 2001).  
Rule 84.13(b).

**B. Offer Of Proof Presented To Trial Court Was Based On A Different Theory Of Admissibility Than The Theory Presented On Appeal**

During the first hearing on October 31, 2006 when Cook was asked what J.C. told her out in the hall, Respondent objected on the basis of hearsay and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Respondent further related that the statements were barred due to the Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36 (2004), since there had been no prior opportunity for cross-examination. The Court sustained the objection originally because the Court felt that Section 491.075 RSMo did not apply to juvenile delinquency proceedings. On November 3, 2006 the Court issued a docket entry setting aside its determination that Section 491.075 did not apply due to the parties' discovery of Section 491.699 RSMo. The Court then expressly said that the testimony in question would not be allowed pursuant to the objection made by Respondent, raising *Crawford*. The Juvenile Office was then allowed to present an offer of proof.

In order to be a proper offer of proof to allow an appellate court to review excluded evidence, the offer must be specific and definite, showing what the evidence will be, the purpose and object of the evidence, and each fact essential to establishing the admissibility of the evidence. *Terry v. Mossie*, 59 S.W. 3d 611, 612 (Mo. App. W.D. 2001). The offer of proof made in this case did not adhere to this standard.

Cook was allowed to tell the Court what J.C. said to her in the hallway. Appellant then asked Cook if J.C. was known to be truthful. Appellant ended its offer of proof and asked that the Court admit the evidence under Section 491.075 RSMo. Throughout the offer of proof, Appellant never made any attempt to show nor produced any evidence that *Crawford* did not apply and therefore the Court had erred in sustaining the objection. Appellant simply asked that the Court allow the evidence in under the statute that all parties had agreed applied.

The first time Appellant raises the issue that the statements sought to be admitted were non-testimonial was in its second point relied on. By raising the issue here for the first time, the allegation is not preserved for appeal.

When an appellant challenges the exclusion of evidence, the “appellant is limited to the reason he gave at the time he made the offer of evidence.” *Atherton v. Kansas City Power and Light Co.*, 356 Mo. 505, 202, S.W. 2d 59, 64 (1947). “It is the obligation of a party to bring to the attention of the trial court its position as to relevancy of evidence offered. . . It cannot advance a theory of admissibility

on appeal different from that advanced at trial.” *Frein v. Madesco Inv. Corp.*, 735 S.W. 2d 760, 762 (Mo. App. E.D. 1987).

Appellant now relies on the theory that the statements were admissible because they were non-testimonial and uses *Ohio v. Roberts*, 448 U.S. 56, 65 L. Ed. 2d 597, 100 S. Ct. 2531, 1979 to advance her position. Since Appellant never presented this theory to the trial court, she should not be allowed to use the theory for the first time on appeal. No allegation of error shall be considered on appeal unless it was presented to and decided by the trial court. *Villaume v. Villaume*, 564 S.W. 2d 290, 297 (Mo. App. 1978).

### **C. Appellant Fails To Meet Burden Of Showing Material Affect**

In addition the same standard of review applies that governed Appellant’s first point relied on and Appellant again fails to show how this ruling materially affected the outcome of the case. Appellant should not be granted reversal under the standard of review applicable to this case.

## **CONCLUSION**

In view of the foregoing, Respondent submits that Appellant's appeal should be dismissed and the case remanded back to the trial court for the conclusion of the hearing.

Respectfully submitted,

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**ATTORNEY FOR THE RESPONDENT**

## **CERTIFICATE OF SERVICE AND COMPLIANCE**

The undersigned Assistant Public Defender hereby certifies that:

- (1) The attached brief complies with the limitations set forth in Supreme Court Rule 84.06, in that it contains 5,135 words as calculated pursuant to the requirements of Supreme Court Rule 84.06; and
- (2) A copy of the brief has been supplied to the Court in diskette form on a diskette that has been scanned and found to be virus free; and
- (3) A true and correct copy of the attached brief and a diskette containing a copy of this brief were mailed on February 14, 2007, to:

Teresa Rieger Householder  
Householder Law Firm, LLC  
P.O. Box 708  
215 South Crittenden  
Marshfield, MO 65706

Respectfully submitted,

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