STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case Nos. 2009AP1540-CR, 2009AP1541-CR,
2009AP1542-CR, 2009AP1543-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SCOTTIE L. BALDWIN,

Defendant-Appellant.

APPEAL FROM JUDGMENTS OF CONVICTION, ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE CLARE L. FIORENZA, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The parties' briefs will fully develop the issues presented, which can be resolved by applying well-established legal principles.

STATEMENT OF THE CASE AND FACTS

As respondent, the State exercises its option not to include separate statements of the case and facts. *See* Wis. Stat. (Rule) § 809.19(3)(a)2. Any necessary information will be included where appropriate in the State's argument.

ARGUMENT

Defendant-appellant Scottie L. Baldwin appeals four judgments of conviction for four counts of misdemeanor bail jumping, three counts of disorderly conduct, two counts of battery, one count of felony intimidation of a witness, and two counts of misdemeanor intimidation of a witness, with all crimes except one of the bail jumping convictions carrying habitual criminality penalty enhancers (2009AP1540-CR, 11; 2009AP1541-CR, 15; 2009AP1542-CR, 31; 2009AP1543-CR, 19). *See* Wis. Stat. §§ 946.49(1)(a); 947.01; 940.19(1); 940.43(1); 940.42; 939.62.[1] Baldwin was convicted of committing these crimes against his girlfriend, Rosalie Z., for physically assaulting her, contacting her in violation of his bail, and preventing her from appearing to testify about these incidents at court proceedings.

On appeal, Baldwin raises three issues. First, he contends that the circuit court erred in imposing a DNA surcharge because it did not adequately explain its reasons for doing so (Baldwin's brief at 17-18). Second, he argues the court improperly admitted at trial Rosalie's hearsay statements to police explaining Baldwin's

[1] All future references to the record will be to the record in appeal number 2009AP1542-CR unless otherwise noted.

crimes against her under the doctrine of forfeiture by wrongdoing (Baldwin's brief at 19-22). Finally, he argues that the circuit court erroneously allowed the State to play phone calls between him and Rosalie without laying the proper foundation for them (Baldwin's brief at 22-23).

This court should deny Baldwin relief on all of these claims. Baldwin did not appeal from the court's postconviction order on the DNA surcharge issue and thus, it is not before this court. Further, even if this court has jurisdiction to review this issue, Baldwin raised it *pro se* in the circuit court while represented by counsel and he forfeited appellate review of the claim. Additionally, the circuit court correctly admitted Rosalie's statements pursuant to the doctrine of forfeiture of wrongdoing because it properly concluded that the State had shown that Baldwin was responsible for her being unavailable to testify. Finally, the State laid a proper foundation for the telephone calls. This court should affirm Baldwin's judgments of conviction.

I. THIS COURT SHOULD NOT REVIEW BALDWIN'S CLAIM THAT THE CIRCUIT COURT IMPROPERLY IMPOSED A DNA SURCHARGE.

A. This court does not have jurisdiction to address this claim because Baldwin did not appeal from the circuit court's postconviction order denying him relief on this claim.

Baldwin's first claim is that the circuit court improperly ordered him to pay a DNA surcharge as part of his sentence (Baldwin's brief at 17-18; 58:84-85). Specifically, he claims the court imposed the surcharge without explaining its reasons for doing so, in violation of this court's decision in *State v. Cherry*, 2008 WI App 80, ¶¶ 9-10, 312 Wis. 2d 203, 752 N.W.2d 393 (Baldwin's brief at 17-18).

This court lacks jurisdiction to consider this claim because Baldwin did not appeal from the circuit court's order denying him relief on this issue. Although Baldwin objected to the DNA surcharge at sentencing, he did so on the grounds that he had already given a DNA sample, not that the court failed to give its reasons for imposing the surcharge (58:84-85). Thus, Baldwin needed to file a postconviction motion to preserve this claim for appeal. *See* Wis. Stat. § 974.02(2) (post-conviction motion required to preserve issues for appeal other than sufficiency of the evidence or grounds previously raised). Baldwin did so, arguing that the court violated *Cherry* in a *pro se*

postconviction motion (36; 2009AP1543-CR, 23). Baldwin's notice of appeal, however, does not purport to appeal from the circuit court's July 31, 2009 order denying that motion (37). Instead, the notice only appeals from "the conviction entered on April 18, 2008, and the sentence entered on June 19, 2008" (37).

Baldwin's failure to include the circuit court's order on his notice of appeal deprives this court of jurisdiction over his claim relating to the DNA surcharge. "If a party fails to comply with the statutory requirements for filing a timely notice of appeal, the court of appeals lacks jurisdiction, and the court must dismiss the appeal as defective." *State v. Sorenson*, 2000 WI 43, ¶ 16, 234 Wis. 2d 648, 611 N.W.2d 240. A notice of appeal must identify any judgment or order appealed. *See* Wis. Stat. § 809.10(1)(b)2 and 5. Baldwin did not appeal from the circuit court's order denying his postconviction motion. Thus, he did not give this court, the circuit court, or the State notice that he was appealing from the circuit court's order on his postconviction motion, and this court lacks jurisdiction over this claim. *Sorenson*, 234 Wis. 2d 648, ¶ 16 n.9.

Further, Baldwin's omission is not inconsequential such that it does not impact the court's jurisdiction. *See* Wis. Stat. § 809.10(1)(f). Baldwin's notice states that he is only appealing from his judgments of conviction, not the later-issued postconviction order. This is a significant omission. And while this court found in *State v. Jackson*, 2007 WI App 145, n.1, 302 Wis. 2d 766, 735 N.W.2d 178, that a defendant's notice of appeal from a circuit court's postconviction order brought before it the court's judgment of

conviction even though the defendant did not mention the judgment on his notice, this rationale should not save Baldwin's DNA surcharge claim. Baldwin's postconviction motion came after his conviction, but he only appealed from his judgments of conviction. In *Jackson*, the defendant appealed from his postconviction order, which followed his judgment of conviction. In *Jackson*, the defendant intended to appeal from the order and all matters that preceded it. Baldwin's failure to include the court's postconviction order in his notice of appeal should lead to the opposite conclusion in this case. *C.f.* Wis. Stat. § 809.10(4) (appeal from final judgment or order brings before court of appeals all prior nonfinal judgments, orders, and rulings adverse to appellant). Baldwin did not appeal the circuit court's postconviction order and his claim is not properly before this court.

B. Baldwin forfeited his right to raise this claim on appeal.

If this court concludes that it has jurisdiction to decide Baldwin's claim, it still should decline to address the claim on its merits because Baldwin forfeited appellate review of this claim by raising it *pro se* in the circuit court while he was represented by counsel. Baldwin argued that the circuit court failed to comply with *Cherry* in a *pro se* postconviction motion (36; 2009AP1543-CR, 23). He filed this motion while represented by counsel, and the circuit court declined to address the claim's merits, noting that Baldwin needed to raise all his claims through counsel (36). Baldwin did not file another postconviction motion raising this claim through counsel.

Under these circumstances, Baldwin has forfeited appellate review of this claim. *See State v. Wanta,* 224 Wis. 2d 679, 699, 592 N.W.2d 645 (Ct. App. 1999). A defendant does not have a right to simultaneously proceed *pro se* and be represented by counsel. *Id.* (citation omitted). And when a defendant raises an issue *pro se* while represented, a court is under no obligation to address the claim. *See id.* While represented, a defendant must raise all his arguments through counsel, and if a defendant has only asserted a claim *pro se* in the circuit court, he forfeits the right to raise the claim on appeal. *Id.*; *see also State v. Kelty*, 2006 WI 101, ¶ 18 n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (noting that loss of appellate review stemming from the failure to properly assert a claim is more properly termed a "forfeiture" of that right rather than a "waiver," which contemplates an intentional relinquishment of the right). Baldwin has forfeited his right to review of his DNA surcharge claim in this court.

C. If this court concludes it has jurisdiction and does not find or apply forfeiture to this claim, remand for further proceedings is appropriate.

In the event this court concludes that it has jurisdiction to decide Baldwin's claim relating to the DNA surcharge, and if this court either concludes that Baldwin did not forfeit his claim or overlooks his forfeiture, then the State concedes that remand for further proceedings pursuant to *Cherry* is warranted. The circuit court did not give sufficient reasons why it imposed the

surcharge (58:84-85). And none of the crimes of which Baldwin was convicted required the court to impose it. *See* Wis. Stat. § 973.046(1r). Thus, the court failed to comply with *Cherry*. *See Cherry*, 312 Wis. 2d 202, ¶¶ 9-10. If this court reaches the merits of Baldwin's claim, it should remand to allow the circuit court to explain its reasons for imposing the surcharge. *See id*., ¶ 11.

II. THE CIRCUIT COURT PROPERLY ADMITTED ROSALIE'S STATEMENTS TO POLICE PURSUANT TO THE DOCTRINE OF FORFEITURE BY WRONGDOING.

A. Applicable law and standard of review.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." *See* U.S. Const., amend. VI. Under this clause, the testimonial statements of a witness against a defendant who does not testify at a defendant's trial will not be admitted at trial unless the defendant had a prior opportunity to cross-examine the witness and the witness is unavailable. *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

A defendant may, however, forfeit his rights under the confrontation clause when his actions have caused the witness to be unavailable to testify at trial. *See Giles v. California*, 544 U.S. ___, 128 S. Ct. 2678 (2008). A defendant forfeits his right to confront a witness at trial when the

defendant engages in conduct designed to prevent the witness from testifying. *Id*. at 2683-91. Thus, when a defendant takes actions to prevent a witness from appearing at trial, that witness's testimonial statements against the defendant may be admitted without the witness's presence at trial and without affording the defendant a prior opportunity for cross-examination without violating the Confrontation Clause. *Id*.

In order to admit an unavailable witness's testimonial statements, the State has the obligation of proving that the defendant caused the witness's absence by a preponderance of the evidence. *State v. Rodriguez*, 2007 WI App 252, ¶ 14, 306 Wis. 2d 129, 743 N.W.2d 460; *State v. Jensen*, 2007 WI 26, ¶ 57, 299 Wis. 2d 267, 727 N.W.2d 518. The court must find, at a minimum, that the defendant's conduct was a substantial factor in causing the witness's absence; it need not, however, be the only cause. *Rodriguez*, 306 Wis. 2d 129, ¶ 15.

This court reviews whether the admission of evidence violates a defendant's right to confrontation as an issue of constitutional fact. *State v. Norman*, 2003 WI 72, ¶ 24, 262 Wis. 2d 506, 664 N.W.2d 97. Under this standard of review, this court will adopt the circuit court's findings of fact unless they are clearly erroneous, but independently applies the appropriate constitutional standard to those facts. *Id*.

B. Baldwin forfeited his right to confront Rosalie.

Baldwin next argues that the circuit court improperly concluded that he had forfeited his

right to confront Rosalie and admitted her out-of-court statements inculpating him in the crimes (Baldwin's brief at 19-22). This court should reject this argument. The circuit court correctly found by a preponderance of the evidence that Baldwin had engaged in activity to prevent Rosalie from testifying at trial. As such, it properly applied the forfeiture by wrongdoing doctrine and admitted her testimonial statements.

1. The circuit court's decision.

Before trial, the State requested that the circuit court find that Baldwin forfeited his right to confront Rosalie as a result of his post-arrest attempts to dissuade her from testifying at trial (12). In granting the State's request on the morning of trial, the circuit court held:

> I have reviewed all of the information submitted regarding the State's motion for forfeiture by wrongdoing and have considered the arguments of counsel.
>
> On December 10th, based upon my review of the cases, I concurred with [defense counsel] that the witness must first be determined to be unavailable. If the witness is determined to be unavailable, then the Court determines if the defendant caused the witness's unavailability. If so determined, then forfeiture by wrongdoing applies to the defendant's confrontation rights, and otherwise testimonial evidence may be admitted.
>
> Now, on December 10th I cited the State v. Jensen case, 299 Wis. 2d, 267, a 2007 case, and I rely upon that decision today. "In Jensen, the

Wisconsin Supreme Court adopted a broad forfeiture by wrongdoing doctrine and concluded that if the State can prove by a preponderance of the evidence that the accused caused the absence of the witness, the forfeiture by wrongdoing doctrine will apply to the confrontation rights of the defendant.

"The Court explicitly adopted this doctrine whereby a defendant is deemed to have lost the right to object on confrontation grounds to the admissibility of out-of-court statements of a declarant whose unavailability the defendant has caused. The law will not allow a person to take advantage of his own wrong act. The rule of forfeiture by wrongdoing is invoked to protect the integrity of our adversary process by deterring defendants from acting on strong incentives to prevent the testimony of an adverse witness."

. . . .

. . . The State has provided me with a subpoena that demonstrates that Rosalie Z[ ] was served with a copy of the subpoena on April 14th – excuse me – on March 31st, 2008, at 2:16 p.m. requiring her attendance at court today, April 14th, at 8:30 in the witness waiting room of the courthouse. This case was called earlier today, and Rosalie Z[ ] had not appeared, and I take it the State double-checked that she was not in the waiting area; is that correct?

[ASSISTANT DISTRICT ATTORNEY]: Yes, Judge.

THE COURT: And I issued a body attachment. I don't recall, exactly, what time that was. It took some time to bring the defendant over from court staging. I'm just guessing maybe around 9:30 or so.

It was signed by the Court, but I'm just guessing sometime this morning it was signed by the Court. And – and the State has sent out officers looking for [Rosalie Z.], and she is not in court.

I believe, based on the State's attempts, they have made a good faith attempt to secure her appearance in court on today's date, and Rosalie Z[ ] is not here. Based upon the record made, based upon the submissions filed by the State and the testimony adduced at preliminary hearing – I believe it was August 23, I believe – this Court finds that the State has met its burden of proof to allow this Court to permit the on-scene statements of Rosalie Z[ ] and two police officers to be used at trial.

This Court finds, by a preponderance of the evidence, that the defendant, Scottie Baldwin, has intimidated the State's witness Rosalie Z[ ], from attending court to testify against him at trial. The actions of the defendant have been outlined in the State's motion and include tape recordings, in particular, a conversation from the jail on June 21, 2007, purportedly between the defendant and Rosalie Z[ ] where there are statements by the defendant regarding a floppy disk and the defendant telling Rosalie Z[ ] to get something notarized.

There is [sic] conversations with respect to that recording, I believe, where Rosalie Z[ ] stated – the State purports it's her – stating – She's making statements she is doing everything that the defendant is telling her to do.

It, clearly, appears, when you read that transcript, that the defendant is directing this witness to do something; and, lo and behold, there is a search warrant of Rosalie Z[ ]'s residence. And

> there is a card that's procured from that search warrant, and also there's an affidavit that's filed in Judge Conen's court that contains language set forth in the card from – that was sent from the jail to this witness.
>
> I've read all the transcripts, and there's [sic] twelve of them. And there's a lot of evidence before this Court; but, looking at all those transcripts which I have reviewed, I believe that the – the State has put forth sufficient evidence for the Court to make a finding that, by a preponderance of the evidence, Scottie Baldwin has intimidated the State's witness from attending the Court proceeding.

(49:38-42).[2]

2. Discussion.

This court should conclude that the circuit court properly applied the forfeiture by wrongdoing doctrine in admitting Rosalie's statements. The court found that, since his initial arrest, Baldwin had taken steps, including sending cards to and calling Rosalie from jail, to prevent her from testifying (49:41). Baldwin does not appear to contend that these factual findings were erroneous, nor could he as they were supported by the record (7:5-10; 12:1-9; 20; 25:3-100).

[2]The circuit court also tentatively granted the State's motion before the scheduled trial date, noting that the State had submitted sufficient evidence of Baldwin's wrongdoing, but it withheld its final decision until the day of trial due to the possibility that Rosalie might appear for trial (2009AP1543-CR 35:9-13, 26-27).

Further, that Baldwin was convicted of three counts of intimidating Rosalie demonstrates that the circuit court did not err. This court has held that when a jury convicts a defendant of intimidating the witness whose testimony was admitted based on the forfeiture by wrongdoing doctrine, the defendant has necessarily forfeited his right to confront that victim. *Rodriguez*, 306 Wis. 2d 129, ¶ 19. This is because the jury's finding of intimidation beyond a reasonable doubt confirms a circuit court's earlier finding of intimidation by a preponderance of the evidence. *Id*. Baldwin does not contend that the evidence was insufficient to convict him of intimidation, and the jury's verdicts demonstrate the correctness of the circuit court's application of the forfeiture by wrongdoing doctrine.[3]

Baldwin's challenge to the circuit court's decision is two-fold. First, he claims that reversal is required because the circuit court applied the forfeiture by wrongdoing doctrine established by the supreme court in *Jensen*, which is no longer good law in light of *Giles* (Baldwin's brief at 20-21). In *Jensen*, the supreme court adopted a "broad" forfeiture by wrongdoing doctrine and held that it could be applied against a defendant who caused the witness's absence from trial. *Jensen*, 299 Wis. 2d 267, ¶ 57. In *Giles*, the United States Supreme Court determined that in order to apply this doctrine, the defendant must have caused the witness's absence for the purpose of preventing the witness from testifying. *Giles*, 128 S. Ct. at

[3]At sentencing, Baldwin appeared to acknowledge that he prevented Rosalie from testifying when he complained to the court that the forfeiture by wrongdoing doctrine was not meant to apply to "attempting to dissuade" a witness (58:58).

2683-86. This is a narrower doctrine than that established in *Jensen*, and the one proposed in that case's dissenting opinion. *Jensen*, 299 Wis. 2d 267, ¶ 63, Butler J., dissenting. Baldwin claims that the circuit court's reliance on *Jensen* thus warrants reversal (Baldwin's brief at 20-21).

Baldwin is incorrect. While the State acknowledges that the narrower version of the forfeiture doctrine adopted in *Giles* controls, the circuit court's decision complies with the principles of that case, notwithstanding the court's discussion of *Jensen*. The circuit court found that Baldwin made Rosalie unavailable so she would not testify against him. This is exactly what *Giles* requires. After *Giles*, it is no longer enough for the State to show that the defendant simply made the witness unavailable for trial. Instead, the State has to show that the defendant made the witness unavailable so that person would not testify. The circuit court found that Baldwin made Rosalie unavailable for the purpose of preventing her from testifying, and its decision complies with *Giles*.

Baldwin's other avenue of attack on the court's decision is to its conclusion that Rosalie was unavailable for trial (Baldwin's brief at 21). He argues that the State did not do enough to secure her presence in court, and that the court should not have found her unavailable (*id.*).

This court should reject this argument as well. First it is undeveloped. Baldwin cites no legal authority for the proposition that the State needs to show a witness meets some particular legal definition of unavailability once a court concludes he has forfeited his right to confront that witness. Nor, for that matter, does Baldwin explain what

that legal standard should be or how the State's efforts failed to meet it. This court does not consider arguments unsupported by citation to legal authority, *see Kruczek v. Dept. of Workforce Development*, 2005 WI App 12, ¶ 32, 278 Wis. 2d 563, 692 N.W.2d 286, and it should decline to address Baldwin's argument.

If this court addresses Baldwin's claim, it should conclude that the State adequately attempted to secure Rosalie's presence such that the circuit court properly found her unavailable. Presumably, the relevant standard of unavailability that the State would have to meet would be the definition established in the hearsay rules, specifically, Wis. Stat. § 908.04. Under § 908.04(1)(e), a witness is unavailable if he or she is "absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means." The proponent must make a good-faith effort and exercise due diligence to secure the witness's presence. *State v. Williams*, 2002 WI 58, ¶ 62, 253 Wis. 2d 99, 644 N.W.2d 919 (citations omitted). Further, "the proponent must specify the facts showing diligence and not rely on a mere assertion or perfunctory showing of some diligence." *Id.*, ¶ 63 (internal quotation marks omitted).

The State met its burden of showing that Rosalie was unavailable. It served a subpoena on her for the trial approximately two weeks before its start date (48:19; 49:5, 39-40). Rosalie did not appear on the morning of trial, and the circuit court issued a body attachment pursuant to Wis. Stat. § 885.11(2) to secure her presence (49:13-14). The court relied on both the subpoena and the

body attachment in finding the State had made a good-faith effort to obtain Rosalie's presence at trial and that she was thus unavailable (49:39-40). This was a proper conclusion. *See LaBarge v. State*, 74 Wis. 2d 327, 336-39, 246 N.W.2d 794 (1976) (issuance of subpoena and arrest warrant for witness sufficient to show State's due diligence to secure witness's presence).

Baldwin contends that the court erred in finding Rosalie unavailable because it did not make any findings with respect to the State's efforts to execute the body attachment (Baldwin's brief at 21). In particular, he notes that the court found Rosalie unavailable a few hours after it issued the attachment (Baldwin's brief at 21).

Baldwin has not shown the court erred because the record demonstrates that the State was diligent in attempting to execute the body attachment. A "few" hours after the court issued the attachment, but before it found Rosalie unavailable, the State informed the court that it had three police officers looking for Rosalie (49:17-18). Later that afternoon, after the court had found Rosalie unavailable, the State advised the court that an officer spoke with Rosalie on the telephone (50:27). The officer informed her that she was supposed to be in court, and she claimed she had to be at work, although she also said she would attempt to be in court (50:27). The State, however, noted that it did not believe that her statement that she would try to be in court was reliable and was not aware where Rosalie worked (50:27-28). The State said it would continue to work to bring her to court (50:27-28). The record shows that the State made a good-faith effort to secure Rosalie's presence before the start of trial

and continued to do so after the court declared her unavailable. The circuit court did not err in finding that Baldwin had forfeited his right to confront Rosalie.

III. THE STATE PROPERLY AUTHENTICATED THE TELEPHONE CONVERSATIONS.

Finally, Baldwin claims that the circuit court erred in allowing the State to introduce recordings of several telephone conversations between him and Rosalie (Baldwin's brief at 22-23). The recordings were of Baldwin's phone calls to Rosalie from jail and were introduced to prove the witness intimidation charges. Baldwin contends that the State failed to authenticate the calls under Wis. Stat. § 909.015(6)(a), and the circuit court thus erred by admitting them (Baldwin's brief at 22-23).

This court should reject Baldwin's claim. Initially, compliance with Wis. Stat. § 909.015(6)(a) is not a necessary prerequisite to admit a recorded telephone conversation. The methods of authentication listed in § 909.015 are illustrative only, and not intended to impose any limitation on methods of authenticating evidence. *See* Wis. Stat. § 909.015. That the State might not have complied with the strict letter of § 909.015(6)(a) does not necessarily prove that the State failed in its obligation to demonstrate, under the general authentication statute, "that the matter in question is what its proponent claims." Wis. Stat. § 909.01.

Further, the State did properly authenticate the phone calls. Telephone calls can be

authenticated by circumstantial evidence. *Campbell v. Wilson*, 18 Wis. 2d 22, 30 n.1, 117 N.W.2d 620 (1962). Here, the State presented sufficient evidence to demonstrate that Baldwin called Rosalie from jail. Rosalie gave police a specific telephone number (52:16). A search of her residence uncovered a telephone bill for that number and addressed to the address searched in the name of Christina A., which police believed to be an alias of Rosalie's (52:36-37). Jail telephone records revealed several telephone calls to this number from the pod in which Baldwin was housed (52:108-10). The calls to this number were first made the day after Baldwin was arrested (53:35-36). Only four people, including Baldwin, were in the pod the entire time that the calls were made (53:38-39). This evidence strongly suggests that it was Baldwin who made the telephone calls from the jail pod to Rosalie.

Additionally, Kara Schurman, a domestic violence victim liaison with the Milwaukee Police Department, identified one of the voices on the recording as Rosalie's based on her previous telephone conversations with her at the number she had given police and with hearing her in person (53:56, 59, 61, 76-78, 85-86; 54:39-40, 46-47, 49-85; 55:8-28). This was an appropriate way of identifying Rosalie's voice. *See* Wis. Stat. § 909.015(5). Finally, in one of the telephone calls, the caller had the person he called make a three-way call to Baldwin's attorney's office (25:90-92). The caller left a message identifying himself as "Mr. Baldwin" (25:92). Baldwin's self-identification to his own attorney also demonstrates that he was the one who made the calls. The State sufficiently authenticated the

recordings and the circuit court properly admitted them.

CONCLUSION

Upon the foregoing, the State respectfully requests that this court affirm the circuit court's judgments of conviction.

Dated this 16th day of February, 2009.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,546 words.

_____

AARON R. O'NEIL
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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 16th day of February, 2010.

_____
AARON R. O'NEIL
Assistant Attorney General