STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

STATE OF WISCONSIN,

Plaintiff- Respondent,

v.

Appeal No. 2013AP002859-CR
Appeal No. 2013AP002860-CR

ANDREW L. JACKSON,

Defendant- Appellant.

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION AND ORDERS DENYING THE DEFENDANT'S POSTCONVICTION MOTIONS, IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HON. MEL FLANAGAN PRESIDING.

BRIEF OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

Issue 1: Whether the circuit court improperly assessed Jackson's lack of preparedness and allegedly "episodic driven" request to represent himself to deny his waiver of the right to counsel.

Issue 2: Whether Wisconsin's standard for evaluating a defendant's competency to represent himself, contained in ***Klessig*** and other cases is unconstitutional in light of more recent U.S. Supreme Court precedent***. See State v. Klessig***, 211 Wis.2d 194, 203, 564 N.W.2d 716, ***See also Indiana v. Edwards***, 128 S.Ct.2379, 171 L.Ed.2d 345, 554 U.S. 164 (2008).

Issue 3: Whether denial of the defendant's right to represent himself results in structural error warranting automatic reversal.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The appellant believes that publication is warranted because he is asking for application of federal constitutional law to overturn state precedent, which would have an impact on circuit court procedures in the future.

The appellant believes that the written briefs of the parties will sufficiently address the issues, and oral argument will not be necessary.

STATEMENT OF THE FACTS AND THE CASE

Jackson was charged in Milwaukee County case number 2011 CF 2437 with several serious felonies resulting from a domestic incident which occurred between Jackson and his wife, Priscilla Martinez, on May 28, 2011. The criminal complaint states that Jackson poured boiling liquid on Martinez and slashed her arms with a large butcher knife. (2A:1-2).[1]

Jackson appeared for an initial appearance on June 3, 2011. Martinez did not appear for the preliminary hearing, and it was adjourned. (47A:1,5). The State asked for a material witness warrant for Martinez on July 6, 2011, when she did not appear a second time for the preliminary hearing. (49A:5). Martinez appeared voluntarily on July 7, 2011, in response to that warrant, and was released on a signature bond. (50A:3).

The preliminary hearing occurred on July 12, 2011. At the preliminary hearing, Martinez testified she did not recall how she received her injuries.(51A:5). Jackson was bound over for trial. The matter was scheduled for trial and final pretrial. (51A:17-18).

The parties appeared in court several times for final pretrial hearings on September 8, 2011, September 29, 2011, and October 4, 2010. (52A; 53A; 54A). The

[1] In these consolidated cases, the records will be referred to as (A) for 2013AP2859, and (B) for 2013AP2860. The circuit court clerk has chosen the (A) record as the primary record, and most of the documents are contained in that record.

trial was adjourned on October 10, 2011, because defense counsel was involved in a homicide trial which had been adjourned from a prior week. (55A:5). Jackson's case was scheduled for trial again on January 3, 2012, but both the defense and the prosecution requested an adjournment on the day of trial. The defense had a new witness it had not previously disclosed to the prosecution. The prosecution informed the circuit court that it might file new charges of witness intimidation against Jackson, and the prosecution did not want to proceed with the trial until those charges were filed. (56A:3-7).

Jackson also asked for his attorney to be removed and replaced on January 3, 2012. According to Jackson, his attorney was not providing him with information about the case or communicating with him about strategy. The Court granted Jackson's request to remove his attorney. (56A:23).

On January 17, 2012, Jackson was not produced for the hearing, but a new attorney was present and informed the circuit court he had been appointed to represent Jackson. (57A:2). The prosecutor also informed the court that he issued four new charges against Jackson for alleged witness intimidation.(57A:3).

An initial appearance for the new witness intimidation charges was held on January 24, 2012 in Milwaukee County case number 12 CF 230. (38B) The criminal complaint charged four counts of felony witness intimidation.(2B) The criminal complaint detailed lengthy phone calls allegedly placed by the defendant, Jackson, to the victim, Martinez. (2B).

Several hearings were held on January 27, 2012, February 2, 2012, and February 21, 2012, at which time consolidation of cases and other issues were discussed. (58A; 59A; 60A)

The preliminary hearing for 2012CF230 was held on March 7, 2012. (39B). Jackson was bound over after testimony from two law enforcement witnesses. (39B:28) At the conclusion of that hearing, defense counsel informed the court that Jackson wanted him to withdraw as his attorney. (39B:29) The circuit court set a date to consider joinder of cases as well as the defense attorney's motion to withdraw.

On April 24, 2012, the parties appeared for the scheduled motion hearing. (61A). Defense counsel asked to withdraw from representing Jackson, and informed the Court that "I don't believe that we are able to – myself and Mr. Jackson to ever communicate to a level that's necessary for adequate representation of Mr. Jackson." (61A:3-4) After a lengthy discussion of the issues between Jackson and the Court, the Court denied defense counsel's request to withdraw. (61A:9) Jackson immediately informed the Court that he wanted to represent himself. (61A:13) The Court told Jackson that he had to "prove to me that you have prepared everything you need to prepare and that means a lot." (61A:14) The Court further told Jackson that he would need to write out questions for each witness and write out an opening statement. (61A:14) The Court told Jackson that they would talk about it "another time" and Jackson could then "*show me* how prepared you have become and whether you have done what you need to do to be able to represent yourself." (61A:17-18)(emphasis added). Finally, the Court told Jackson that "I need told to me exactly

what you're going to say to the jury on voir dire when we select a jury.". (61A:32) The Court told Jackson that they would talk about him representing himself at the next hearing. (61A:32)

At the next hearing, on July 17, 2012, Jackson was not produced for the hearing. His defense attorney waived his appearance at that hearing. (62A:3) Defense counsel reminded the Court about the Court's request that Jackson provide some proof that he was capable of representing himself. Defense counsel noted that he did not believe the Court's request was appropriate. (62A:4) However, defense counsel noted that he would be willing to review the defendant's preparation and inform the Court whether the defendant was prepared, rather than require the defendant to provide materials to the Court. (62A:4) Both defense counsel and the district attorney made it clear that they believed Jackson would not plead guilty but wanted to proceed to trial. (62A:5-6) The Court did not decide the defendant's motion to represent himself at this hearing, but scheduled another hearing for August 15, 2012, three days before the scheduled trial date of August 20, 2012. (62A:8)

The parties next appeared in court on August 17, 2012. The Court engaged Jackson in a discussion regarding his request to represent himself. (63A:6-15) The Court asked Jackson whether he was prepared to address the motions in the case, particularly a constitutional issue. (63A:10) Jackson informed the Court he had just received the motion while he was sitting in court. (63A:10-11) Jackson complained that his attorney had not assisted him with subpoenaing his daughter as a witness for

trial. The Court noted Jackson's custodial status, and said "I can't make it easier for you.". (63A:11) The Court focused on Jackson's custodial status as the basis for its decision to deny his request to represent himself. (63A:13)

The parties appeared in court again on August 20, 2012. At that time, Jackson pled guilty to four of the charges against him. (64A:10-14). Other counts were dismissed and read-in. After a colloquy with Jackson, the circuit court accepted Jackson's pleas (64A:31).

Jackson was subsequently sentenced to a total of 35 years of imprisonment, comprised of 20 years of confinement and 15 years of extended supervision. (17B).

Jackson filed a postconviction motion on September 19, 2013. That motion included an affidavit from Jackson's counsel indicating that Jackson informed counsel he would not have pled guilty to the charges if the Court had allowed him to represent himself. (33A, 27B). On September 23, 2013, the Court issued a briefing schedule requiring the State and defense to file briefs. (35A). The State and defense both filed briefs in response to the circuit court's briefing schedule.

On December 3, 2013, the circuit court issued a decision and order denying the motion to withdraw the guilty pleas. The Court believed that the defendant's requests to represent himself were "episodic driven" and that the defendant was incompetent to represent himself. (42A:2)

On December 23, 2013, Jackson filed a notice of appeal from the entire final judgment and the denial of his postconviction motion. (45A). On January 15, 2014, Jackson also filed a motion in the Court of Appeals requesting that the Court

determine non-waiver of an issue the circuit court declined to address, specifically, the constitutionality of Wisconsin's standard for assessing a defendant's competency to represent himself. (44). The Court of Appeals issued an order dated January 30, 2014, in which the Court remanded the matter to the circuit court to allow Jackson to seek clarification from the circuit court regarding the issue. (67A). Jackson was ordered to file a motion for reconsideration in the circuit court no later than thirty days from the date of the Court of Appeals' order remanding the matter. (44A; 66A).

On February 24, 2014, the defendant filed a motion to reconsider and supplemental postconviction motion. (68A). Jackson filed this supplement to his original postconviction motion to address, and avoid potential waiver, of the argument that the Wisconsin standard for competence to represent oneself is unconstitutional under U.S. Supreme Court precedent. (68A).

On February 27, 2014, the circuit court issued an order for supplemental briefing. The State's response was due on or before April 2, 2014. The defendant's reply was due on or before April 16, 2014. (69A). The parties filed briefs as ordered.

On April 2, 2014, The State's response to defendant's motion to reconsider and supplemental postconviction motion/brief was filed. On April 22, 2014, the circuit court issued a decision and order denying Jackson's supplemental postconviction motion. (72A).

Pursuant to the Court of Appeals January 30, 2014, order, the matter was transferred back to the Court of Appeals for further appellate proceedings.

ARGUMENT

Plea withdrawal is warranted because the Court refused to allow Jackson to represent himself, a constitutional right, for improper and insufficient reasons. Jackson thus entered a plea because he did not believe his attorney would adequately represent him at trial and was told he would not be allowed to represent himself. As a result he entered guilty pleas which were involuntary, unknowing, and unintelligent. These circumstances created a manifest injustice and structural error.

The circuit court in this case denied Jackson's request to represent himself without considering whether his waiver of counsel was valid or whether he was competent. Instead, the circuit court focused on Jackson's preparedness, a factor which is not a valid consideration. The circuit court gave significant weight to the fact that Jackson did not receive a motion in advance of the trial, possibly due to the lack of communication by his appointed counsel, and Jackson's inability to subpoena a witness due to his custodial status. In addition, the Court failed to make the decision about Jackson's request to represent himself well enough in advance of trial to provide him with sufficient notice that he would need to prepare for trial. Under these circumstances, denial of Jackson's request to represent himself was improper, a

serious flaw in the fundamental integrity of the proceedings, and a structural error mandating reversal.

Finally, to the extent that the circuit court based it's decision on Jackson's competence, the Wisconsin standard for assessing a defendant's competency to represent himself is unconstitutional under existing U.S. Supreme Court precedent. Even under the existing Wisconsin standard, Jackson was competent.

ISSUE 1: IMPROPER WAIVER CONSIDERATIONS

While a criminal defendant has a fundamental right to the assistance of counsel, he also has the constitutional right to represent himself. ***State v. Imani***, 2010 WI 66, ¶ 20, 326 Wis.2d 179, 786 N.W.2d 40 (citing ***Faretta v. California***, 422 U.S. 806, 819, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975), and ***State v. Klessig***, 211 Wis.2d 194, 564 N.W.2d 716 (1997)). There is recognized tension between the right to the assistance of counsel and the right to represent oneself. ***Imani***, at ¶21. In fact, the right to counsel is so important that "nonwaiver is presumed." ***Imani***, at ¶ 22, quoting ***State v. Pickens***, 96 Wis.2d 549, 555, 292 N.W.2d 601 (1980).

Yet criminal defendants who waive the right to counsel and are competent to represent themselves have the right to do so. Two conditions must be met for a defendant to exercise the right to self-representation: (1) knowing, intelligent, and voluntary waiver, and (2) competence to proceed *pro se*. ***Imani***, at ¶21 (citations omitted).

In ***State v. Klessig***, the Wisconsin supreme court established a mandatory colloquy for use by circuit courts to establish a defendant's valid waiver of counsel. 211 Wis.2d at 206. "If the circuit court fails to conduct such a colloquy, a reviewing court may not find, based on the record, that there was a valid waiver of counsel." ***Imani***, at ¶ 23 (*citing* ***Klessig***, 211 Wis.2d at 206). In order to grant a defendant's request to represent himself, the court must conduct a colloquy to determine:

> 1. The defendant made a deliberate choice to proceed without counsel.
> 2. Was aware of the difficulties and disadvantages of self-representation.
> 3. Was aware of the seriousness of the charge or charges against him.
> 4. Was aware of the general range of penalties that could be imposed on him.
>
> ***Imani***, ¶ 23. (*quoting* ***Klessig***, 211 Wis.2d at 206).

Imani and ***Klessig*** presented opposite scenarios on the waiver of counsel analytical framework. ***Imani***, ¶ 25. In ***Klessig***, the defendant appealed the circuit court's decision which *allowed* him to represent himself. ***Id.*** at ¶24. In that situation, when the court allowed the defendant to represent himself, the full ***Klessig*** colloquy was mandatory due to the recognized importance of the right to counsel.

Defendant Imani, on the other hand, appealed following the circuit court's *denial* of his request to represent himself. ***Id.***, at ¶25. Right to counsel issues are not present in ***Imani***, as the focus is on the denial of the right to self-representation. In ***Imani,*** the Wisconsin supreme court scaled back the ***Klessig*** language mandating a colloquy with every request for self-representation:

> Under ***Klessig***, as long as the circuit court finds that one of the four conditions is not met, the court cannot permit the defendant to represent himself. We do not impose on circuit courts the requirement of placing form over substance and using "magic words" when the reality of the circumstances dictate the answer. ***Imani***, at ¶ 26.

The Court also explained that

> The circuit court engaged Imani in two of the four lines of inquiry prescribed in Klessig and properly determined that Imani (1) did not make a deliberate choice to proceed without counsel, and (2) was unaware of the difficulties and disadvantages of self-representation. If any one of the four conditions prescribed in Klessig is not met, the circuit court is required to conclude that the defendant did not validly waive the right to counsel. ***Imani***, at ¶ 3.

Jackson concedes that his case fits the ***Imani*** side of the framework, and thus the circuit court is not required to conduct a complete ***Klessig*** colloquy. According to ***Imani***, if waiver should be denied on *any* of the four factors presented by the colloquy, it is unnecessary to conduct a full colloquy. But in Jackson's case the circuit court did not conduct a colloquy on any of these factors. The Court's decision during the trial proceedings focused on Jackson's lack of preparedness for a motion hearing. The Court's written decision denying his postconviction motion changed that focus to the asserted "episodic driven" nature of the request. (42A:2). According to the Court, Jackson's desire to represent himself was motivated by impulsive decision making rather than a deliberate choice to represent himself. (42A:2).

The circuit court's written decision thus denied Jackson's request on the first ***Klessig*** factor, lack of deliberate choice. According to the court, this was an impulsive decision by Jackson. Yet Jackson made this request at least three times between March and August. Jackson first made the request to represent himself immediately after the preliminary hearing, and made the request every time he

appeared in court. On the one occasion he was not produced, his appointed attorney made it clear that Jackson still wanted to represent himself.

Despite the circuit court's focus on the first ***Klessig*** factor, the court also reiterated in the written decision that the decision was based on "the complexity of these cases, his attitude and demeanor and his thorough unpreparedness for trial." (42A:2). The circuit court made no attempt to support this rationale with any recognized legal authority. There is no basis to deny Jackson's request to represent himself for these reasons.

In addition to lack of any colloquy or clear decision making, the circuit court did not decide the defendant's request to represent himself until three days before trial. The circuit court must address motions such as these within a reasonable time before trial. As the record shows, the circuit court first told Jackson he would have to show the court that he could be prepared for trial by showing the court his preparation materials. Jackson was then not produced for a hearing at which time the issue was supposed to be addressed. Finally, the circuit court denied Jackson's motion to represent himself only three days before trial.

ISSUE 2: COMPETENCE

Competence to represent one's self is different than competence to stand trial. ***State v. Klessig***, 211 Wis.2d at ¶23 (affirming ***State v. Pickens***, 96 Wis.2d 549, 292 N.W.2d 601 (1980). Assessing competence to represent one's self requires evaluating factors like intellectual ability, education, literacy, fluency in English, physical and

psychological ability. ***Klessig***, at ¶ 24. Jackson asserts that he was and is competent to represent himself, and that the ***Pickens*** / ***Klessig*** rule violates his sixth amendment to self-representation.

In the wake of the U.S. Supreme Court's decision in ***Indiana v. Edwards***, the viability of Wisconsin's standard for assessing competence to stand trial is questionable at best. ***Indiana v. Edwards***, 128 S.Ct. 2379, 171 L.Ed.2d 345, 554 U.S. 164 (2008) Prior to ***Indiana v. Edwards***, Wisconsin's standard for competence to represent one's self was almost certainly unconstitutional. Existing precedent prior to 2008 required that a defendant competent to stand trial also be found competent to proceed pro se. But ***Indiana v. Edwards*** ruled that states may impose a higher standard to protect *those with severe mental illness*. *See* ***Indiana v. Edwards***, 554 U.S. at 178. Wisconsin's standard does not address the limited issue of mental illness, but rather intelligence and other personal characteristics. The ruling in ***Edwards*** thus requires the conclusion that Wisconsin's standard for competence to represent one's self is unconstitutional under the sixth and fourteenth amendments to the U.S. Constitution.

Wisconsin cases addressing this issue specifically note that the Wisconsin and United States Constitutions preserve identical rights. "Just as the right to the assistance of counsel is identical under the Wisconsin and United States Constitutions, the right to represent oneself also does not differ." ***Klessig***, 211 Wis.2d 194, 203, 564 N.W.2d 716. Wisconsin cases also make it clear that Wisconsin's standard for determining competence to proceed pro se is a higher standard than

competence to stand trial. ***Imani***, 2010 WI 66, ¶ 36 (*citing* ***Klessig***, 211 Wis.2d at 212). According to the Imani court:

> "In determining whether a defendant is competent to proceed pro se, the circuit court may consider the defendant's education, literacy, language fluency, and any physical or psychological disability which may significantly affect his ability to present a defense." ***Imani***, 2010 WI 66, ¶ 37 (citing ***State v. Pickens***, 96 Wis.2d 549, 569, 292 N.W.2d 601 (1980)).

This standard is unconstitutional, because it is higher than the standard set by the United States Supreme Court. In 2008, the U.S. Supreme Court held that the constitution does not forbid States from insisting upon representation by counsel for those competent enough to stand trial but who suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. ***Indiana v. Edwards***, 128 S.Ct.2379, 171 L.Ed. 345, 554 U.S. 164 (2008). The impact of the ruling is that defendants who are not severely mentally ill must be found competent to represent themselves. Because the Wisconsin standard allows the circuit court to consider literacy, fluency, and physical disabilities, as well as because it fails to define the degree of mental disability required to forbid self-representation, it is unconstitutional under the ***Edwards*** standard.

In ***Edwards***, the defendant specifically requested that he be allowed to represent himself at trial, arguing that his mental competence to stand trial was all that could be required to also find that he was also competent to represent himself. ***Edwards***, 554 U.S. at 168-9. On appeal, Edwards argued that ***Farretta v. California***, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562, required that he be found competent to represent himself if he was merely competent to stand trial. ***Id***. The Indiana Supreme Court agreed with Edwards, and the State of Indiana then asked the U.S. Supreme

Court to review the standard for competence to represent oneself at trial. ***Edwards***, 422 U.S. at 169.

The ***Edwards*** court considered the two significant lines of precedent framing competence to represent oneself at trial. On one end of the analysis is the right of a defendant to be competent during trial. ***Edwards***, 554 U.S. at 170 (citing ***Dusky v. United States,*** 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1980) and ***Drope v. Missouri***, 420 U.S. 162, S.Ct. 896, 43 L.Ed.2d 103 (1975)). On the other end of the analysis is the right to represent oneself at trial. ***Id.***, (*citing* ***Farretta v. California***, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562).

As the ***Edwards*** Court pointed out the right to self-representation is not absolute. 554 U.S. at 171. Yet the ***Edwards*** Court also noted that the States may not impose significant restrictions on a competent defendant's right to represent himself. In ***Godinez v. Moran***, the U.S. Supreme Court previously ruled a defendant's competence to waive his right to counsel was not higher than the ***Dusky*** standard for competence to stand trial, when the defendant wished to plead guilty without the assistance of counsel. See ***Edwards***, at 171 (*citing* ***Godinez v. Moran***, 509 U.S. 389, 113 S.Ct 2680, 125 L.Ed.2d 321 (1993)).

Edwards has provided a very narrow limitation, ***severe mental illness***, as the only allowable limitation for not finding competence to represent oneself when the defendant is mentally competent to stand trial:

> That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under Dusky but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. ***Edwards***, 554 U.S. at 179.

Wisconsin's standard allows a circuit court to consider literacy, fluency, physical disability, and other things in deciding whether a defendant is competent to represent himself. Edwards does not allow the State to limit a defendant's right to represent himself for lack of competency except when there is a showing of "severe mental illness." Wisconsin's rule, expressed in Klessig, Pickens, and Imani, is unconstitutional under the U.S. and State Constitutions.

The circuit court issued a one-paragraph decision denying Jackson's motion to reconsider. (72A). The circuit court's analysis of ***Edwards*** led it to decide that states are allowed to adopt a higher standard of competency than the federal minimum standard. This is not the holding of ***Edwards***.

There is no evidence that Jackson was suffering from severe mental illness at the time he made the request to represent himself. The court never conducted an inquiry to determine Jackson's level of intelligence or ability to represent himself. The circuit court's only assessment in this regard was to decide that Jackson was not competent to represent himself because he was not prepared enough for a motion or for the trial, and because the cases were "complex." (42A:2)

The U.S. Supreme Court's rationale in ***Dusky***, relied on in ***Edwards***, included this pertinent observation:

> Third, the concept of competency to represent oneself at trial does not include possessing or lacking technical legal knowledge. "[T]he competence that is required… to waive [the] right to counsel is the competence to waive the right, not the competence to represent [themselves]. ***Godinez v. Moran***, 509 U.S. 389, 399.

The ***Edwards*** decision only allows courts to evaluate a defendant's mental health, not the ability to be as prepared as a lawyer:

> [T]he Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under ***Dusky*** but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves. ***Edwards***, 554 U.S. 164, at 177-178).

Under this standard, there was absolutely nothing in the record that would suggest Jackson was not competent to representing himself.

ISSUE 3: STRUCTURAL ERROR

Tthe Court's improper denial of Jackson's right to self-representation is structural error and requires reversal. Structural errors exclude the consideration of harmless error analysis. As pointed out in ***Imani,*** "An improper denial of a defendant's constitutional right to self-representation is a structural error subject to automatic reversal." ***Imani***, at ¶ 21 (*citing* ***State v. Harvey***, 254 Wis.2d 442, ¶ 37, ***Neder v. United States,*** 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)).

Most constitutional errors can be harmless. Certain fundamental constitutional errors are not subject to harmless error analysis. These errors are so "intrinsically harmful" it does not matter whether they had an effect on the outcome. ***Harvey***, ¶ 37. This is true in only a "very limited class of cases." ***Id.***, (*citing* ***Johnson v. United States***, 520 U.S. 461, 468, 137 L.Ed.2d 718, 117 S.Ct. 1544 (1997)). Those are cases which contain a "defect affecting the framework within which the trial

proceeds, rather than simply an error in the trial process itself." ***Id.***, (*citing* ***Arizona v. Fulminatnte***, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991).

The improper denial of the right to self-representation is such an error not subject to harmless error analysis. ***Imani***, at ¶ 21, ***Neder***, 527 U.S. at 8 (*citing* ***McKaskle v. Wiggins***, 465 U.S. 168, 177-78, n.8, 79 L.Ed.2d 122, 104 S.Ct. 944 (1984)). A recent Wisconsin Supreme Court case applied the harmless error test to a defendant's right to testify, something previously thought unlikely. Yet that case too confirmed that it is structural error to improperly deny a defendant the right of self-representation. *See* ***State v. Nelson***, 2014 WI 70, ¶ 34 (opinion filed July 16, 2014).

Jackson requests the Court find this was structural error, requiring he be placed back in the position he was in prior to the improper denial of his request to represent himself, meaning before he entered guilty pleas.

CONCLUSION

For the reasons stated, Andrew Jackson respectfully requests that the Court of Appeals find that the circuit court erred and improperly denied his right to self-representation, warranting reversal of the conviction and reinstatement of the proceedings at the point the request was improperly denied.

Dated July 24, 2014 at Stevens Point, WI.

ZELL LAW OFFICE, LLC

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cc: Hon. Mel Flanagan, Milwaukee County Circuit Court, Branch 4

Assistant District Attorney
Assistant Attorney General

CERTIFICATE OF FORM, LENGTH, APPENDIX, CONFIDENTIALITY, AND E-FILING REQUIREMENTS

I hereby certify that this brief conforms to the rules contained in **Wis. Stat. §809.19(8)(b) and (c)** for a brief and appendix produced with a proportional serif font. The length of this brief is 5233 words, and 22 pages.

I further certify that filed with this brief is an appendix that complies with **Wis. Stat. §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 issue raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

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 person, 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.

I further certify pursuant to **Wis. Stat. § 809.19 (12)(f)**, I have filed an electronic copy of this brief, excluding the appendix, if any, and that the text of the electronic copy and the text of the paper copy of the brief are identical.

A copy of all of these certificates is part of both the paper and electronic copies of the brief, and has been served on the court and all parties.

Dated this July 24, 2014

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Michael D. Zell
Attorney At Law

APPENDIX