RECEIVED
08-18-2014
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2014AP1265-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BENJAMIN J. STROHMAN,

Defendant-Appellant.

DEFENDANT-APPELLANT'S BRIEF

MILLER APPELLATE PRACTICE, LLC
Attorneys for the Defendant-Appellant
By Steven L. Miller #1005582
P.O. Box 655
River Falls, WI 54022
(715) 425-9780

On appeal from the Circuit Court
of Brown County, Hon. William J. Atkinson,
Circuit Judge, presiding.

TABLE OF CONTENTS

CASES CITED

WISCONSIN STATUTES CITED

OTHER AUTHORITY

STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2014AP1265-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BENJAMIN J. STROHMAN,

Defendant-Appellant.

DEFENDANT-APPELLANT'S BRIEF

ISSUE FOR REVIEW

1. Does a void 2005 municipal OWI conviction toll the statute of limitations so as to permit a criminal prosecution for the same offense in 2013?

The Trial Court Answered: "Yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument and publication are not requested.

STATEMENT OF THE CASE[1]

This case was originally adjudicated as an OWI-1st in the Green Bay Municipal Court on July 25, 2005. The incident date was March 23, 2005. Strohman was fined and given an 8 months license revocation. (6:4-6).

On March 13, 2013, the municipal adjudication was vacated based on the fact that Strohman had a 1999 OWI-related suspension from Illinois which qualified as a prior offense under Wis. Stat. § 343.307. (6:4-6). On October 15, 2013, Strohman was charged with one count each of OWI and PAC second offense, contrary to Wis. Stats. §§ 346.63(1)(a); 346.63(1)(b); and 346.64(2)(b).

Strohman moved to dismiss the charges, citing the three-year statute of limitations. Wis. Stats. § 939.74(1). (3:1-2). The State did not dispute a 3-year statute of limitations normally applied and that over 8 years had passed since the incident occurred. Nonetheless, it argued criminal prosecution was still possible because Strohman had a duty to inform the municipal court he had a prior qualified offense under Wis. Stat. § 343.307, and having failed to do so, was equitably estopped from asserting the statute of limitations. (6:2-3).

The circuit court denied Strohman's motion to dismiss, "adopt[ing] the arguments set forth in the State's

---

1 The Statement of the Case and the Statement of Facts are combined.

motion to deny defendant's motion to dismiss. I'll make those decision (sic) and finding of the Court, and I'll deny the motion." (33:8; A:1). The Court then added:

> To be honest, it's only logical. The arguments set forth in this brief make rational sense. The defense arguments just don't make sense. It's the exact type of illogical, technical garbage that people complain about in the criminal justice system, and it just shouldn't be. The rational, common sense approach would be the tolling of the statute of limitations where you've got a defendant who goes in there and in essence defrauds the Court and that's what the defendant did. Judge Hanson was defrauded by this defendant who should have disclosed this was his second offense.

(33:8; A:1). Strohman filed a motion for reconsideration which was denied on February 3, 2014. (11:1-15; 34:3 (A:2)). A bench trial was held upon stipulated facts and the trial court found Strohman guilty. (34:8). Strohman was sentenced to five days in jail; fined $350; and given a 12-month license revocation. (34:12). Strohman filed a motion for postconviction relief on April 14, 2014. (18). His statute of limitations argument was again denied at the postconviction hearing held on May 13, 2014. (35:10; A:3). The imposition of sentence was stayed pending appeal. (27; 34:13; 35:13-14).

ARGUMENT

I. THE VOID MUNICIPAL CONVICTION DID NOT TOLL THE STATUTE OF LIMITATIONS.

Misdemeanors must be prosecuted within three years of the commission of the act. Wis. Stat. § 939.74(1). A prosecution is commenced "when a warrant or a summons has been issued, an indictment has been found, or an information has been filed." *Id.* Courts may not exercise personal jurisdiction over a defendant when the relevant

criminal statute of limitations has expired. *State v. Jennings*, 2003 WI 10, ¶ 15, 259 Wis.2d 523, 657 N.W.2d 393.

Criminal charges may only be issued after a void forfeiture proceeding if the statute of limitations has "not yet run." *State v. Schneider*, 60 Wis.2d 563, 567, 211 N.W.2d 630 (1973). See also *State v. Banks*, 105 Wis.2d 32, 44, 313 N.W.2d 67 (1981):

> The proceedings in the action are set aside as being wholly void, and the judgment, sentence, and order are vacated. *Since no jurisdiction was acquired over the defendant*, future prosecution, *not barred by the statute of limitations*, may be initiated in the discretion of the prosecutor.

(Emphasis added). See also *State v. Russo*, 70 Wis.2d 169, 174-175, 233 N.W.2d 485 (1975) (Defendant may be prosecuted after void proceeding if statute of limitations has not yet run.); and *State v. Green*, 60 Wis.2d 570, 572, 211 N.W.2d 634 (1973) (Future prosecution possible if not barred by statute of limitations).

The State's argument to the circuit court fails for multiple alternative reasons. Equitable estoppel cannot be applied to the tolling of criminal charges, which is governed exclusively by Wis. Stat. § 939.74. Alternatively, estoppel cannot be applied to these facts as the municipal adjudication was neither a "representation" nor, alternatively, a representation upon which the State could reasonably rely. Likewise, *State v. Deilke,* 2004 WI 104, 274 Wis.2d 595, 682 N.W.2d 945 is of no help to the State, as no criminal charges were ever issued; no plea bargain was breached; and most importantly, the State has no standing as it was never a party to the proceedings. Each of these arguments will be addressed in turn.

1. The statute of limitations was not tolled by equitable estoppel.

While the State concedes a 3-year statute of limitations applies, it argues, nonetheless, that equitable estoppel prevents Strohman from asserting it. The State fails to cite any legal authority which allows the tolling of a criminal prosecution based on equitable estoppel. Instead, it relies on a paternity case, *State ex rel Susedik v. Knutson*, 52 Wis.2d 593, 596-98, 191 N.W.2d 23 (1971).

In *Knutson*, the parties had a child and in all respects presented themselves as a married couple for seven years. Throughout this time the father made representations and conducted himself in such a manner as to lead the mother to believe he would marry her and support the child. When the father moved out of the house and stopped providing support, the mother filed a paternity action. The issue on appeal was whether the father was equitably estopped from asserting the five year statute of limitations on paternity actions. The Court enumerated six relevant factors.[2] K*nutson*, at 596-598. The *Knutson* court found that all of these factors were met. The father had an ongoing legal

---

2 1. The doctrine of estoppel in pais may be applied to preclude a defendant *who had been guilty of fraudulent or inequitable conduct* from asserting the statute of limitations.

2. The aggrieved *party must have relied on the representation or acts of the defendant*, and as a result of such reliance failed to commence action within the statutory period.

3. The acts, promises or representations must have occurred before the expiration of the limitation period.

4. After the inducement for delay has ceased to operate the aggrieved party may not unreasonably delay.

5. Affirmative conduct of defendant may be equivalent to a representation upon which the plaintiff may to her disadvantage rely.

6. Actual fraud, in a technical sense, is not required to find estoppel in pais.

obligation to support the child and his decision to stop supporting him was inequitable. The paternity action was delayed because the father went to extraordinary lengths to appear married, and through his conduct and representations continually led the mother to believe that he would marry her and support the child. The paternity action, moreover, was promptly brought once the father stopped his support. *Id*. Ultimately, the issue was "whether *the conduct and representations of appellant* were so unfair and misleading as to outbalance the public's interest in setting a limitation on bringing actions." (emphasis added). *Id*., at 598.

The State attempts to apply this doctrine here by arguing it "relied" on Strohman's "representation" that "the March 23, 2005 OWI offense was his first...." The State does not identify any specific assertion Strohman actually made--either oral or in writing--or how it was relied upon. In fact, the State has admitted: "I'm not saying I or someone from my office personally relied on representation from the defendant." (33:6). Rather, the State claims the municipal adjudication itself constitutes a "representation" *by Strohman*. By pleading no contest to a first offense OWI, Strohman "accepted a conviction for that offense as a first offense…." By "accepting" a "first-offense" conviction, Strohman effectively represented this was, indeed, his first offense. The State, moreover, reasonably relied on this "representation." Strohman's "representation" began on the date he was convicted and "continued until he filed a motion to reopen and vacate the conviction in February of 2013." Because Strohman's "representation" reasonably induced the State to forgo criminal charges for 8 years, he is equitably estopped from asserting the 3-year statute of limitations. (6:2-3).

The State's estoppel argument fails for at least three alternative reasons: (1) the municipal adjudication did not toll the limitations period under Wis. Stat. § 939.74(1)

because it was not a "pending" prosecution under Wis. Stat. § 939.74(3); (2) alternatively, entering a no-contest plea to an alleged municipal violation does not constitute a "representation" for estoppel purposes; and, (3) alternatively, the State could not have reasonably relied on any such a "representation" as a basis for not commencing an OWI prosecution.

Each of these will be addressed in turn.

a. Wis. Stat. § 939.74 only tolls pending criminal prosecutions.

Wis. Stat. § 939.74(3) outlines the circumstances under which a criminal prosecution is tolled:

> (3) In computing *the time* limited by this section, the time...during which a prosecution against the actor for the same act *was pending* shall not be included. *A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.*

(Emphasis added).

A municipal citation does not constitute a "pending" prosecution--whether adjudicated or not. *State v. Faber*, 2010AP2324 (March 23, 2011, Unpublished Authored Opinion) (A:10-12). In *Faber*, two first offense forfeiture OWI cases were issued in 2005 and 2006, but never resolved. In 2010, the State issued criminal charges[3] on both incidents. The defendant moved to dismiss on statute of limitations grounds. The State argued the original forfeiture actions were still pending and thus tolled under Wis. Stat. § 939.74(3). The circuit court disagreed and

---

3 In *Faber*, the defendant was charged and convicted of three new OWI offenses in 2007 and 2008. *Faber*, at ¶1 (A:10).

dismissed both charges. This Court affirmed the circuit court. The tolling provisions of Wis. Stat. § 939.74(3) did not apply because the municipal traffic citation was not a "warrant...summons ...indictment... or...information" and therefore did not confer personal jurisdiction for criminal proceedings before the circuit court. *Id*, at ¶¶8-9.

This case is no different. The municipal traffic citation was not a "warrant...summons ...indictment... or...information" and therefore a criminal prosecution was never pending. Because a criminal prosecution was never pending, the three-year statute of limitations was not tolled. As the 2013 prosecution in this case exceeds the three-year statute of limitations by 5 years, the judgment must be reversed and the case dismissed.

b. Alternatively, a no-contest plea to a municipal citation does not constitute a "representation" for estoppel purposes.

Strohman did not "represent" anything by entering a "no contest" plea to a municipal charge. All he did was respond to a lawsuit filed against him in a statutorily prescribed manner.

The State cites no authority for the novel proposition that entering a no contest plea to an OWI forfeiture somehow constitutes an affirmative representation by the defendant that he has no prior qualifying offenses. To the contrary, a "no contest" plea does not admit anything that can be used against the defendant in a subsequent criminal or civil proceeding apart from the fact of conviction.[4]

---

4 Wis. Stat. § 904.10. See also *State v. Suick*, 195 Wis. 175, 177, 217 N.W. 743 (1928); *Lee v. Wisconsin State Bd. of Dental Examiners*, 29 Wis. 2d 330, 334, 139 N.W.2d 61, 63 (1966).

Further, the State fails to explain just how a "no contest" plea metamorphoses into an affirmative representation of fact. The very idea that Strohman affirmatively represented anything when he entered a no contest plea to a court action he did not initiate lacks any rational basis. The mere act of entering a statutorily prescribed plea does not, in any event, come anywhere near "conduct and representations...so unfair and misleading as to outbalance the public's interest in setting a limitation on bringing actions." *Knutson*, at 598.

c. Alternatively, the State could not have "reasonably relied" upon any representation Strohman may have made.

The State could not have "reasonably relied" upon any "representation" Strohman may have made because, alternatively: (i) Strohman had no legal duty to inform the municipal court of a prior judgment that may have qualified as a prior offense under Wis. Stat. § 343.307; (ii) the State had an independent legal duty to determine whether Strohman had any prior offenses which would subject him to a second offense charge; (iii) the State was not a party to the original action and therefore has no standing to rely on any "representations" Strohman may have made; and, (iv) the State cannot reasonably rely in any way on a proceeding that is void upon inception. Each of these will be addressed in turn.

(i) Strohman had no legal duty to inform the municipal court of a prior offense.

The State's argument presumes Strohman had an affirmative legal duty to inform the municipal court of a prior judgment or conviction if he knew he had one. The State has yet to cite any legal authority showing such a duty exists. Such a duty would directly implicate any number of constitutional protections, moreover, in particular a

defendant's right to not incriminate himself.[5] Such a duty would also require Strohman to make a legal determination as to whether the prior incident qualified under Wis. Stat. § 343.307.[6]

The State also cites *Hester v. Williams*, 117 Wis.2d 634, 644-645, 345 N.W.2d 426 (1984)--a personal injury case which actually undermines the State's argument. In *Hester*, the plaintiff served the defendants with a summons and complaint without having first filed the documents with the clerk. Defendants knew the action had not been filed, but nonetheless served an answer on the plaintiff. Defendants did not raise any affirmative defenses related to the lack of filing, however, so as not to alert the plaintiff to his error. After the limitations period expired, defendants moved to dismiss. Defendants were not equitably estopped from asserting a statute of limitations defense after failing to raise it in their answer because: 1. defendants "were not required to alert the opposing counsel of the defect in his case especially since the defect was dispositive of the case";

---

5 The State "bears the burden of establishing prior offenses as the basis for enhanced penalties under [WIS. STAT.] § 346.65(2)," *State v. Wideman*, 206 Wis.2d 91, 94, 556 N.W.2d 737 (1996); See also WIS JI–CRIMINAL 2600C cmt. 9 (2007) (explaining that if a defendant does not admit the "status element" of having three or more prior convictions as counted under WIS. STAT. § 343.307(1), the jury should be instructed that it must determine whether that element was proven).

6 Applying Wis. Stat. § 343.307 can be complicated and is often the source of litigation. The State's argument assumes Strohman knew his out-of-state, alcohol related license suspension would count as a prior offense under Wisconsin law. To the contrary, if anyone has a reliance argument it's Strohman. By charging the OWI as a first offense, Strohman could reasonably presume the professional legal establishment--i.e. the police, the DA's office, and the City Attorney--had all determined his out-of-state license suspension was *not* considered a prior under Wisconsin law.

and, 2. plaintiff "could not have reasonably relied on the defendant's answer for a determination as to whether the cause of action had been properly commenced" because it had no bearing on "the initial mode in which the plaintiff chose to start the action." *Id*., at 644-645.

Even in a civil case, the defendant had no duty to inform the plaintiff of jurisdictional defects, and nothing prevented the defendant from asserting a statute of limitations defense once the limitations period had passed. As *Hester* pointed out, defendant's response to the suit had no bearing on how the plaintiff chose to initiate the action. There could be no detrimental reliance on a subsequently filed document. *Id*., at 644-645.

Likewise, here, Strohman had nothing to do with filing the case in municipal court. Nor did he have a duty to inform the City of jurisdictional defects, especially one that would land him in criminal court. Nor is he prevented from asserting those defects as a defense. The Court's finding that Strohman had such a duty and "defrauded" the court by not disclosing his prior offense is without any legal or factual basis.

Because Strohman had no affirmative duty--legal or otherwise--to inform the municipal court he may have had a prior qualifying offense, the State cannot have reasonably relied on a municipal judgment to tell them Strohman had no prior offenses under Wis. Stat. § 343.307.

(ii) Alternatively, the State has an independent legal duty to determine the number of qualifying prior convictions and therefore cannot, as a matter of law, have *reasonably* relied on a defendant's no contest plea.

Criminal prosecution is mandatory if a prior offense qualifies under Wis. Stat. § 343.307; *Deilke*, 2004 WI 104, at ¶21. Consequently, the State must not only determine whether a defendant has prior convictions before charging, it must prove those convictions before sentencing. Because of this independent legal duty (and the ability to access Strohman's traffic record), the State cannot have reasonably relied on a municipal judgment to tell them Strohman had no prior offenses under Wis. Stat. § 343.307.

(iii) Alternatively, the State was not a party and therefore has no standing.

The original action was brought in municipal court by the Green Bay City Attorney. The State was not a party to that proceeding and makes no allegation it participated in any way. It was not part of any plea agreement, assuming there was one.[7] It could not have been deprived of a benefit or induced to act in a certain way. The State cannot, therefore, have "reasonably relied" on the municipal judgment as an affirmation by Strohman he did not have any qualifying priors under Wis. Stat. § 343.307.

7 The state did not provide any contemporaneous record of what occurred at that proceedings.

d. Alternatively, the State cannot rely on a void judgment for any purpose.

No court has subject matter jurisdiction to hear a second or greater OWI offense as an ordinance violation. *Walworth v. Rohner*, 108 Wis.2d 713, 715, 722, 324 N.W.2d 682 (1982). Such a proceeding is null and void, "as if it never took place." *City of Kenosha v. Jensen*, 184 Wis.2d 91, 99, 516 N.W.2d 4 (1994). A void judgment "cannot be validated by consent, ratification, waiver, or estoppel." *Kohler Co. v. DILHR*, 81 Wis.2d 11, 25, 259 N.W.2d 695, 701 (1977). The court may vacate a void judgment at will, or upon the motion of either party. *Jensen,* at 98. The State may criminally prosecute, moreover, regardless of whether the forfeiture judgment is vacated or not. *Id*. at 99.

The State cannot base its failure to prosecute on what transpired in a null and void forfeiture proceeding which "never took place." The forfeiture judgment is a nullity, non-existent, and therefore does not prove or show anything. Nothing prevented the State from criminally prosecuting Strohman during the 3-year limitations period. As a matter of law and simple logic, the void judgment cannot bind Strohman in any way as it does not bind the State in any way.

It was the State's incompetence, not Strohman's "representations," which caused the void judgment in the first place. The State presumably failed to do a proper background check before sending the case to municipal court. Strohman had nothing to do with the case being filed as a forfeiture action, and his actions were nothing more than a statutorily prescribed response. The idea that Strohman is required to do the State's job by supplying a list of prior qualified offenses is not only foreign to our jurisprudence but unconstitutional.

2. *Deilke* does not apply because criminal charges were never issued; there was no plea bargain; and the State was not a party.

The State also argues the statute of limitations was tolled under the rationale of *Deilke*, 2004 WI 104, at ¶30. *Deilke* held that a defendant's successful collateral attack of prior OWI convictions for sentencing enhancement purposes was a substantial breach of the plea bargain reached in those prior cases. Therefore, the trial court has the authority to restore the parties to their original positions, including reinstatement of the original charges. Further, those original charges can be reinstated without regard to the statute of limitations.

Deilke does not apply under these circumstances for multiple alternative reasons: 1. There was no plea bargain nor breach of a plea bargain in this case, because the original proceedings were null and void from the start and by law neither party is bound by them; 2. The State cannot allege a breach because it was not a party to the original plea bargain, assuming there was one; and 3. The State has no remedy because criminal prosecution was never commenced, and therefore no criminal charges are available to reinstate. Each of these will be addressed in turn.

Deilke does not apply to these facts. In *Deilke*, the defendant collaterally attacked three prior *criminal* OWI convictions because they violated his constitutional right to counsel. *Id*. at ¶6. The State conceded Deilke had not validly waived his right to counsel in the prior cases and therefore they could not be used to enhance the sentence of his pending OWI. *Id*. The State then moved, however, to vacate the convictions in the prior cases and reinstate the

original charges.[8] The trial court reinstated the charges in two of the three prior cases, and Deilke appealed. The question on appeal was whether Deilke's successful collateral attacks constituted a "material and substantial breach" of the plea agreements reached in the prior cases. The Court held that they were. *Id*. at ¶24.

A material breach is one that deprives *the non-breaching party* of a benefit the party reasonably expected. *Id*. at ¶13-14. Because the State, among other things, was deprived of the benefit of using the convictions for sentencing enhancement in future prosecutions, the plea agreements were "materially" breached. *Id*. at ¶22. The court also held that the statute of limitations did not bar reinstatement of the charges, citing *State v. Pohlhammer*, 78 Wis.2d 516, 522, 254 N.W.2d 478. In *Pohlhammer*, the State filed an amended complaint which dropped several charges after the defendant agreed to enter a plea. Later, the defendant successfully withdrew his plea. The State was then allowed to reinstate the original charges even though the statute of limitations period had run. The court reasoned that Deilke's situation was similar. As in *Pohlhammer*, both the OWI and PAC charges in the prior cases were issued before the statute of limitations was implicated. *Id*. at ¶30. As in *Pohlhammer*, Deilke's pleas to the original OWI charges:

> *…induced the state to refrain from prosecuting the PAC charges when they were originally filed.* Accordingly, we conclude that the circuit court was correct in rescinding the plea agreements so that the parties were in the same position as they had prior to Deilke's pleas, *when the statute of limitations was not implicated.*

(Emphasis added). *Id*. at ¶30.

---

8 Deilke's prior OMVWIs convictions were apparently all from the same county.

The burden is on the party arguing a breach to show, by clear and convincing evidence, that a breach of the plea bargain occurred and that the breach is material and substantial. *Deilke*, at at ¶13.

The State conceded it was not alleging "a violation of some plea agreement as there was in the Deilke case." (33:7). Even if it were, it could not meet its burden because, unlike *Deilke,* the entire forfeiture proceeding was a nullity from the start. It doesn't matter whether the forfeiture judgment was vacated or not. *Jensen*, at 99. The State was not bound by the void forfeiture proceeding in any way, and could have filed criminal OWI and PAC charges at will.[9] Likewise, a defendant cannot be held accountable for "breaching" a "plea bargain" the State has no legal obligation to follow. A plea bargain requires mutuality. *State v. Bembenek*, 2006 WI App 198, ¶11, 296 Wis.2d 422, 724 N.W.2d 685. By definition, there is no mutuality if one party is bound to the agreement and the other is not. The bottom line is that neither the State nor the defendant can rely on, enforce, or obtain a remedy from a legally non-existent agreement.

In *Jensen,* for example, the defendant argued that both the city and the State were estopped *from vacating* his OWI forfeiture judgment and filing criminal charges. The court rejected this argument because criminal prosecution was within the exclusive control of the State. The municipality acted in excess of its authority in even bringing the action. *Jensen*, 184 Wis.2d at 99. In fact, "the City did

---

9 Neither can the State bargain away the penalty-enhancing character of an OWI or PAC conviction. *Deilke*, at ¶21. In other words, the state cannot amend a properly charged 2nd offense OMVWI to a 1st offense in exchange for a plea.

not even have the authority to negotiate with Jensen and its negotiations could not bind the State in any way." *Id*. Thus, Jensen's reliance on the negotiated plea agreement was "not reasonable or justifiable because the agreement itself was unlawful." *Id*. at 99-100. Here, the State's position is no different than the defendant's was in *Jensen*. It cannot rely on a null and void agreement negotiated without authority. Nor was it deprived of a benefit it reasonably expected when the agreement itself was unlawful.

Alternatively, there was no actionable breach because the State was not a party to the original agreement. The original action was brought by the City of Green Bay as an ordinance violation. Therefore, the State cannot argue it was deprived of a benefit or induced to act in a certain way because of an agreement it was not a party to, and which was, in addition, completely unenforceable to begin with.

Finally, both *Deilke* and *Pohlhammer* reason that criminal charges can be *reinstated* beyond the statute of limitations only because *the same* ***criminal*** *charges were originally "commenced" within the limitations period. Deilke*, at ¶30; Wis. Stat. § 939.74(3). In this case, no criminal charges have ever been issued. The only legal action was a void forfeiture proceeding. Because no criminal action was ever "commenced" prior to the running of the statute of limitations, there are no criminal charges to reinstate. See also *State v. Faber*, 2010AP2324, ¶¶8-9 (March 23, 2011, Unpublished Authored Opinion) (A:11-12)(tolling provision of Wis. Stat. § 939.74 does not apply to OWI commenced as a forfeiture action. Criminal charges must be issued within 3 years of offense date).

For any of these alternative reasons the State is bound by Wis. Stats. § 939.74(3). As the three-year limitations period expired on March 23, 2008, criminal charges are barred.

CONCLUSION

This Court should reverse the conviction and direct the circuit court to dismiss the case with prejudice.

Respectfully submitted this 18th day of August, 2014.

MILLER APPELLATE PRACTICE, LLC

By_____
Steven L. Miller #1005582
Attorney for the Defendant-Appellant
P.O. Box 655
River Falls, WI 54022
715-425-9780

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(8)(b)&(c)

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b)&(c), as modified by the Court's Order, and that the text is:

Times Roman proportional serif font, printed at a resolution of 300 dots per inch, 14 point body text and 12 point text for quotes and footnotes, with a minimum leading of 2 points and a maximum of 60 characters per line.

This brief contains 5746 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that: I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12).
I further certify that: This electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(2)(b)

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, to the extent required: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(13)

I hereby certify that: I have submitted an electronic copy of this appendix, excluding the brief, which complies with the requirements of s. 809.19(13).
I further certify that: This electronic appendix is identical in content and format to the printed form of the appendix filed as of this date. A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 18th day of August, 2014.

MILLER APPELLATE PRACTICE, LLC

By_____
Steven L. Miller #1005582
Attorney for the Defendant-Appellant
P.O. Box 655
River Falls, WI 54022
715-425-9780

CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States Mail for delivery to the Clerk of the Court of Appeals by First Class Mail on August 18, 2014. I further certify that the brief or appendix was correctly addressed and postage was prepaid.

Dated this 18th day of August, 2014.

MILLER APPELLATE PRACTICE, LLC

By_____
Steven L. Miller #1005582
Attorney for the Defendant-Appellant
P.O. Box 655
River Falls, WI 54022
715-425-9780

APPENDIX OF DEFENDANT-APPELLANT

INDEX TO APPENDIX