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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2015AP002328-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

SHAUN M. SANDERS,

Defendant-Appellant.

SUPPLEMENTAL REPLY BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED
IN THE WAUKESHA COUNTY CIRCUIT COURT, THE
HONORABLE JENNIFER R. DOROW, PRESIDING AND
ORDER DENYING POSTCONVICTION RELIEF ENTERED
IN THE WAUKESHA COUNTY CIRCUIT COURT, THE
HONORABLE LEE S. DREYFUS, JR., PRESIDING

By: Craig M. Kuhary
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ARGUMENT

A. THE TRIAL COURT DID NOT HAVE COMPETENCY TO EXERCISE ITS SUBJECT MATTER JURISDICTION OVER SANDERS FOR CRIMINAL OFFENSES ALLEGEDLY OCCURRING BEFORE HIS TENTH BIRTHDAY.

The answer to whether the trial court had competency to exercise either its subject matter jurisdiction with regard to count one of the information and/or if it had criminal subject matter jurisdiction instead ultimately hinges on whether the legislature implicitly authorized the State to prosecute and convict adults for crimes allegedly committed before the age of ten, the earliest age a child can be prosecuted for a violation of a State or federal law in the State of Wisconsin. If this court finds no legislative or statutory bar to prosecution, then Sanders' challenge to count one fails.

The State, in its Supplemental Brief at pp. 2-3, argues that Secs. 938.12(1) and 938.02(3m), of the statutes merely determine when, not *whether* the State can prosecute children. The incongruity of this position can best be seen thusly.

If, for example, the assaults had been reported immediately, when Sanders would have been as young as eight or nine years old (54:123-24), the State could not have prosecuted Sanders under the Children's Code or the Adult Criminal Code. Put another way, neither the juvenile court nor the adult criminal court would have

had competency to exercise their respective subject matter jurisdiction on these facts. Sanders was simply too young. Obviously, he could have been the subject of a civil proceeding, such as a CHIPS petition, (See Sec. 48.13, Wis. Stats.) but he would not have faced the consequences of *either* system because of his age (said consequences including confinement in a secure setting and/or Sex Offender Registration).

However, based *solely* on his age at time of the reporting of the alleged offenses (eighteen years as of the time of the initial charging of the complaint), the State believes Sanders should now face the *full* extent of the adult criminal justice system. Under the State's analysis, competency and/or subject matter jurisdiction can be analogized like fruit on a tree, which can ripen over time and be plucked and eaten at a later date. Sanders does not believe that the legislature intended this absurd result.

As stated previously, when there are several statutes relating to the same subject matter (Chapters 938 and 939), they should be read together and harmonized, if possible. See *Edelman v. State*, 62 Wis.2d 613, 215 N.W.2d 386 (1974). Sanders maintains that the legislature set distinct age based limits for each system that make up our justice code to shield young children under the age of ten from the potential consequences of their actions. Otherwise, there would have been

no need to set a minimum age for the applicability of the Children's Code in the first place.

Therefore, under the very unusual facts of this case, age at the time of the offense does more than determine when, but also determines *whether* the court would have competency to exercise its subject matter jurisdiction at a later point in time. To borrow from the earlier analogy, if the fruit was too green to be eaten initially (i.e. at the time of the alleged offense) it will always remain that way, no matter how long it has sat on the tree.

CONCLUSION

For the foregoing reasons, Sanders asks this court to find that the circuit court did not have competency to exercise its subject matter jurisdiction on count one. Alternatively, Sanders also maintains that the circuit court did not have criminal subject matter jurisdiction on count one as well because it did not allege an offense known to law.

Dated this 22 day of December, 2016.

Respectfully submitted,

/s/ Craig M. Kuhary

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CERTIFICATION

I hereby certify that this Document conforms to the rules contained in § 809.50(1) for a petition and memorandum produced with a proportional serif font. The length of this document is 601 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 § 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 proper copies of this brief filed with the court and served on all opposing parties.

Dated this 22 day of December, 2016.

/s/ Craig M. Kuhary

Craig M. Kuhary, State Bar No. 1013040

CERTIFICATION OF FILING BY PROCESS SERVER

I certify that on December 22, 2016, this brief was delivered to a process server for same day delivery to the Clerk of the Court of Appeals. I further certify that the brief was correctly addressed.

Dated this 22 day of December, 2016.

/s/ Craig M. Kuhary

Craig M. Kuhary, State Bar No. 1013040