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WISCONSIN COURT OF APPEALS
DISTRICT IV
APPEAL FROM THE CIRCUIT COURT
OF JEFFERSON COUNTY
HONORABLE DAVID WAMBACH

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT,
V.
NOAH M. SANDERS,
DEFENDANT-APPELLANT.

BRIEF AND ARGUMENT OF APPELLANT

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ORAL ARGUMENT NOT REQUESTED

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ISSUE PRESENTED FOR REVIEW

Whether it would constitute a manifest injustice not to allow Mr. Sanders to withdraw his pleas to counts one and three of the criminal complaint due to an insufficient factual basis for his pleas.

Mr. Sanders raised this issue in a Motion for Postconviction Relief. The Jefferson County Circuit Court, Br. 3, Honorable David Wambach, held a hearing on the motion. After reviewing the written submissions and hearing oral argument, the court denied Mr. Sanders' motion.

STATEMENT OF REASONS FOR ORAL ARGUMENT AND PUBLICATION

Mr. Sanders does not request oral argument and does not recommend that the opinion be published.

STATEMENT OF THE CASE

On July 20, 2015, a criminal complaint was filed in Jefferson County Circuit Court, charging Noah Sanders with five counts of Intimidation of Victim, contrary to Wis. Stats. § 940.44(2), a class A misdemeanor, and four counts of Contact After Domestic Abuse Arrest, in violation of Wis. Stats. § 968.075(5(a)1, a class A misdemeanor.[1]

Pursuant to a negotiated plea agreement that resolved several cases, Mr. Sanders entered pleas of no contest to counts one through four of the criminal complaint. The remaining counts were dismissed and read-in.

Mr. Sanders was sentenced to six months of confinement on count one and thirty days of confinement on count three, both alleging violations of Wis. Stats. § 940.44(2). The court also imposed thirty days of confinement on counts two and four, alleging

[1] All references to Wisconsin Statutes are to the 2013-2014 Edition.

violations of Wis. Stats. § 968.075(5)(a)1. All of the terms of confinement were ordered to be served consecutively, and since Mr. Sanders was serving a sentence of confinement in the Wisconsin state prison system at the time, the court ordered that confinement in this case be served in a prison setting as well.

Mr. Sanders filed a Notice of Intent to Seek Postconviction Relief. Mr. Sanders subsequently filed a Motion for Postconviction Relief. Jefferson County Circuit Court, Br. 3, denied the motion after a hearing.

STATEMENT OF FACTS

The relevant facts in this case are not in dispute. According to the criminal complaint, on June 18, 2015, Detective Caucutt received a complaint that Mr. Sanders was having contact with KL. (DOC 1:2; Appendix B:2). Det. Caucutt further noted that such contact may have been a violation of Mr. Sanders' bond conditions. (DOC 1:2; Appendix B:2). Specifically, Mr. Sanders had been charged with misdemeanor battery in Jefferson Co. case

number 15CM106. (DOC 1:2; Appendix B:2). The victim named in the complaint in that case was KL; as a condition of his bond Mr. Sanders was prohibited from having contact with KL. (DOC 1:2; Appendix B:2).

Det. Caucutt contacted the Jefferson County jail to determine if Mr. Sanders had placed any outgoing phone calls to the phone number associated with KL. (DOC 1:3; Appendix B:3). According to the complaint, jail Sgt. Gailbraith reviewed telephone records between June 16 and June 18. (DOC 1:3; Appendix B:3). Sgt. Gailbraith located thirteen telephone calls to KL's telephone number. (DOC 1:3; Appendix B:3).

Sgt. Gailbraith provided Det. Caucutt with recordings of the telephone calls. (DOC 1:3; Appendix B:3). Det. Caucutt reviewed each call. (DOC 1:3; Appendix B:3). Each call was a conversation between the person identified as Mr. Sanders and a female believed to be KL. (DOC 1:3; Appendix B:3). KL later confirmed that she had received telephone calls from

Mr. Sanders while he was in the jail. (DOC 1:3; Appendix B:3).

According to the complaint, during the first phone call Mr. Sanders denied striking KL, and accused KL of biting him (DOC 1:3; Appendix B:3). KL denied biting Mr. Sanders, and reiterated that he did hit her. (DOC 1:3; Appendix B:3).

Mr. Sanders asked KL why she called the police. (DOC 1:3; Appendix B:3). Mr. Sanders reminded KL that he was on parole. (DOC 1:3; Appendix B:3). Mr. Sanders further told KL "not to tell his probation agent anything that will 'fuck him' even more. (DOC 1:3; Appendix B:3). According to the complaint, Mr. Sanders begged KL and complained to her that this was going to mess up his parole. (DOC 1:3; Appendix B:3).

The second phone call occurred approximately fifteen minutes later. (DOC 1:3; Appendix B:3). It began with KL telling Mr. Sanders that she was not trying to get him revoked, but that she just wanted him

out of the house. (DOC 1:3; Appendix B:3). The parties argued over what had happened, and Det. Caucutt noted that the argument was "heated." (DOC 1:3; Appendix B:3). KL told Mr. Sanders that because of the 72 hour no contact provision she was not supposed to have contact with him. (DOC 1:3; Appendix B:3). Mr. Sanders stated that she could have contact with him, further stating "when I'm in custody I can contact you as much as I want and they cannot do anything." (DOC 1:3; Appendix B:3). Mr. Sanders then instructed KL to "go down there right now and tell them you want the 72 hour no contact removed." (DOC 1:3; Appendix B:3).

Later that day, KL arrived at the Watertown Police Department and requested that the 72 hour no contact be lifted. (DOC 1:4; Appendix B:4). KL provided a written statement recanting her prior statements to police. (DOC 1:4; Appendix B:4). KL denied that Mr. Sanders had talked into recanting her initial statement. (DOC 1:4; Appendix B:4). KL claimed

that she had just "come to her senses" and wanted to "fill out a statement that was more accurate than the statement that she had previously given to police." (DOC 1:4; Appendix B:4).

APPELLANT'S ISSUE ON APPEAL

I. Whether it would be a manifest injustice not to allow Mr. Sanders to withdraw his pleas to counts one and three of the criminal complaint due to an insufficient factual basis for his pleas.

A. Summary of the Argument

It would constitute a manifest injustice not to allow Mr. Sanders to withdraw his pleas to counts one and three in this case because the pleas rest on an insufficient factual basis.

Specifically, counts one and three of the complaint allege that Mr. Sanders violated Wis. Stats. § 940.44(2), prohibiting the intimidation of a crime victim.

In order to convict an individual of that offense, the state must prove that the person knowingly and maliciously prevents or dissuades, or attempts to prevent or dissuade, another person who has been the victim of any crime, from causing a complaint to be filed, an indictment or information to be sought or prosecuted, or from assisting in the prosecution thereof.

Mr. Sanders submits that the undisputed facts as set forth in the criminal complaint do not establish a factual basis to conclude that he attempted to prevent or dissuade KL from assisting in the prosecution.

Mr. Sanders did have contact with KL and instructed her to waive the 72 hour no contact provision and refrain from talking to his probation agent. However, that contact does not establish that Mr. Sanders attempted to prevent or dissuade KL from assisting in the prosecution in the underlying battery case (15CM106). The 72 hour no contact order is not an integral part of the prosecution of the underlying case.

Similarly, telling KL not to talk to his probation agent does not interfere with or have any impact on the prosecution in the underlying case.

Mr. Sanders submits that the undisputed facts set forth in the criminal complaint do not establish a factual basis to support his pleas to counts one and three in this case. Accordingly, it would constitute a manifest injustice if Mr. Sanders is not permitted to withdraw his pleas to counts one and three of the criminal complaint in Jefferson County Case No. 16CM251.

B. Standard of Review

The reviewing court decides whether a postconviction motion to withdraw a guilty or no contest plea under entitles a defendant to an evidentiary hearing independently of the circuit court. State v. Howell, 2007 WI 75, ¶30, 301 Wis. 2d 350, 734 N.W.2d 48 (2007).

A reviewing court first determines as a matter of law whether a defendant's motion has pointed to

deficiencies in the plea colloquy that establish a violation of Wis. Stat. § 971.08 or other mandatory duties at a plea hearing. State v. Howell, 2007 WI 75, ¶31, 301 Wis. 2d 350, 734 N.W.2d 48 (2007).

The reviewing court then determines as a matter of law whether a defendant has sufficiently alleged that he did not know or understand information that should have been provided at the plea hearing. State v. Howell, 2007 WI 75, ¶31, 301 Wis. 2d 350, 734 N.W.2d 48 (2007).

The reviewing court reviews questions of law, such as whether facts fulfill a particular legal standard, *de novo*. State v. Bentley, 201 Wis. 303, 310,548 N.W.2d 50 (1996).

C. Relevant Law

When a defendant seeks to withdraw a plea after sentencing, he must establish by clear and convincing evidence that refusal to allow withdrawal of the plea would result in a manifest injustice. State v.

Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006).

Historically, one type of manifest injustice is the failure of the trial court to establish a sufficient factual basis that the defendant committed the offense to which he or she pleads. State v. Smith, 202 Wis. 2d 21, 25,549 N.W.2d 232, (1996).

Where undisputed facts cannot constitute the crime charged as a matter of law, the defendant is allowed to withdraw his plea to prevent a manifest injustice. State v. Lackershire, 2007 WI 74, ¶48, 301 Wis.2d 418, 734 N.W.2d 23 (2007).

D. Argument

Mr. Sanders submits that the criminal complaint in this case does not set forth facts sufficient to establish a factual basis for his pleas to counts one and three. The undisputed facts set forth in the complaint do not establish that Mr. Sanders attempted to prevent or dissuade KL from assisting in the prosecution of the

underlying battery case in which KL was the victim. Since the undisputed facts cannot, as a matter of law, constitute the crime charged in counts one and three, Mr. Sanders should be permitted to withdraw his plea to those counts in order to prevent a manifest injustice.

1. Procedure/analysis for plea withdrawal based on an inadequate factual basis.

Regarding a defendant's motion for plea withdrawal, a defendant is entitled to an evidentiary hearing when (1) the defendant makes a prima facie showing that the circuit court's plea colloquy did not conform to Wis. Stats. § 971.08 or other mandated procedures; and (2) the defendant alleges that he did not know or understand the information that should have been provided at the plea hearing. State v. Bangert, 131 Wis.2d 246, 274, 389 N.W.2d 12 (1986).

If the defendant satisfies both criteria, the state bears the burden at the evidentiary hearing to show by clear and convincing evidence that the plea was

knowing, intelligent, and voluntary. State v. Bangert, 131 Wis.2d 246, 274, 389 N.W.2d 12 (1986).

The Wisconsin supreme court has recognized that "in some ways, however, applying the Bangert procedure for failure to satisfy the factual basis requirement is an awkward fit." State v. Lackershire, 2007 WI 74, ¶48, 301 Wis.2d 418, 734 N.W.2d 23 (2007). Since factual basis cases typically involve the question of whether undisputed facts can actually constitute the crime charged, when undisputed facts cannot constitute the crime charged as a matter of law, the defendant is allowed to withdraw his plea to prevent a manifest injustice. State v. Lackershire, 2007 WI 74, ¶48, 301 Wis.2d 418, 734 N.W.2d 23 (2007).

The present case raises that question – whether the undisputed facts can constitute the crime. Accordingly, the question of whether Mr. Sanders should be able to withdraw his plea to avoid a manifest injustice can be resolved without application of the

Bangert procedure or need for an evidentiary hearing. If the undisputed facts cannot satisfy the elements of the offense of conviction, Lackershire states that the manifest injustice standard is met. Accordingly, there would be no need to hold an evidentiary hearing in order to give the state a chance to show by clear and convincing evidence that the plea was knowing and intelligent.

To preserve his argument under both Bangert and Lackershire, in his motion Mr. Sanders did argue that he had established a *prima facie* violation of Wis. Stats. § 971.08, and that as a consequence he did not know or understand information that should have been provided at the plea hearing. (DOC 44:8; Appendix C:8). However, Mr. Sanders also argued that the record was insufficient to establish a factual basis for those pleas, and as a consequence it would be a manifest injustice to deny his request for plea withdrawal. (DOC 44:8; Appendix C:8). In terms of relief, Mr. Sanders requested

that the court enter an order for the withdrawal of his pleas to counts one and three. (DOC 44:8; Appendix C:8).

At the motion hearing, Mr. Sanders attempted to clarify that per Lackershire, the court could resolve the issue raised in the motion without a further evidentiary hearing. (DOC 63:8-9; Appendix G:8-9).[2]

However, the court, relying on Howell, concluded that the two-part Bangert test for an evidentiary hearing was appropriate. (DOC 63:10; Appendix G:10).

Mr. Sanders would respectfully reiterate his argument that as a matter of law, the undisputed facts of this case, encompassing the conduct to which he admitted, cannot constitute a violation of Wis. Stats. § 940.44(2). Accordingly, his argument can be resolved

[2] However, Mr. Sanders did argue that the criteria for an evidentiary hearing had been met – he had established a *prima facie* violation of Wis. Stats. § 971.08, and that as a consequence Mr. Sanders' plea was not knowingly or intelligently entered. (DOC 44:8; Appendix C:8); (DOC 63:9; Appendix F:9).

consistent with Lackershire and without application of the awkwardly fitting Bangert procedure.

Since the court relied on Bangert in denying his motion, Mr. Sanders will address both arguments.

2. The circuit court erred in concluding that Mr. Sanders failed to make a *prima facie* showing that the plea colloquy in this case was inadequate.

At the motion hearing, the court concluded that the plea colloquy had satisfied the court's obligation to ascertain whether a factual basis exists to support Mr. Sanders' plea to counts one and three. (DOC 63:31; Appendix G:31). The court further held that accordingly, Mr. Sanders was not entitled to an evidentiary hearing on his motion. (DOC 63:31; Appendix G:31).

Mr. Sanders would respectfully disagree with the court's conclusion that its plea colloquy was sufficient.

Before accepting a plea, the court is required to "make such inquiry as satisfies it that the defendant in

fact committed the crime charged." State v. Lackershire, 2007 WI 74, ¶33, 301 Wis.2d 418, 734 N.W.2d 23 (2007).

In the present case, Mr. Sanders' plea hearing resolved several cases simultaneously. Those cases involved multiple counts and more than one criminal offense. In its factual basis inquiry, the court did not actually address each count (or even each complaint) individually.

Instead, the court essentially lumped everything together and obtained a general stipulation from defense counsel that "the factual portion of the complaints in which Mr. Sanders will be entering pleas to one or more counts also provide an adequate factual basis for the court to accept pleas from Mr. Sanders and find him guilty." (DOC 61:9; Appendix F:9).

The court then asked Mr. Sanders if he believed that if the facts "from these different complaints in 15CM347 and 15CM251 and 15CM206" were

submitted to a jury, would the jury find "from those facts all the elements of the offenses you're charged with and find you guilty beyond a reasonable doubt?" (DOC 61:9-10; Appendix F:9-10).

The court concluded that its colloquy had been sufficiently individualized because the court referred to "each" fact portion of "each" complaint. (DOC 63:28; Appendix G:28). However, at no point in the plea colloquy did the court discuss the specific facts of any of the complaints, nor did the court discuss the specific elements of any of the offenses to which Mr. Sanders was pleading. There was no substantive inquiry into whether the facts of any of the complaints satisfied the elements of any of the offenses.

It is unclear how the court could be satisfied as to the sufficiency of the factual basis without a more substantive inquiry or analysis into each of the individual cases.

Mr. Sanders would respectfully disagree that using the words suggested in the special materials makes the inquiry adequately substantive. The issue is not whether the court used the right word – "ample" – to describe its finding, but whether it conducted a sufficient inquiry to arrive at that finding. (DOC 63:28; Appendix G:28).

The Wisconsin supreme court has emphasized the importance of the court conducting a sufficient inquiry to determine whether a plea is supported by an adequate factual basis. State v. Howell, 2007 WI 75, ¶59, 301 Wis. 2d 350, 734 N.W.2d 48 (2007). Mr. Sanders would respectfully submit that the court's inquiry in this case was more perfunctory than substantive. At minimum, Mr. Sanders would submit that the court must discuss each case individually, including the specific elements of each offense and the facts being alleged to satisfy the elements.

Mr. Sanders made a *prima facie* showing that the court's plea colloquy did not comply with the standard set forth in Wis. Stats. § 971.08 and Bangert. Mr. Sanders alleged that due to the deficient plea colloquy, he did not understand that the conduct set forth in the criminal complaint did not actually constitute the offense charged in counts one and three. (DOC 44:8; Appendix C:8). Accordingly, Mr. Sanders was entitled to an evidentiary hearing on his motion for plea withdrawal.

3. The undisputed facts alleged in the criminal complaint do not establish a factual basis for Mr. Sanders' plea to counts one and three of the complaint.

As Mr. Sanders has argued, *supra*, the issue of whether he is entitled to withdraw his pleas to counts one and three in order to avoid a manifest injustice could be/could have been resolved without the Bangert procedure, per Lackershire, because the facts cannot constitute the offense of conviction.

Counts one and three of the complaint charged Mr. Sanders with violations of Wis. Stats. § 940.44(2). The elements of that offense are that (1) the individual knowingly and maliciously prevents or dissuades, or attempts to prevent or dissuade; (2) another person who has been the victim of any crime; (3) from causing a complaint to be filed, an indictment or information to be sought or prosecuted, or from assisting in the prosecution thereof.

In State v. Freer, 2010 WI App 9, 323 Wis.2d 29, 779 N.W.2d 12 (Ct.App.2010), the court of appeals elaborated on the meaning of the statute. The court analyzed the legislative history, and concluded that the intent of the legislature was to prohibit any act of intimidation that seeks to prevent or dissuade a crime victim from *assisting in the prosecution*. State v. Freer, 2010 WI App 9, ¶24, 323 Wis.2d 29, 779 N.W.2d 12 (Ct.App.2010)(Emphasis added).

The two counts of the criminal complaint at issue involve two telephone calls Mr. Sanders placed to the victim, KL. In one call (count one), he denied hitting KL and asked why she had called the police. (DOC 2:3; Appendix B:3). He reminded her that he was already on parole, and told her not to talk to his probation agent. (DOC 2:3; Appendix B:3). He "begged" and complained that this was going to mess up his parole. (DOC 2:3; Appendix B:3).

In the second call (count three), Mr. Sanders told KL that he could have as much contact with her as he wanted. (DOC 2:3; Appendix B:3). He told her he was "very familiar with the law and very good with the law." (DOC 2:3; Appendix B:3). He told KL to tell law enforcement that she wanted to remove the 72 hour no contact provision. (DOC 2:3; Appendix B:3).

Mr. Sanders would respectfully submit that none of those communications had anything to do with the actual prosecution of this case. Telling KL not to speak

with his probation agent, and to have the no contact provision removed, were not attempts to prevent or dissuade KL from assisting in the prosecution of the case.

Most of the court's discussion at the hearing was focused on the facts alleged in support of count three. The court concluded that one reasonable inference to be drawn from Mr. Sanders' initial contact with KL despite the prohibitions on doing so is that it sent a message to KL that the law cannot protect her from Mr. Sanders. [3] (DOC 63:15; Appendix G:15). The court concluded that in such a context, the conduct was "the beginning of an effort to intimidate the victim." (DOC 63:16; Appendix G:16). Further, since KL requested the removal of the 72 hour no contact provision as Mr. Sanders had said, it

[3] The court suggested that Mr. Sanders had raised a First Amendment argument that the "law on intimidation" should embrace his right to have contact with the victim and explain his version of events. (DOC 63:18; Appendix G:18). Mr. Sanders made no such argument. However, Mr. Sanders did argue that offering his own version of events is not inherently malicious or done with the attempt to interfere with the prosecution. (DOC 63:4: Appendix G:4). Mr. Sanders did not (and does not) argue that the no contact provision is unconstitutional.

showed that he was already having an impact on her behavior. (DOC 63:16; Appendix G:16).

The court further concluded that Mr. Sanders had attempted to get KL to change her version of events and recant, constituting a malicious attempt to dissuade her from assisting in the prosecution. (DOC 63:19; Appendix G:19). [4]

In its response the state argued that Mr. Sanders had, through his contact with KL, attempted to make KL "feel guilty about his predicament" and further dissuade her from assisting in the prosecution. (DOC 48:3; Appendix D:3). Mr. Sanders argued at the hearing that such a standard was too vague and subject to interpretation, as it would be difficult to determine whether certain contact/conduct was intended to inspire guilt within the victim. (DOC 63:4; Appendix C:4).

[4] In neither of the telephone calls described in the complaint in support of counts one and three did Mr. Sanders tell KL to recant. Mr. Sanders made that comment in a subsequent telephone call that served as the basis for count seven of the complaint. Although count seven was dismissed, Mr. Sanders would submit that the conduct alleged in support of count seven cannot also provide a factual basis for counts one and three.

However, the court appeared to accept the state's argument, noting that its Catholic background provided added insight into the power of guilt and manipulation. (DOC 63:24; Appendix G:24). The court concluded that making a person feel guilty is an effective way to get that person to change her behavior. (DOC 63:24; Appendix G:24).

With respect to count one, the court concluded that telling KL not to talk to his probation agent was no different than if Mr. Sanders had specifically said not to cooperate with law enforcement or the prosecutor. (DOC 63:23; Appendix G:23). The court reasoned that the probation agent is similar to law enforcement or the prosecutor in that they are all authority figures with the power to hold Mr. Sanders accountable. (DOC 63:23; Appendix G:23). The court reasoned that dissuading KL from cooperating with the probation agent was an attempt to dissuade her from assisting in the prosecution. (DOC 63:23; Appendix G:23).

Ultimately, the court concluded that its review showed sufficient facts to support each element of the offense charged, and to provide a factual basis for Mr. Sanders' pleas. (DOC 63:25; Appendix G:25).

Mr. Sanders would respectfully disagree. The standard the court applied to its count three analysis – the conduct was an effort to manipulate KL by making her feel guilty - is too vague and subject to interpretation. Suppose Mr. Sanders had called KL to tell her how sorry he was for his conduct. Following the approach of the court in this case, one could reasonably conclude that contrition is really a malicious attempt at making the victim feel guilty, and thereby an attempt to dissuade her cooperation in the prosecution.

Such a vague standard would make it virtually impossible for any reasonable person to know whether or not – in addition to violating no contact provisions – their conduct was unlawful. Almost any conduct could

be interpreted in such a manner as to appear manipulative or guilt inducing.

Mr. Sanders would submit that Wis. Stats. § 940.44(2) requires that the individual do more than manipulate the victim or try to make the victim feel guilty about the individual's predicament.

The caselaw is limited, but Freer does provide some insight. In Freer, the defendant had engaged in specific conduct designed to dissuade another from reporting a crime. The defendant left a telephone message, promising that if the other person "wants to denounce people in an unjustified way, he will find justified denunciation of his own…[misconduct]." State v. Freer, 2010 WI App 9, ¶3, 323 Wis.2d 29, 779 N.W.2d 12 (Ct.App.2010). Rather than try to make the other person feel guilty about reporting a crime, Freer threatened that there would be specific consequences if he did so.

Mr. Sanders would also disagree with the court's count one analysis that telling KL not to talk to his probation agent is the same as telling her not to talk to the prosecutor or law enforcement.

Mr. Sanders' probation agent would not be involved in the prosecution of the underlying battery case. The probation agent would not have any relevant evidence or testimony to provide in the prosecution of the underlying battery case. Although the probation agent might have asked some of the same questions as an investigating police officer, telling KL not to talk to his probation agent from an older case would not affect the investigation or prosecution of the underlying battery case.

With respect to counts one and three of the criminal complaint in this case, the undisputed facts cannot constitute a violation of Wis. Stats. § 940.44(2). Although Mr. Sanders had prohibited contact with KL, in neither telephone call did he maliciously attempt to

prevent or dissuade KL from assisting in the prosecution of the underlying battery case. Mr. Sanders would request that this court independently review the conclusions of the circuit court, and determine that his pleas to counts one and three are not supported by an adequate factual basis. Accordingly, it would constitute a manifest injustice to deny his request to withdraw his pleas to counts one and three.

CONCLUSION TO BRIEF AND ARGUMENT

Mr. Sanders respectfully requests that this court reverse the denial of his Motion for Postconviction Relief, permit the withdrawal of his plea and vacate the judgment of conviction, and remand for further proceedings. In the alternative, Mr. Sanders requests that the court reverse the denial of his Motion for Postconviction Relief and remand for an evidentiary hearing.

Dated this 20th day of February, 2017.

Respectfully submitted,

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Certification of Brief Complaince with Wis. Stats. § 809.19(8)(b) and (c)

I hereby certify that this brief conforms to the rule contained in Wis. Stats. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4507 words.

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Certification of Appendix Complaince with Wis. Stats. § Wis. Stats. 809.19(2)(a).

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 Wis. Stats. § 809.19(2)(a) and contains: (1) a table of content; (2) the findings or opinions of the trial court; (3) a copy of any unpublished opinion cited under Wis. Stats. § 809.23(3)(a) or (b); and (4) portions of the record essential to the 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 required by law to be confidential, the portions of the record included in the Appendix are reproduced using first names and last

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