State of Wisconsin
Court of Appeals
District 1
Appeal No. 2017AP1021-CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Delano Maurice Wade,

Defendant-Appellant.

On appeal from a judgment of the Milwaukee County Circuit Court, The Honorable Thomas J. McAdams, presiding

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Defendant-Appellant's Brief and Appendix

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Statement on Oral Argument and Publication

The issues presented by this appeal are controlled by well-settled law. Therefore, the appellant does not recommend either oral argument or publication.

Statement of the Issues

I. Whether the circuit court erred in overruling Wade's hearsay objection to a police officer's testimony as to what the alleged victim, AC, told the officer shortly after the incident.

Answered by the circuit court: No. Although the judge's reasoning is not in the record, the court apparently adopted the state's argument that the statements were not hearsay because they were prior consistent statements, and the victim's credibility "has been called into question."

II. Whether the circuit court erred in overruling Wade's hearsay objection to the admission of statements attributed to the alleged victim, AC, and recorded in a written "domestic violence supplement".

Answered by the circuit court: No. The state established a foundation that the document was an exception to the hearsay rule as a business record.

III. Whether the circuit court erred in discussing a jury question with the defense attorney present, but with Wade being kept in the bullpen (i.e. not personally present).

Answered by the circuit court: No. Although defense counsel had not discussed the question with Wade, the court accepted counsel's claim that the answer given to the jury was consistent with other discussions that the attorney had with Wade.

Summary of the Arguments

I. The circuit court erred in overruling Wade's hearsay objection to Officer Reyes' testimony. The state elicited testimony from Officer Jolene Reyes concerning AC's statements about her injuries made shortly after the incident. Wade objected on hearsay grounds. The state argued that the testimony was not hearsay because it was consistent with AC's trial testimony, and the defendant had "called into question" AC's credibility. The court apparently adopted that argument, and overruled Wade's objection.

The circuit court erroneously exercised its discretion because the decision was not based upon the proper law. The prosecutor's rendition of the hearsay rule is not even close to being accurate. Prior consistent statements are not admissible whenever the witness's credibility is "called into question."

Rather, prior consistent statements are admissible when the defendant has made a claim of *recent* fabrication. Here, there is no such claim. Rather, Wade's claim is that AC had fabricated the story all along.

Thus, it was error for the circuit court to admit the hearsay statements. The error is not harmless.

II. The circuit court erred in permitting the state to introduce AC's statements, contained in the domestic violence supplement, concerning her injuries. Additionally, during the testimony of Reyes, the state offered as an exhibit a written "domestic violence supplement". Wade objected on hearsay grounds. The court admitted the document under the business records exception. The state was then permitted to have Reyes read into the record statements made by AC concerning her injuries. This was an erroneous exercise of discretion by the circuit court. The business records exception is not a Trojan horse for multiple levels of hearsay. Here, no exception was established for the admission of the statements of AC recorded in the report.

III. Wade was denied his constitutional right to be present during the conference concerning the jury's request to view the exhibits. During their deliberations, the jury sent the judge a written request to view the exhibits. The court conducted a conference with the lawyers concerning the question, but Wade was left in the courtroom bullpen. He was

not personally present for the conference. During the conference, defense counsel agreed to permit the jury to see exhibit 25, the domestic violence supplement. This amounted to a reversal of the position that defense counsel had previously taken concerning the exhibit. The judge then asked defense counsel whether he had conferred with Wade about this decision, and counsel indicated that he had not. Nevertheless, counsel assured the court that the decision was consistent with prior discussions he had with Wade.

This procedure denied Wade his constitutional right to be present during a critical part of his trial. Although a criminal defendant does not have an absolute right to be present at all proceedings no matter what, where the defendant's absence makes the proceeding unfair, it is error to deny him the right to be present.

Here, it was unfair to deny Wade the right to be present. Wade could have assisted his lawyer by reminding the lawyer that the defense had previously objected to the exhibit going to the jury. Wade's presence would not have been an obstacle to the proceedings.

Statement of the Case

I. Procedural History

The defendant-appellant, Delano Maurice Wade (hereinafter "Wade") was charged in a criminal complaint with second degree sexual assault and false imprisonment. Both charges were alleged to be domestic abuse related. (R:1) The complaint alleged that Wade's live-in girlfriend, AC, was the victim.

Following a preliminary hearing, Wade was bound over for trial. (R:33-14) Wade entered not guilty pleas, and he demanded a speedy trial. (R:33-15)

Wade filed a number of pretrial motions, none of which are relevant to this appeal.[1]

At trial, the state called Jolene Reyes, a Milwaukee police officer, as a witness. Reyes testified that, following the incident, she went to the hospital and interviewed AC concerning the incident. (R:43-84) The prosecutor prompted Reyes to recount

[1] In one motion, Wade claimed that he was selectively prosecuted and/or the police failed to investigate and to preserve exculpatory evidence. According to the motion, during his custodial interrogation, Wade "provided a detailed and thorough account of the events surrounding the termination of his relationship with [AC]" (R:8) In this account, Wade claimed that he had been the victim of a theft perpetrated by AC and her family. Further, Wade claimed that his version of the events would be corroborated by the security video from the apartment building, and from examination of the cellphone of another tenant in the building. *Id*. The motion claimed that the police never investigated Wade's claims. The circuit court held an evidentiary hearing on the motion and took the motion under advisement pending the trial. (R:39-72) After trial, the court denied the motion. (R:47-9)

what AC said, and Wade objected on the grounds of hearsay. *Id.* The prosecutor claimed that AC's statements to Reyes were not hearsay because, "It's a prior consistent statement as the victim's credibility is being called into question by the defense." *Id.* The court, without explanation, overruled Wade's objection.[2]

Reyes then told the jury that AC said she was injured, "basically told me all over her body, but she was specific in saying that she was kicked on her legs, her buttock area, ribs, I believe it was her elbow." (R:43-84)

Further, during Reyes' testimony, the state marked exhibit 25, a "domestic violence supplement", and sought to have it admitted as a business record. (R:43-90, 91) Wade initially objected on hearsay grounds, and then on "foundation" grounds[3]. The court overruled Wade's objection, and admitted the report under the business records exception to the hearsay rule. (R:43-91) Reyes then read from the report various statements attributable to AC concerning her injuries. (R:43-91) At the conclusion of the trial, Wade also objected to the DV report going back to the jury during deliberations. (R:44-68)

During jury deliberations, the jury sent a written question to the judge asking to see the exhibits. (R:44-69) The judge

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[2] The transcript indicates that a discuss was held off the record. The judge then told the prosecutor to "repeat the question, or have it read back, please." (R:43-84) The court later reconstructed for the record the various sidebars, including Wade's hearsay objection. (R:43-103) The judge, though, did not specifically say what the court's ruling was on the hearsay objection, or why it ruled that way. (R:43-104)

[3] But it is apparent from the context of the objection that it was actually a hearsay objection. Counsel meant that the state had not established a foundation that the record was, in fact, an exception to the hearsay rule as a business record.

discussed the jury question with the attorneys, but the record reflects that Wade was kept "in the back", meaning in the courtroom bullpen. *Id.* In other words, Wade was not personally present for the discussion concerning the jury question.

Inexplicably, having previously objected to exhibit 25 (the DV report) going to the jury, this time defense counsel told the judge that he did not object. (R:44-70) The judge then asked whether counsel had conferred with Wade about the decision. Counsel said, "Well, I didn't have chance [sic] run it by him, but I-- from my discussions with him, that is consistent with his wishes." (R:44-70, 71)

Wade did not testify at the trial.

The jury returned verdicts finding Wade guilty of both counts. (R:45-3)

On the sexual assault, the court sentenced Wade to ten years in prison, bifurcated as seven years initial confinement and three years extended supervision. (R:48-33) On the false imprisonment, the court imposed a concurrent sentence of five years, bifurcated as three years initial confinement, and two years of extended supervision. (R:48-39)

II. Factual Background

On November 25, 2015, Wade and AC were in a Pick-n-Save grocery store on the southside of Milwaukee. While Wade was on his cellphone, AC began signalling people

to call the police. (R:42-14, 15) The police received numerous 911 calls. Wade and AC checked out with their groceries, and went out to Wade's car in the parking lot.

Because of what had gone in in the store, customers were watching the car. (R:42-19) A loss prevention officer tried to delay Wade's car from pulling out. (R:43-72, 73) Wade was in the driver's seat. He rolled down the window and demanded to know why these people were following him. *Id.* Wade then pulled away, but the customers approached the car and forced him to stop. While Wade was occupied with the customers, AC opened the car door, rolled out, and ran back into the Pick-n-Save store. (R:43-73, 74) She eventually went to St. Francis Hospital, where the police interviewed her.

AC told police that Wade was angry with her when she came home at 2 a.m. the night before, and he then found out that she had been at a hotel (R:42-9), and had spent money on Wade's food stamp card. (R:41-72, 73) Wade claimed that she had "broken the rules", and that she now owed him $5000. (R:41-74) According to AC, Wade kicked her, threw things at her-- including an ash tray and a Ciroc liquor bottle-- burned her with cigarettes, and made her sit in the corner for about two hours. (R:41-75, 76, 77) After that, according to AC, Wade took her into the bedroom, and said that he was going to "break her jaw" unless she gave him "head"[4]. She did. (R:41-79, 80)

[4] Oral sex

Later on, Wade took AC in the car and attempted to sell her to men so they could have sex with her for money. (R:42-11) According to AC, Wade was trying to recoup the money AC had spent on the hotel and on the food stamp card. Then the two of went to the Pick-n-Save grocery store. Wade said that he had to pick up some items for his mother[5]. (R:42-12) This is where AC escaped.

After the interview at the hospital, police went to AC's apartment, where she consented to a search. The police found the ashtray and a liquor bottle that AC had claimed that Wade had thrown at her.

Argument

I. The circuit court erred in overruling Wade's hearsay objection to Officer Reyes' testimony recounting AC's statement to police.

The state elicited testimony from Officer Reyes concerning AC's statements about her injuries made shortly after the incident. Wade objected on hearsay grounds. The state argued that the testimony was not hearsay because it was consistent with AC's trial testimony, and the defendant had "called into question" AC's credibility. The court apparently adopted that argument, and overruled Wade's objection.

[5] It was Thanksgiving

The circuit court erroneously exercised its discretion because the decision was not based upon the proper law. The prosecutor's rendition of the hearsay rule is not even close to being accurate. Prior consistent statements are not admissible whenever the witness's credibility is "called into question." Rather, prior consistent statements are admissible when the defendant has made a claim of *recent* fabrication. Here, there is no such claim. Rather, Wade's claim is that AC had fabricated the story all along.

Thus, it was error for the circuit court to admit the hearsay statements. The error is not harmless.

A. Standard of appellate review

"Whether to admit or exclude evidence is a decision left to the trial court's discretion. [internal citation omitted] We will uphold the trial court's decision to admit or exclude evidence if the trial "court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion." Id. If the trial court failed to "adequately explain its reasoning, we may search the record to determine if it supports the court's discretionary decision." *Dalka v. Wisconsin Cent., Ltd.*, 2012 WI App 22, ¶ 51, 339 Wis. 2d 361, 392, 811 N.W.2d 834, 849

B. Admission of prior consistent statements

"A statement is not hearsay if . . . The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is **. .** Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of *recent* fabrication or improper influence or motive . . ." (emphasis provided) § 908.01(4), Stats.

It is well-settled that,

> To use prior consistent statements, the proponent of the statements must show that they [the statements] predated the alleged recent fabrication and that there was an express or implied charge of fabrication at trial. *State v. Peters*, 166 Wis.2d 168, 177, 479 N.W.2d 198, 201 (Ct.App.1991); *State v. Mares*, 149 Wis.2d 519, 527, 439 N.W.2d 146, 149 (Ct.App.1989). If the prior consistent statements predate the alleged recent fabrication, then the statements have probative value and are admissible. *Peters*, 166 Wis.2d at 177, 479 N.W.2d at 201. In addition, a suggestion of recent fabrication must be made at trial. For example, in *Mares*, a sexual assault victim was asked questions on both cross-examination and recross-examination which suggested that the victim had been coached by the prosecutor about explaining the differences between her preliminary hearing testimony and her trial testimony. *Mares*, 149 Wis.2d at 527, 439 N.W.2d at 149. We concluded that this line of questioning raised the spectre of improper prosecutorial coaching and suggested that the victim was fabricating her testimony at trial. *Id.* at 528–29, 439 N.W.2d at 149.

Ansani v. Cascade Mountain, Inc., 223 Wis. 2d 39, 53, 588 N.W.2d 321, 327 (Ct. App. 1998).

C. The record fails to establish that Wade made any claim that AC recently fabricated her trial testimony.

In responding to Wade's hearsay objection, the prosecutor said, "At this point it's not hearsay. It's a prior consistent statement as the victim's credibility is being called into question by the defense." (R:43-84)

This, of course, is not even a remotely a correct statement of the hearsay rule. A prior consistent statement is not admissible every time the defense suggests that, perhaps, the alleged victim is not being truthful. Rather, a prior consistent statement is admissible only on those fairly rare occasions when the defendant suggests that the alleged victim *recently* fabricated the story she is telling at trial. When the defendant's claim is that the victim has been fabricating her story from the very beginning, prior consistent statements are hearsay.

On this record, we do not know whether the circuit court overruled Wade's hearsay objection based upon the prosecutor's fairly egregious misinterpretation of the law. The judge never explained why he overruled the objection.

Of course, "If the trial court failed to adequately explain its reasoning, [the appellate court] may search the record to

determine if it supports the court's discretionary decision." *Dalka*, *supra.*

Here, though, a search of the record offers no sanctuary for the ruling.

Firstly, Wade's attorney spent a long time cross-examining AC, but the cross-examination was exceptionally unproductive for the defense. Defense counsel asked mostly open-ended questions that only permitted AC restate her testimony with, perhaps, some greater detail. Not once did defense counsel explicitly or impliedly accuse AC of recently fabricating any of her trial testimony.

Secondly, during his opening statement, defense counsel specifically told the jury that it was Wade's theory that AC had lied to the police *from the very beginning*, and the police never conducted an investigation designed to corroborate AC's claims. Defense counsel said, "But what I would ask you to look at in this case is when [AC] tells thing to the-- that you had just heard about to the police, what do they do? What do they do to make sure that all of these statement are true . . . Do we just presume that everything [AC] told the police is accurate?" (R:41- 64)

Plainly, the circuit court erroneously exercised its discretion in permitting the state the elicit, through officer Reyes, AC's hearsay statements concerning her injuries.

D. The admission of AC's hearsay statements was not harmless error.

There is no doubt that the state will vehemently argue that this error is harmless beyond a reasonable doubt.

> To assess whether an error is harmless, we focus on the effect of the error on the jury's verdict. [internal citation omitted] This test is 'whether it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.[internal citation omitted]. We have held that "in order to conclude that an error 'did not contribute to the verdict' within the meaning of Chapman, a court must be able to conclude 'beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.' [internal citation omitted] In other words, if it is "clear beyond a reasonable doubt that a rational jury would have convicted absent the error," then the error did not " 'contribute to the verdict.

State v. Weed, 2003 WI 85, ¶ 29, 263 Wis. 2d 434, 457, 666 N.W.2d 485, 495–96

When the state makes its harmless error argument, the first question that should come to mind is: If the state truly believes that this evidence is harmless, then why did the prosecutor introduce it both through Officer Reyes and also through the domestic violence report?

The answer, of course, is that the prosecutor reckoned that the evidence concerning the beating and AC's injuries was critically important to the state's case.

What happened at the Pick-n-Save is essentially uncontroverted. But the crux of the case is what happened in

the apartment. There is precious little to corroborate AC's claims except, perhaps, the fact that there was an ashtray and an empty Ciroc bottle in the apartment, *and any injuries that AC may have sustained.*

AC claimed that, among other things, Wade burned her with a cigarette, but, curiously, there are no photographs of any such burns. (R:43-43) There is a notation in the medical records about a "cigarette burn", but the notation is by way of "Later history supplied by patient to police." (R:43-59)

Plainly, the repeated efforts by the state to "corroborate" AC's injury claims with hearsay testimony contributed to the jury's guilty verdicts.

II. The circuit court erred in permitting the state to introduce AC's statements in the domestic violence report. Although the report may be a business record, there is no hearsay exception for the second level of hearsay (AC's statements)

The state offered exhibit 25, which is the MPD domestic violence report. Among other things, this report contained statements attributable to AC concerning her injuries. Wade's attorney objected initially on hearsay grounds (R:43-89), and then on foundational grounds, evidently meaning that the state had not established a foundation that the record fell under any exception to the hearsay rule. (R:43-91). The court overruled

the objection, and admitted the document as a business records exception to the hearsay rule. *Id.*

Thereafter, the witness, Officer Reyes again, reading from the document, testified that, "She [AC] circled injury to her head, neck, shoulders, arms, thighs, back, her left arm. There's a right arm, and there's the right shin area. Or calf I should say. . . . The front part of the diagram, that's her shoulders, arms again, the ribs, front of her thighs, and again, the side of her leg kind of near the calf area on her right side." (R:43-91, 92)

The so-called business records exception, § 908.03(6), Stats., provides an exception to the hearsay rule for, "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony of the custodian or other qualified witness, or by certification that complies with s. 909.02 (12) or (13), or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness."

The business records exception, though, is not a Trojan horse for additional levels of hearsay. As the Wisconsin Supreme Court teaches, the business records exception "[A]llows the introduction of documents made in the course of a regularly conducted activity, which includes police reports.

When the report contains out-of-court assertions by others, an additional level of hearsay is contained in the report and an exception for that hearsay must also be found." *Mitchell v. State,* 84 Wis. 2d 325, 330, 267 N.W.2d 349, 352 (1978)

Here, AC's assertions to Officer Reyes concerning her [AC's] injuries, represents a second level of hearsay for which there is no exception.

Thus, the circuit court erroneously exercised its discretion in permitting the state to read into the record AC's statements, contained in the domestic violence supplement, concerning her injuries. The judge's ruling was not based on a correct reading of the law.

This additional hearsay evidence concerning AC's injuries is additive to the prejudice already discussed in the preceding section.

III. Wade was denied his constitutional right to be present when the circuit court conducted a conference concerning a jury question, and Wade was not produced in court.

During their deliberations, the jury sent the judge a written request to view the exhibits. The court conducted a conference with the lawyers concerning the question, but Wade was left in the courtroom bullpen. He was not personally present for the conference. During the conference, defense counsel agreed to permit the jury to see exhibit 25, the domestic violence

supplement. This amounted to a reversal of the position that defense counsel had previously taken concerning the exhibit. The judge then asked defense counsel whether he had conferred with Wade about this decision, and counsel indicated that he had not. Nevertheless, counsel assured the court that the decision was consistent with prior discussions he had with Wade.

This procedure denied Wade his constitutional right to be present during a critical part of his trial. Although a criminal defendant does not have an absolute right to be present at all proceedings no matter what, where the defendant's absence makes the proceeding unfair, it is error to deny him the right to be present.

Here, it was unfair to deny Wade the right to be present. Wade could have assisted his lawyer by reminding the lawyer that the defense had previously objected to the exhibit going to the jury. Or, if the defense strategy had changed, Wade could have at least been a part of the discussion where that occurred. Additionally, Wade's presence would not have been an obstacle to the proceedings.

> An accused has a constitutional right "to be present during his trial, and his right to be present at the trial includes the right to be present at proceedings before trial at which important steps in a criminal prosecution are often taken." [internal citation omitted] As for conferences during the trial, we have "recommended" that these "rarely" be held without the defendant present. [citation

> omitted]. "However, the presence of [a] defendant is constitutionally required only to the extent a fair and just hearing would be thwarted by his absence.... The constitution does not assure 'the privilege of presence when presence would be useless, or the benefit but a shadow.'

State v. Alexander, 2013 WI 70, ¶ 22, 349 Wis. 2d 327, 339–40, 833 N.W.2d 126, 132.

"Factors a trial court may consider in determining whether a defendant's presence is required at an in-chambers conference with a juror to ensure a "fair and just hearing" include whether the defendant could meaningfully participate, whether he would gain anything by attending, and whether the presence of the defendant would be counterproductive." *Alexander*, 2013 WI 70, ¶ 30, 349 Wis. 2d 327, 345, 833 N.W.2d 126, 135

Here, Wade's absence from the discussion concerning the jury question was unfair for several reasons.

Firstly, the 'decision" that was made at the conference was the exact opposite of what Wade had previously been led to believe was the defense position concerning exhibit 25 (the domestic violence supplement).

Following the closing arguments, with Wade still in the courtroom, the judge asked the parties to state their positions concerning the exhibits going into the jury room. Defense counsel told the court, "I take issue with the-- I forgot what it was called but the domestic violence worksheet contains some

things that weren't testified about and also would be hearsay . . ." (R:44-68)

Then, when the jury later asked to see the exhibits, and Wade was not produced, defense counsel objected to the "CAD report", but, inexplicably, not to the domestic violence supplement. (R:44-70) The judge proposed to send all exhibits, except exhibit 31, and defense counsel said, "I think it would probably be-- be fine." *Id.*

This, of course, represents a substantial change of the position that defense counsel had previously taken concerning exhibit 25 while Wade had been in the courtroom.

Perhaps making a mental note of this shift in position, the judge asked defense counsel, "[Y]our client is on board with what we're doing here?" *Id.*

Defense counsel said, "Well, I didn't have chance to run it by him, but I-- from my discussions with him, that is consistent with his wishes." (R:44-70, 71)

Thus, it was entirely unfair to deny Wade the opportunity to be present during the discussion concerning the exhibits. There was a fairly substantial change in the defense position concerning exhibit 25, and Wade had no opportunity to be involved in the decision. The decision to allow exhibit 25 to be viewed by the jury only intensified the prejudice already discussed concerning AC's hearsay statements contained in the report. Now the jury had those statements in writing.

It does not go to fair to say that defense counsel's statement to the judge was misleading. This new defense position was not at all consistent with what Wade previously believed the defense position to be concerning exhibit 25.

Moreover, there is no reason to believe that Wade's presence in the courtroom would have been any sort of obstacle to the discussion. The transcript does not suggest that Wade ever disrupted the proceedings during the trial.

The judge, at the very least, could have directed defense counsel to go into the bullpen to discuss the decision with Wade before taking a position. Instead, the judge simply accepted defense counsel's assurance that the new position with consistent with Wade's wishes.

For these reasons, Wade was denied his constitutional right to be present during a critical part of the trial.

Conclusion

It is respectfully requested that the court vacate Wade's convictions, and remand the matter for a new trial.

Dated at Milwaukee, Wisconsin, this _____ day of September, 2017.

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Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 5079 words.

This brief was prepared using *Google Docs* word processing software.The length of the brief was obtained by use of the Word Count function of the software

I hereby certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated this _____ day of September, 2017:

_____

Jeffrey W. Jensen

State of Wisconsin
Court of Appeals
District 1
Appeal No. 2017AP1021-CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Delano Maurice Wade,

Defendant-Appellant.

Defendant-Appellant's Appendix

A. Record on Appeal
B. Excerpt of transcript re hearsay objections
C. Excerpt of transcript re jury question

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, at a minimum: (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 circuit 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.

Dated this ____ day of September, 2017.

_____

Jeffrey W. Jensen