STATE OF WISCONSIN

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

DISTRICT I

Case No. 2017AP1588-CR, 2017AP1587-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THEORIS R. STEWART,

Defendant-Appellant.

On Appeal from a Judgment of Conviction
and an Order Denying Postconviction Relief,
Entered in the Milwaukee County Circuit Court,
the Honorable Dennis R. Cimpl Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. Was there a factual basis supporting Mr. Stewart's guilty plea to the two counts of unauthorized use of an entity's identifying information, in violation of Wis. Stat. § 943.203(2), when it was alleged that he provided two falsified diplomas to a presentence investigation writer? Specifically, was there a factual basis establishing two of the four elements of the crime in question: (1) that Mr. Stewart was representing that he was the entities in question or acting with their express authorization, and (2) that Mr. Stewart intended to "obtain credit, money, goods, services or anything else of value or benefit" as required by statute?

The circuit court held that there was a factual basis sustaining Mr. Stewart's identity theft convictions. The court concluded (1) that Mr. Stewart was "at least implicitely representing" that he was acting with the authorization of the entities in question and (2) the phrase "value or benefit" under Wis. Stat. § 943.203(2) includes the type favorable consideration Mr. Stewart sought from the court in the associated sentencing disposition.

2. Did the trial court err by ordering that Mr. Stewart's unpaid and past due child support obligations be paid as restitution under Wis. Stat. § 973.20?

The circuit court never specifically addressed this question and instead concluded: "For the reasons set forth by the State in its response brief, the defendant's motion is denied *in toto*." The State's response brief, however, stipulated to the conversion of the restitution order pertaining to child support into an order under Wis. Stat. § 948.22(7). In

denying Mr. Stewart's motion in its entirety, the circuit court declined to alter the restitution order as requested.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Stewart welcomes oral argument if the court would find it helpful to deciding the issues. Publication is appropriate because this case involves an issue of first impression: whether the legislature intended the phrase "anything else of value or benefit," within the meaning of Wis. Stat. § 943.203(2), to include an act done with the intent of gaining favor with a sentencing court in a criminal prosecution.

STATEMENT OF FACTS

The Falsified Diplomas

In 2011, Mr. Stewart was charged in Milwaukee County Case Number 11CF2608 with four counts of failure to support, contrary to Wis. Stat. § 948.22(2). (14CF3197, 2:6). At the time the charges were filed, Mr. Stewart was residing in Tennessee. On April 28, 2012, he was arrested and extradited to Wisconsin. Mr. Stewart eventually entered a plea to two of the four counts pursuant to a plea agreement and the court ordered that a Presentence Investigation Report (PSI) be completed by the Department of Corrections. (14CF3197, 2:6). In accordance with the plea agreement, the State recommended that Mr. Stewart be placed on probation and that he be required to serve the first 90 days of that period in the House of Correction as conditional jail time. (14CF3197, 34:27-28).

During the PSI interview process, Mr. Stewart represented that he had two Bachelor's degrees, one from University of Arizona and the other from Jones International University. (14CF3197, 2:6). He also told the PSI writer that he had successfully appealed his "bad conduct discharge" from the U.S. Air Force. (14CF3197, 2:6). In support of his claims, Mr. Stewart provided falsified documents, including diplomas from the University of Arizona and Jones International University, an email purportedly from Jones University and a letter allegedly from the Department of Veterans Affairs stating that his "bad conduct discharge" was upgraded to "general discharge." (14CF3197, 2:6-7).

At sentencing, the court ultimately placed Mr. Stewart on probation for a period of eighteen months, and declined to impose any conditional jail time. (14CF3197, 34:23-24).

Following Mr. Stewart's sentencing hearing in that matter, the State investigated the documents Mr. Stewart submitted to the PSI writer. (14CF3197, 2:7). During the investigation, the State discovered that Mr. Stewart was not a graduate of the University of Arizona and while he had attended Jones International University, he did not graduate. (14CF3197, 2:7). The State also learned that while Mr. Stewart had petitioned for a change of the status of his discharge from the U.S. Air Force, his request was ultimately denied. (14CF3197, 2:7).

Case Numbers 14CF3197 & 14CF5128

Following the conclusion of the investigation, the State pursued new charges against Mr. Stewart. In Case Number 14CF3197, the State charged Mr. Stewart with fifteen counts: seven counts failure to support a child, four counts of identity theft and four counts of contempt of court-misconduct in court (the latter eight counts were charged as a result of the

alleged creation of the four documents provided to the presentence writer). (14CF3197, 2). In Case Number 14CF5128, the State filed an additional five counts of failure to support a child. (14CF5128, 1).

On February 26, 2016, Mr. Stewart entered guilty pleas to eleven counts between the two cases. He pled guilty to eight counts of failure to support a child, contrary to Wis. Stat. § 948.22(2), two counts identity theft, contrary to Wis. Stat. § 943.203(2)(a), and one count of contempt of court-misconduct in court, contrary to Wis. Stat. § 785.01(1)(a). (14CF5128, 23; 14CF3197, 25). Nine other counts were either dismissed outright or read in for the purpose of sentencing. (14CF5128, 23; 14CF3197, 25).

On April 29, 2016, the Honorable Dennis R. Cimpl sentenced Mr. Stewart to a total of six years initial confinement and seven years extended supervision between the two cases. The sentences are broken down as follows:

Case Number 14CF3197:

> Count One: 1 year initial confinement, 2 years extended supervision, consecutive to 14CF5128;
>
> Counts Two, Three and Four: 1 year initial confinement, 2 years extended supervision, concurrent to Count One;
>
> Count Ten: 1 year in the House of Correction, consecutive to Count One;
>
> Count Eleven: 11 months in the House of Correction, consecutive to Count Ten;
>
> Count Twelve: 3 years initial confinement and 3 years extended supervision, concurrent to Count Eleven.

Case Number 14CF5128:

> Count One: 1 year initial confinement, 2 years extended supervision, consecutive to 14CF3197;
>
> Counts Two, Three and Four: 1 year initial confinement, 2 years extended supervision, concurrent to Count One;

(14CF5128, 23; 14CF3197, 25).

Mr. Stewart filed a timely notice of intent to pursue postconviction relief. (14CF5128, 20; 14CF3197, 21).

Postconviction Proceedings

Mr. Stewart filed a postconviction motion seeking plea withdrawal and a correction in the assignment of his pastdue child support obligation to a restitution order. (14CF5128, 31; 14CF3197, 32). The motion asserted[1]:

(1) That Mr. Stewart should be permitted to withdraw his plea to counts ten and twelve in Case Number 14CF3197, charging unauthorized use of an entity's identifying information as a repeater, as there was not a sufficient factual basis on which the court could properly accept his pleas;

(2) That the circuit court should convert the restitution order as it relates to court-ordered

[1] The postconviction motion also asserted that trial counsel was ineffective for failing to properly advise his client regarding a potential defense to three of the counts of failure to support a child. Mr. Stewart is not appealing the circuit court's ruling on that issue and therefore, the details of the arguments on that topic are not included in this brief.

> child support to an order in compliance with Wis. Stat. § 948.22(7).

(14CF5128, 31; 14CF3197, 32).

Following the submission of briefs and without a hearing, the circuit court denied Mr. Stewart's motion for postconviction relief on all grounds. Regarding the challenge to the identity theft counts, the circuit court concluded that there was a factual basis sustaining Mr. Stewart's convictions. The circuit court found that there was evidence alleged that supported the conclusion that Mr. Stewart, by presenting the falsified diplomas to the presentence investigation writer, was implicitly acting as if he had the authorization of the academic institution entities to create and reproduce diplomas. This the court held, was enough to support the element in question.

Next, the circuit court held that the phrase "anything else of value or benefit" under Wis. Stat. § 943.203(2), includes "the benefit the defendant sought to obtain from the PSI writer in terms of a favorable sentence recommendation and from the court in case 11CF2608 in terms of a more favorable sentencing disposition." (14CF5128, 38:2; 14CF3197, 39:2).

Finally, regarding the conversion of the order for payment of past-due child support, the circuit court did not specifically address this issue in the decision denying Mr. Stewart's postconviction motion. Instead, the court concluded: "For the reasons set forth by the State in its response brief, the defendant's motion is denied *in toto*." Notably, the State stipulated to the conversion of the restitution order pertaining to child support into an order under Wis. Stat. § 948.22(7) in its response brief, but this was

not addressed in the circuit court's written decision. (14CF5128, 38:2; 14CF3197, 39:2).

Mr. Stewart now appeals.

ARGUMENT

I. No Factual Basis Exists to Support Mr. Stewart's Guilty Pleas to the Two Counts of Unauthorized Use of an Entity's Identifying Information as Charged in 14CF3197.

In this case, there was no factual basis upon which the court could accept a plea of guilty to the identity theft charges. Wisconsin Jury Instruction 1459 outlines the four elements of the offense of unauthorized use of an entity's identifying information which require that the State prove the following:

> 1. The defendant intentionally used identifying information of an entity. The name of the entity is identifying information.
>
> 2. The defendant intentionally used the identifying information of the entity to obtain credit, money, goods, services, or anything else of value or benefit.
>
> 3. The defendant acted without the authorization or consent of the entity and knew that the entity did not give authorization or consent.
>
> 4. The defendant intentionally represented that he was acting with the authorization or consent of the entity. "Intentionally" requires that the defendant had the mental purpose to obtain credit, money, goods, services, or anything else of value or benefit by using identifying

> information of the entity without the entity's consent or authorization.

(Wis. JI-CRIMINAL 1459).

Here, no evidence was presented at the time of the plea establishing that Mr. Stewart represented that he was the entity or that he had delivered the forged documents to the PSI writer with the consent of the entities in question or that he used the information to obtain something of "value or benefit" within the meaning of the statute. (14CF3197, 2; 14CF5128, 1); Wis. Stat. § 943.203(2).

A. General legal principles and standard of review.

When the court accepts a plea of "guilty" to a criminal charge, it has the duty during the plea colloquy to "make such inquiry as satisfies it that the defendant in fact committed the crime charged." Wis. Stat. § 971.08(1)(b) (2015-2016); ***McCarthy v. United States***, 394 U.S. 459, 467 (1969); ***White v. State***, 85 Wis. 2d 485, 488, 271 N.W.2d 97 (1978). This requirement for guilty pleas is modeled after Rule 11 of the Federal Rules of Criminal Procedure. ***Ernst v. State***, 43 Wis. 2d 661, 674, 170 N.W.2d 713 (1969). In other words, the court must find through its review of the record before it that there is a factual basis for the crime charged and that the defendant is knowingly admitting to those facts. ***McCarthy***, 394 U.S. at 466-67. The trial court must make this inquiry to protect "a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." ***White***, 85 Wis. 2d at 491. The factual basis requirement is separate and distinct from the requirement that a plea be voluntary. ***State v. Thomas***, 2000 WI 13, ¶ 14, 232 Wis. 2d 714, 605 N.W.2d 836.

A defendant pursuing plea withdrawal after sentencing must prove by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. ***State ex rel. Warren v. Schwarz***, 219 Wis. 2d 615, 635, 579 N.W.2d 698 (1998). Failure to establish a factual basis showing that the conduct which the defendant admits constitutes the offense pleaded to is itself evidence that a manifest injustice has occurred warranting plea withdrawal. ***Thomas***, 232 Wis. 2d 714, ¶ 17; ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994).

Whether an adequate factual basis was presented to support a guilty plea when the facts supporting the charge are derived from the criminal complaint in the record is a question of law that this Court reviews *de novo*. *See* ***State v. Peralta***, 2011 WI App 81, ¶ 16, 334 Wis. 2d 159, 800 N.W.2d 512; *See also* ***Cohn v. Town of Randall***, 2001 WI App 176, ¶ 5, 247 Wis.2d 118, 633 N.W.2d 674.

B. Mr. Stewart was neither representing that he was one of the entities in question or that he was acting with its authorization or consent, and therefore, there was an insufficient factual basis upon which the trial court could accept his plea to the identity theft charges.

In denying the postconviction motion, the circuit court concluded that the record showed that Mr. Stewart "intentionally, and at least implicitly, represented that he was acting with the authorization of the entity" when he falsified the documents. (14CF3197, 38). The circuit court provided no authority in support of this conclusion. Mr. Stewart contends that the circuit court's ruling is not a proper interpretation and application of the statute and that this court should not adopt its reasoning.

The fourth element of the crime of unauthorized use of an entity's identifying information, in violation of section 943.203(2), is that the "defendant intentionally represent that he was the entity or that he was acting with the authorization or consent of the entity." (Wis. JI-CRIMINAL 1459). The criminal complaint alleged that Mr. Stewart falsely claimed to have been a graduate of two universities and to have received a "general discharge" from the military. The complaint stated he created four documents to support his claim.

Mr. Stewart is not disputing that he lied about his educational background or military service. However, he asserts there is nothing in the complaint or record indicating that he was intentionally claiming to act as a representative of the universities or the military or that he had represented that he obtained the entities' permission to provide the false documents to the PSI writer. (14CF3197, 1). Further, the documents in question - purported copies of college diplomas and a letter from the U.S. Air Force - are not the type of items that require permission from an entity to use or share.

Therefore, the fact that Mr. Stewart presented the documents in question as authentic to the presentence writer does not satisfy the requirement that he acted as if he was the entity or was acting with the express permission of the entity. This is not a charge of uttering a forgery (and these acts would also not meet the legal element for that crime) where the act of representing a forgery to another as genuine is itself a crime. *See* Wis. Stat. 943.38(2). Had the legislature intended that this behavior be likewise criminalized in the identity theft statutory scheme as it relates to entities, the statute could have been drafted in that way. Instead, Wis. Stat. §943.203 requires that the individual charged either be representing that the person is the entity itself or is intentionally acting with the actual authorization or consent of

the entity. The criminal complaint did not allege — and Mr. Stewart did not admit to — those facts.

For these reasons, Mr. Stewart asserts that there was not a factual basis that supported a finding of guilt on the identity theft charges. While Mr. Stewart was "in the position of pleading voluntarily with an understanding of the nature of the charge," he did not realize "that his conduct [did] not actually fall within the charge." ***White***, 85 Wis. 2d at 491. Therefore, a manifest injustice has occurred and plea withdrawal is warranted. ***Thomas***, 232 Wis. 2d at ¶ 17; ***Harrington***, 181 Wis. 2d at 989.

C. Mr. Stewart did not create or utilize the fake diplomas to obtain "anything else of value" within the meaning of Wis. Stat. § 943.203(2), and therefore, there was no factual basis upon which the trial court could accept his plea to the identity theft charges.

Mr. Stewart did not use the identifying information of the entities in question to obtain "anything of value or benefit" within the meaning of the statute. (14CF3197, 2:3-5) Wis. Stat. § 943.203(2). The criminal complaint alleged that Mr. Stewart received a "benefit" from the sentencing court as a result of his misrepresentations, simply because the court mentioned Mr. Stewart's purported educational background during the sentencing hearing. During the court's remarks, the judge stated: "You speak well. You have got a fairly good record with education and so on…" and "Went to University of Arizona…says he completed a Bachelor of Arts degree in Business Administration." (14CF3197, 2:7). At the conclusion of sentencing, the court imposed a period of probation with no condition time, rather than probation with

ninety days of condition time as the State had requested. (14CF3197, 2:7).

Despite the State's assertions to the contrary, the sentencing court did not state that it was declining to order condition time due to his education or successful military discharge., By adopting the State's reasoning in its entirety, the circuit court ignores that even assuming the itgave some consideration to the misrepresentations at issue, the sentencing court's determination is not "anything of value or benefit" as intended by the legislature.

First, when determining the appropriate application of the phrase "anything else of value or benefit," Mr. Stewart contends that the doctrine of *ejusdem generis* should be applied. "The doctrine of ejusdem generis is a 'canon of construction that when a general word or phrase follows a list of specific person or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed.'" ***State v. Peters***, 2003 WI 88, 263 Wis. 2d 475, 665 N.W.2d 171, citing ***State v. A.S.***, 2001 WI 48, ¶ 33 n. 4, 243 Wis. 2d 173, 626 N.W.2d 712 (other citations omitted). Mr. Stewart argues that the phrase only makes practical sense when interpreting it to mean anything of commercial or financial benefit or value. If the "anything else of value or benefit" language is not limited by the principle of ejusdem generis, the language can include practically anything in the world. This cannot be what the legislature intended.

For example, if the language of the statute encompasses a lie about employment or military service to a court to gain favor at sentencing, then who is to say that it can't also be used to penalize someone who lies about a job or military service to pursue a romantic relationship or

someone who embellishes her work or prior educational experience on a resume′ or says he just got released from Racine Correctional Institution so that people will buy him drinks in a bar? These are just a few examples of the types of behaviors that could be prosecuted as felony identity theft under the broad interpretation of the statute that the State has asked the Court to permit. The possibilities are endless.

In response to these arguments, the circuit court (by adopting the State's arguments in its response brief) concluded that the legislature did in fact wish to penalize these relatively minor misrepresentations one could make with a felony criminal conviction. Each one of the examples above would fit the elements of the crime of unauthorized use of an entity's identifying information under the circuit court's accepted interpretation. This is absurd and leads to a statute that is unconstitutionally vague.[2]

Further, we have reason to believe that this is not what the legislature intended when codifying Wis. Stat. § 943.203(2). First, the legislature codified the contempt of court statute, which was utilized in the prosecution of Mr. Stewart. That statute penalizes, as an unclassified misdemeanor, intentional misconduct directed at the court. Wis. Stat. § 785.01. Second, in 2015, the legislature enacted Wis. Stat. § 946.78, a provision titled "false statement

[2] "A statute is unconstitutionally vague when read as a whole, it is so indefinite and vague that an ordinary person could not be cognizant or and alerted to the type of conduct, either active or passive, that is prohibited by statute." ***State v. Courtney***, 74 Wis. 2d 705, 710, 247 N.W.2d 714 (1976); see also ***State v. Hurd***, 135 Wis. 2d 166, 272, 400 N.W.2d 42 (Ct. App. 1968); ***State v. Pittman***, 174 Wis. 2d 255, 276-277, 496 N.W.2d 74 (1993).

regarding military service." This statute criminalizes, as a Class A misdemeanor, the act of untruthfully claiming to have served in the military or having received awards or designations in the armed forces with the intent to obtain a "tangible benefit." Wis. Stat. § 946.78. When drafting the statute, the legislature specifically included "an effect on the outcome of a criminal or civil court proceeding" in the definition of "tangible benefit." Wis. Stat. § 946.78(1)(b).

Additionally, in 2003, at the same time the legislature codified § 943.203 into law in 2003 Act 36, the legislature amended the already existing counterpart to the provision, § 943.201.[3] In 2003 Act 36, the legislature created three new subsections to the existing individual identity theft statute, including § 943.201(2)(b), which made it a crime to use an individual's identity "to avoid civil or criminal process or penalty." No similar provision was included in § 943.203, the statute at issue in this case that applies to entities.

Had the legislature envisioned the identity theft statute found in Wis. Stat. § 943.203(2) to apply in this type of circumstance, there would have been no need to enact the new statute regarding misrepresentations of military service. Similarly, the legislature would have added language to § 943.203 to include an act meant to effect the outcome of a criminal court proceeding when it added similar language in the statute's counterpart applying to individuals had that been its purpose. Therefore, the legislature did not intend for § 943.203 to apply in this case, and there is no factual basis sustaining Mr. Stewart's convictions for counts ten and twelve.

[3] Section 943.201, Wis. Stat., relates to the use of an individual's identity rather than that of an entity.

Because failure to establish a factual basis showing that the conduct to which Mr. Stewart freely admitted constitutes a violation of § 943.203, a manifest injustice has occurred, and plea withdrawal is warranted. ***Thomas***, 232 Wis. 2d at ¶ 17; ***Harrington***, 181 Wis. 2d at 989.

II. The Court Erred in Entering Restitution Orders in 14CF3197 and 14CF5128, as Payment Toward the Existing Child Support Obligations Must Be Made Under Wis. Stat. § 948.22(7)(b).

At sentencing, the court ordered Mr. Stewart to pay child support arrearages of $8583.26 in Case Number 14CF3197 and $28,459.89 in Case Number 14CF5128 and this order appears as restitution[4] on the judgments of conviction in each case. (14CF3197, 25; 14CF5128, 23)This type of child support arrearage obligation, however, should

[4] Mr. Stewart does not challenge the court's ability to order that he pay child support as a condition of his extended supervision, but only that the support cannot be collected as "restitution," which subjects him to additional restitution surcharges and fees.

At the sentencing hearing, the State explained to the court that the parties stipulated to the amount of arrearages in the associated child support matters and asked the court to issue an order as part of the disposition of the criminal cases. The State, however, incorrectly described the agreement as "stipulating pursuant to the plea agreement to *restitution*." (14CF3197, 55:8). The court accepted the State's stipulation at that time, not specifically referring to the order as "restitution." Subsequently, in ordering conditions of extended supervision, the court mistakenly referred to Mr. Stewart's child support obligation as "restitution," ordering that he pay at least $200 a month toward his child support debts while he remains on supervision. (14CF3197, 52).

have been ordered under Wis. Stat. § 948.22(7)(b), which provides:

> In addition to or instead of imposing a penalty authorized for a Class I felony or a Class A misdemeanor, whichever is appropriate, the court shall:
>
> 1. If a court order requiring the defendant to pay child, grandchild, or spousal support exists, order the defendant to pay the amount required, including any amount necessary to meet a past legal obligation for support.

Wis. Stat. § 948.22(7)(b).

By its plain language, sub. (b) requires courts to order defendants who have been convicted of failure to pay court-ordered child support to pay "any amount necessary to meet a past due legal obligation for support." The "shall order" language in the statute means courts lack discretion not to order a defendant to pay child support arrears under this statute when the statute is satisfied. *See* ***Karow v. Milw. Cnty. Civil Serv. Comm'n***, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978) ("The general rule is that the word 'shall' is presumed mandatory when it appears in a statute.").

By contrast, the restitution statute, Wis. Stat. § 973.20, contains no provision that authorizes a court to order restitution for child support arrears. Section 973.20(5)(a) allows for restitution for "special damages, but not general damages, . . .which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing."[5] However,

[5] "General damages," for purposes of the restitution statute are those that compensate the victim for damages such as pain and suffering, (continued)

child support arrears are not special damages that can be recovered in a civil action, but is rather a financial obligation owed pursuant to a family court order.

The error in ordering payment of the arrearage as "restitution" results in the imposition of a 10 percent restitution surcharge under Wis. Stat. § 973.06(1)(g), as well as an additional 5 percent restitution surcharge under § 973.20(11)(a), which is not permitted by statute. Mr. Stewart asks this court to remand this matter to the circuit court[6] on this issue to convert the restitution orders into orders for payment of past due child support under § 948.22(7), and vacate the restitution surcharges.

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anguish, or humiliation, damages crime victims often experience. ***State v. Holmgren***, 229 Wis. 2d 358, 365, 599 N.W.2d 876 (Ct. App. 1999). In contrast, "special damages" encompass harm of a more material or pecuniary nature and represent the victim's actual pecuniary losses. ***Id.***

[6] As noted in the Issues and Facts sections of this brief, the circuit court did not address this argument in its decision. The circuit court wrote that it was denying Mr. Stewart's argument in its totality and specifically adopted the State's argument to support its decision. The State's response brief, however, stipulated to the conversion of Mr. Stewart's restitution order to a court order in accordance with Wis. Stat. § 948.22(7).

CONCLUSION

For the foregoing reasons, Mr. Stewart respectfully requests that this court reverse the judgment and order of the circuit court, order that his pleas be deemed withdrawn, and remand this matter to the circuit court for further proceedings consistent with this court's opinion. Regarding the issue of repayment of the child support obligation, Mr. Stewart asks this court to order that the court remand this matter to the circuit court for correction of the judgments of conviction.

Dated this 2nd day of November, 2017.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 4,289 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 on or after 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.

Dated this 2nd day of November, 2017.

Signed:

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CERTIFICATION AS TO APPENDIX

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 § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) 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 one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically 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 2nd day of November, 2017.

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