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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 1

Case No. 2018AP001293-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL W. MORSE,

Defendant-Appellant.

On Appeal from a Judgment of Conviction
in the Milwaukee County Circuit Court
the Honorable Joseph P. Wall Presiding

REPLY BRIEF OF
DEFENDANT-APPELLANT

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ARGUMENT

The state attempts to take what was obviously an error in judgment and certainly an ethical violation and ruin the 36 year career of an AV 5 of 5 preeminent rated attorney of excellence in professionalism by stretching so far as to contort the actions of Mr. Morse into criminal behavior. That is simply not what happened.

It boggles the mind to try to comprehend how it is perfectly legal to deposit the funds of an estate into the personal account of the named Personal Representative and yet at any moment when a payment from said account could reduce the total value of the account below the amount of estate funds deposited a crime is thereby committed – despite sufficient funds in other accounts of the Personal Representative and despite a Signature Bond provided by the Personal Representative to guarantee the funds of the estate.

A. The state's attempt to charge a Personal Representative with embezzlement is misguided.

Any response to the clear and pervasive practice by Personal Representatives of simply using a personal account to administer estates as condoned by the Wisconsin Registers in Probate is conspicuously absent. Talk about a trap for the unwary.

B. Doss is not applicable

Both this Court and the Supreme Court had serious misgivings about the Doss prosecution. In the end, the Supreme Court punted on whether any of the facts justified a criminal charge but ultimately, largely because it needed to defend the integrity of a court order, found Doss guilty but only because she failed to turn over the money when ordered to do so. Here we have the opposite situation. Mr. Morse was

cooperative and voluntarily withdrew as Personal Representative. He was unable to provide an accounting because his entire estate file, along with several other files were in his briefcase when his vehicle was stolen. No longer having authority to access the estate account records, Mr. Morse was prevented from recreating an accounting. The successor Personal Representative was able to do so. At no time did Mr. Morse suggest that he did not owe money to the estate. He lacked an accurate accounting of how much, and he lacked the access necessary to reconstruct one. Once the court endorsed the accounting provided by the successor Personal Representative, it is undisputed that Mr. Morse promptly restored the funds. People with either the malicious intent or callous disregard for the rules do not own up to their mistakes, stipulate to misconduct, or show remorse. Mr. Morse did all three. In addition, Mr. Morse paid the estate for the cost incurred by the successor Personal Representative to reconstruct the accounting.

C. The Circuit Court made it clear that Appeal was possible, even anticipated

The state must have reviewed a different transcript of the hearing on the sentencing as Judge Wall went out of his way to make it abundantly clear and set the table with an obvious desire to provide a record for appeal. The state attempts to assert that because Judge Wall didn't state that Mr. Morse had *not* waived any challenges that it must be so.

D. The gun held to the head yet again

We all know that Mr. Morse accepted the plea agreement to get rid of the felonies and avoid a costly trial. Now, despite U.S. law which makes it clear that a plea

agreement does not prevent appeal when entered into for the benefit of a bargain, the state is again using the agreement to deny the right to appeal and to avoid addressing the underlying issue.

E. The Elements of the statute

In the initial brief of Mr. Morse, the argument presented that none of the elements of the crime were met. Whether there are properly four or five elements, there is most certainly one of them that was absolutely not met. Mr. Morse at no time knew that the use of the money was without the owner's consent and contrary to the defendant's authority.

F. The Signature Bond

It is rather unusual for the Personal Representative to volunteer to become personally liable for the assets of the estate. The common practice is to purchase a bond. Mr. Morse, in an effort to save the funds of this small estate, submitted his personal financial statement and requested to be permitted to provide a Signature Bond. Oddly, the state doesn't even address this. Possibly because of the irony that Mr. Morse was actually convicted of effectively stealing from himself.

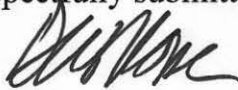
CONCLUSION

Mr. Morse has fully completed his sentence. At the recommendation of the probation officer, Judge Wall reduced the probation from one year to six months. All community service, fines and fees have already been paid. Mr. Morse breached the ethics rules for attorneys, and arguably may have violated the duties of a fiduciary. But none of that makes such

actions criminal. This Court should remand to the circuit court with instructions to vacate Mr. Morse's convictions and dismiss with prejudice.

Dated this 10th day of December 2018.

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 768 words.

Dated this 10th day of December 2018.

Signed:



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**CERTIFICATE OF COMPLIANCE
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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 10th day of December 2018.

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