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C O U R T O F A P P E A L S **CLERK OF COURT OF APPEALS
OF WISCONSIN**

DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

Appeal No. 18AP001461

v.

NOAH YANG,

Sheboygan County Case
No. 17CF373

Defendant-Appellant.

ON NOTICE OF APPEAL FROM A JUDGMENT OF CONVICTION
AND DENIAL OF MOTION FOR POST-CONVICTION RELIEF ORDERED
AND ENTERED IN SHEBOYGAN COUNTY CIRCUIT COURT
BRANCH III, THE HONORABLE ANGELA W SUTKIEWICZ PRESIDING

DEFENDANT-APPELLANT'S REPLY BRIEF

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INTRODUCTION

The defendant-appellant, Noah Yang (hereinafter, "Yang"), relies on all the authority and reasoning set forth in his original brief-in-chief and incorporates that submission into this reply brief. In addition, he submits the following responses to the arguments in the brief of the State (hereinafter "the State").

ARGUMENT

I. THE STATE'S ARGUMENT THAT THE DEFENDANT COULD HAVE COMMITTED THE OFFENSE WITHOUT DIRECTLY DOING SO HIMSELF IS MISPLACED.

The Respondent's argument against plea withdrawal in this matter is almost entirely focused on the facts as set forth in the sentencing transcript (92:1-15, App. 155-69). The Respondent believes the factual basis for the plea is fully established in the sentencing transcript (Respondent's brief: 7-8). To reiterate the initial argument made by Yang, the factual basis for the plea needs to be contained within the record prior to the plea, whether the facts in a sentencing hearing can perhaps connect the dots is irrelevant to this inquiry.

Under Wis. Stat. § 971.08(1)(b), a sufficient factual basis for a plea is always required, and any plea lacking such a requirement is subject to a thorough review of the record. A sufficient factual basis for a guilty plea requires a showing that "the conduct which the defendant admits constitutes the offense charged." State v. Tourville, 367 Wis. 2d 285, 305 (2016) (quoting State v. Lackershire, 301 Wis. 2d 418 (2007)). The remedy

for a failure to establish a sufficient factual basis is plea withdrawal. Id.

Furthermore, nowhere in Appellant's brief is the argument the Respondent is so focused on refuting; that the defendant could not have committed the offense if he did not do so directly. Yang acknowledges that another person acting on his direction could commit the offense for the both of them; however, Yang argues the facts contained within the record simply cannot support a plea to intimidation of a witness. The theory of the State's case was not overlooked---but Yang has instead chosen to focus on the argument that the dots for the State's theory were not connected within the record in order to support a plea.

This isn't a situation where Yang is testing "poorridge" from fairy tales, but rather a situation where a plea was entered into without a factual basis, and where Yang did not know at the time of his plea that the factual basis was lacking, and that a lack of factual basis could render his plea invalid and unconstitutional. Following the resolution of this case, there still leaves a substantial question as to whether the facts that

formed the basis for the plea actually constituted the offense charged. Yang would not have entered his plea had he known that his conduct did not actually meet the elements of the offense he ultimately pled to.

CONCLUSION

There was not a sufficient factual basis for Yang's plea with respect to the amended charge of intimidation of a witness contained within the court record. The defense believes both elements for plea withdrawal on this basis have been met. The defense believes the acceptance of this plea has resulted in a manifest injustice. Accordingly, the plea should be withdrawn and the case should be remanded to the circuit court for the scheduling of further proceedings.

Dated this _____ day of October, 2018.

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CERTIFICATION

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. Stat. § 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 or 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 October, 2018.

Britteny M. LaFond

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I hereby certify that this reply brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with mono spaced font. This brief has seven (7) pages.

Dated this _____ day of October, 2018.

Britteny M. LaFond

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this _____ day of October, 2018.

Brittany M. LaFond