STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Appeal No. 2019AP000224-CR
Appeal No. 2019AP000225-CR
Appeal No. 2019AP000226-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES A. JONES,

Defendant-Appellant.

On Appeal from the Judgment of Conviction and Order Partially Granting and Denying Postconviction Motion Entered in Outagamie County Circuit Court, the Honorable, Mark J. McGinnis Presiding

Circuit Court Case No. 2016CF000687
Circuit Court Case No. 2016CF000736
Circuit Court Case No. 2017CF000852

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

I. Does §969.03(5) mandate that any bail money posted shall be returned, if the complaint against the defendant is dismissed, but also read-in?

The trial court answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Mr. Jones does requests publication of the opinion in this case. A published opinion in this case would help clarify the law regarding the use of bail money posted on a dismissed but read-in complaint. It also appears that this issue, is an issue of first impression.

However, the evidence is documentary in nature, and there is no dispute about what evidence was submitted, the issue presented is a question of law which is reviewed *de novo* by this court, and therefore, oral argument is not necessary nor requested.

STATEMENT OF THE CASE AND FACTS

On January 27, 2016, the Defendant-Appellant, James A. Jones,(hereinafter, Jones) was charged in Outagamie County case number 2016-CF-52 in a complaint in Count I of

Possession of Burglarious Tools, pursuant to §943.12 as a repeater and in Count II of Misdemeanor Receiving Stolen Property, pursuant to §943.34(1), as a repeater. [32:2][1]

The Complaint in 16-CF-52 alleged that on January 26, 2016, Jones was found in a suspicious vehicle with a woman, Maria C. The police observed Jones in possession of a crow bar, a medium sized screwdriver, bolt cutters, a hammer, and numerous license plates, along with two empty radio scanner boxes apparently recently stolen from Radio Shack and other suspicious merchandise. This resulted in charges for Possession of Burglarious tools and Concealing Stolen Property. [32:4] This case will be referred to as the Burglary Tools case.

On January 27, 2016, at an Initial Appearance, cash bond was set at $2,500. This bond was posted on June 7, 2016 by Anna Alt [43:1-6; App.119-124]

On August 10, 2016, Jones was charged in Outagamie County case number 2016-CM-761 in a complaint with a single count of Misdemeanor Retail Theft pursuant to §943.50(1m)(b) as a repeater. [32:2] The Complaint in 16-CM-761 alleged that on January 22, 2016, Jones entered a Radio Shack store, and then shoplifted two empty radio scanner boxes and a

[1]In an effort to make the citations to the record more clear, since many of the entries are from joint hearings, all citations will be to 16-CF-687, unless otherwise noted.

multi-meter valued at $44.99. When Jones was arrested on the Burglary Tools case on January 26, 2016, the same empty radio scanner boxes were found in the car. [32:3-4] This misdemeanor retail theft case will be referred to as the Radio Shack case.

On August 10, 2016, Jones was also charged in Outagamie County case number 2016-CF-687 in a complaint with a single count of Felony Retail Theft pursuant to §943.50(1m)(b) as a repeater. [2:1-4] The Complaint in this case alleged that on January 22, 2016, Jones entered a sporting goods store with his cohort, Anderson. Jones is alleged to have taken four game cameras worth almost $2,000, while Anderson engaged the clerk and distracted them. This case will be referred to as the Game Camera case. Id.

Finally, on August 25, 2016, Jones was charged for a fourth time in Outagamie County case number 2016-CF-736 in a complaint with a single count of Burglary of a Building or Dwelling, pursuant to §943.10(1m)(a) as a repeater, and as a Party to a Crime. [2:1-6; 16CF736] The Complaint in 16-CF-736 alleged that on January 12, 2016, Jones, along with two cohorts, Thor and Baumgartner, was alleged to have burglarized a Laundry that had gaming machines. They were alleged to have broken into the building, and then broken the fronts of several gaming machines and stolen the money

inside them. Id. This case will be referred to as the Laundry case.

An Initial Appearance on the last three cases was held on August 30, 2016. Bond was set at $200 for 16-CM-761, and at $500 for the 16-CF-687 case, and at another $500 for the 16-CF-736 case. [53:5-7]

On September 27, 2016, the total bond of $1,200, that is $200 on 16-CM-761 and $500 each on 16-CF-687 and 16-CF-736, was posted by a friend of Jones, Mr. Vincent Udo. [4:1-6; App.131-136 16CF736] Page 5 of that record citation (App.135) shows that even though the $1,200 was paid in one sum, it was designated to each separate case. (See record citations for the Bail/Bond form in 16-CM-761 [45:1-6; App.12-130] and for the Bail/Bond form in 16-CF-687 [6:1-6])

The four cases proceeded for more than a year, mostly with joint hearings. On October 5, 2017, a plea bargain was reached, and Jones entered pleas. In 16-CF-687, the Game Camera case, he plead as charged to Felony Retail Theft, but without the repeater. In 16-CF-736, the Laundry case, the single charge of Burglary as a repeater was amended to three charges, Possession of Burglarious Tools, Felony Theft, and Misdemeanor Criminal Damage to Property, without any repeaters. In addition, 16-CF-52 and 16-CM-761 were dismissed and read-in. [64:2-5] In addition, new charges

were discussed, and part of the plea bargain was for Jones to plea and the DA would recommend a concurrent sentence on the new case. Id.

That new case was filed as Outagamie County case number 17-CF-852 on October 17, 2017, with a single felony count complaint for Operating a Motor Vehicle without Owner's Consent, pursuant to §943.23(3). [2:1-3; 17CF852] A signature bond was ordered at the Initial Appearance on October 17, 2017. [4:1; and 30:1-9 17CF852] The Complaint in this case alleged that on December 15, 2016, Jones stole a pickup truck that the owner had left running but unattended to let it warm up. Two days later, it was crashed into a ditch. After Jones ran off, the passenger, Michelle, was found by the police and informed them that Jones had stolen the vehicle. This case will be referred to as the OMVOC case. [2:1-3 17CF852]

The cases proceeded to a combined sentencing on January 5, 2018. First, Jones entered pleas to the single count in 17-CF-852. [65:2-9] The three cases still remaining, 16-CF-687, 16-CF-736, and 17-CF-852, then proceeded to sentencing.

The court first inquired if there was any objection to the $1,200 restitution claim in 17-CF-852, the OMVOC case, and there was no objection. With the surcharge, the total was $1,320. [65:11] After the parties argued their

positions, the court sentenced Jones to 18 months IC plus 18 months ES on the single count of felony retail theft in 16-CF-687, the Game Camera case. [36:1-2; App.101-102] Jones also received 18 months IC plus 24 months ES on count I of 16-CF-736, the Laundry case, and imposed costs only on counts II and III. [34:1-2 16CF736; App.103-104] Finally, Jones was sentenced to 18 months IC plus 18 months ES on the single count in 17-CF-852, the OMVOC case. [14:1-2 17CF852; App.105-106] All sentences were consecutive to each other and to any other sentence. [65:34-35]

At the end of the hearing, the court also addressed the restitution request in the Game Camera case totaling $2,199.96, and that was impliedly agreed to by the defense. [65:36] The court did not specify on the record that the bail money was to be used towards restitution, but it did require that Jones "pay court costs and supervision fees in a timely manner, and that you pay the restitution as requested." Id. There was no restitution claimed, nor ordered, in the two cases dismissed and read-in, i.e., the Burglary Tools case and the Radio Shack case.

Jones timely filed a Notice of Intent to Seek Post-Conviction Relief. [37:1] A Post-Conviction Motion was filed challenging the application of the bail money posted on the two dismissed and read-in cases, 16-CF-52 (Burglary

Tools) and 16-CM-761 (Radio Shack) to the restitution for the separate and distinct cases of 16-CF-687 (Game Camera) and 17-CF-852 (OMVOC). [39:1-6]

A hearing was held on the post-conviction motion on January 3, 2019. [66:1-49] The trial court denied the motion regarding the application of the bail money in a written order dated January 10, 2019. [50:1] The Trial Court ruled that:

> I think that that gets answered, which leads us then to what I said originally. When I come back to 969.03(5), that statute is not clear on its face as to what happens in this case. I haven't studied the legislative history. I have taken a look at the cases that you have cited, Mr. Donarski, including the Powell unpublished decision, which I don't think has any weight and I am not giving it any way.
>
> But I think given everything that's been said and everything that's been argued that it is appropriate and lawful and within the statute to allow restitution to be paid from a case where Mr. Jones had it dismissed and read in and that that case was part of a package deal that involved cases that led to convictions with restitution amounts due and owing.
>
> That's exactly what happened in this case. It happened on January 5, 2018; and I think that that fits within the statute, namely, because it doesn't violate it. Cases were not dismissed. Mr. Jones was not acquitted of them. They were handled together in a joint effort and they were – It was appropriate to consider all of those cases and all parts of those cases at the time of sentencing.
>
> [65:46-47; App.117-118]

The trial court did partially grant relief by ordering

the restitution owed in 16-CF-687, the Game Camera case, to be joint and several with the co-defendant, Anderson. That issues is not on appeal.

This appeal followed with a timely Notice of Appeal, filed on January 23, 2019. By order of this court, dated 3/7/2019, the several appeals at issue were consolidated for the purpose of briefing and Decision.

Further reference to the record and facts will be provided as needed in the argument.

ARGUMENT

I. Because Wis. Stat. §969.03(5)Requires That Any Bail Money Posted Be Returned When a Complaint Is Dismissed, the Trial Court Erred When it Ordered the Bail Money from Two Cases That Were Dismissed but Read-in to Be Applied to Restitution and Costs in Distinct and Unrelated Cases.

The trial court ruled at the post-conviction motion hearing that it was satisfied that because the charges in 16-CF-52 (Possession Burglary Tools case) and 16-CM-761 (Radio Shack case) were not acquitted and not dismissed outright, but were dismissed and read-in, that the statutory language in §969.03(5) allowed the bond money posted in those two cases to be used for distinct and unrelated cases.

A. Standard of Review

Jones' argument is essentially that the plain language of the statutes controls the disposition of bond monies.

Therefore, this is a case of statutory construction. This court revues statutory construction *de novo*. State v. Cole, 2000 WI App 52, ¶3, 233 Wis.2d 577, 608 N.W.2d 432.

In State v. Braunschweig, 2018 WI 113, ¶¶ 12-14, __ Wis.2d ___, ___ N.W.2d ____, the Wisconsin Supreme Court reiterated that the first place to look is the language of the Statute. It stated:

> ¶12 We begin our analysis with a review of the language of the statutes. State ex rel. Kalal v. Circuit Court for Dane Cty., 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. "[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." Id., ¶44. If the meaning of the statute is plain, we ordinarily stop the inquiry and give the language its "common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." Id., ¶45.
>
> ¶13 Context and structure of a statute are important to the meaning of the statute. Id., ¶46. "Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." Id. Moreover, the "[s]tatutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage." Id. "A statute's purpose or scope may be readily apparent from its plain language or its relationship to surrounding or closely-related statutes—that is, from its context or the structure of the statute as a coherent whole." Id., ¶49.
>
> ¶14 "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to

> this ascertainment of its meaning." Id., ¶46. If statutory language is unambiguous, we do not need to consult extrinsic sources of interpretation. Id. "Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity." Id., ¶47.

Jones argues that the plain language of §969.03(5) clearly mandates that since the case at issue was dismissed, and there was no judgment of conviction entered, the entire sum deposited shall be returned. Jones argues that a dismissed and read-in case is still dismissed. The essence of the argument is whether the phrase in §969.03(5) that "If the complaint against the defendant has been dismissed ... the entire sum shall be returned" also applies when the complaint against the defendant has been dismissed but read-in. Jones argues that, at least for the purpose of §969.03(5), that there is no difference between "dismissed and read-in" and "dismissed", since the bottom line is that the case was still dismissed.

B. For the Purpose of §969.03(5) a Dismissed and Read-In Complaint is Still a Dismissal.

In the two dismissed and read-in cases, 16-CF-52 (Burglary Tools case) and 16-CM-761 (Radio Shack case), monies were posted for bail. However, the complaints in those cases were dismissed and there was no judgment of conviction in those cases. However, the court applied those monies to restitution in two other distinct and unrelated

cases. The only connection between those cases, besides Jones being the defendant, was that they were handled at the same time for the convenience of the court.

First, it is absolutely clear in the case law and the statutes, that there is no admission of guilt by the defendant when a charge is dismissed and read-in. In the concurrence in State v. Sulla, 2016 WI 46, ¶¶54-68, 369 Wis.2d 225, 880 N.W.2d 659, Justice Ann Walsh Bradley goes through the history of the concept of read-in offenses. This history starts with English Common Law and discusses how over time in Wisconsin there were cases that assumed that there was an admission by the defendant for read-ins. Id., at ¶¶58-61. However, the legislative history of §973.20(1g)(b) makes clear that there is no admission by the defendant. Id., at ¶¶62-64. The original draft of this statute contained the language "'Read-in crime' means any crime that is uncharged that the defendant admits to having committed..." Id., at ¶62. However, the Department of Justice objected to that definition, and proposed the language that was eventually adopted. Id., at ¶63, n.2.

Wis. Stat., §973.20(1g)(b) reads:

> "Read-in Crime" means any crime that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of

> sentencing the defendant for the crime
> for which the defendant was convicted.

The plain language of this statute shows that the crime is dismissed. It doesn't say it has any special status of dismissed. It is simply dismissed. Therefore, since the entire complaint in those two cases was dismissed, §969.03(5) requires that the bail monies shall be returned.

The difference between a crime that was "dismissed" and a crime that was "dismissed and read-in" was further discussed in the case of State v. Frey, 2012 WI 99, 343 Wis.2d 358, 817 N.W.2d 436. This case dealt with the issue of whether the sentencing court could consider charges that were dismissed outright when determining an appropriate sentence. As noted above, §973.20(1g)(b) makes it clear that the court can consider dismissed and read-in charges at sentencing. Frey argued that meant the court could not consider charges that were dismissed outright. The Frey court ruled that "For purposes of sentencing, this opinion makes no distinction between charges that are 'dismissed' and charges that are 'dismissed outright.' For sentencing they are exactly the same." Id., at ¶41.

The Frey case makes clear that a charge that is dismissed and read-in is still dismissed. The only two characteristics of a charge that is dismissed and read-in from a charge that is dismissed outright is that for a read-

in the defendant can not be prosecuted in the future, but is subject to owe restitution, if any is owed on the read-in charge, whereas charges dismissed outright are not subject to restitution, but might be prosecuted in the future. Id., at ¶43. The Frey court makes this even more clear later in the opinion. "The promise by the prosecutor not to prosecute the read-in charges in the future is an essential component to a read-in." Id., at ¶72. The second component of the read-in charge is then listed. "In exchange for this benefit, the defendant exposes himself to ... the additional possibility of restitution for the offenses that are 'read-in'. Wisconsin Stat. §973.20 requires that the sentencing judge order partial or full restitution for the crime for which a defendant was convicted *and for any read-in crime*." Id., at ¶73 (emphasis in original).

§973.20 makes it clear that a defendant is subject to a restitution order for any restitution owed for the read-in charge. §969.03(4) makes it clear that the bail money deposited in any case that results in a judgment of conviction is applied to restitution for the case resulting in the judgment of conviction and for any restitution owed on any read-in cases.

There is no dispute that bail money can be applied from a case that resulted in a conviction to be paid on

restitution owed on a dismissed and read-in case. But, the statute does not authorize it to work in the other direction. §939.03(4) requires as a prerequisite to using the bail money that "a judgment of conviction is entered in a prosecution in which a deposit has been made..." In Jones case, there was no judgement of conviction in the Burglary Tools case nor in the Radio Shack case, because they were both dismissed, so the bail money deposited in those two cases can not be used to pay restitution in any other cases.

The trial court discussed the issue of whether there was one "prosecution" of Jones or five or six prosecutions of Jones at the postconviction motion hearing. [66:15; 28-31] Jones argues that each case is a separate "prosecution" because each case stands on its own. It makes no difference that they are handled together for the convenience of the court or the parties. Each case has its own separate Complaint, and its own separate case number, and for felonies, its own separate Information. Each case gives the defendant its own separate procedural rights, including separate rights to substitute on the judge, and the setting of bond on each separate case. If all of the cases were just one single "prosecution", when bond was set on a new case, the court would not set it separately, but would just add to the bond originally imposed.

The separate prosecution of each case is also shown when a defendant enters a plea on each case and charge separately. But, the defendant also has the right to plead guilty to one case, while pleading not guilty on the other cases, which then remain on the trial track.

The separate prosecution of each felony case gives the defendant the right to have a preliminary hearing where probable cause must be established for each separate case. If all the cases against a defendant pending at the same time were handled as just one "prosecution", then the finding of probable cause that a felony had been committed in one case would allow all of the pending cases to be bound over for trial, like they can be for multiple related felonies in a single case. But that is not allowed if they are charged as separate cases.

Each case pending against a defendant at the same time must be its own prosecution, or else there would be no need to ever make a motion for joinder under §971.12. Each separate case would have its own separate trial, unless they were properly joined under the statute. Each separate case has its own witness lists, its own separate jury instructions, its own separate pre-trial motions and rulings, its own separate evidentiary issues. Finally, each separate case has its own verdict, and its own separate

sentence and its own separate calculation of sentence credit. If the five or six cases considered at sentencing for Jones were just one "prosecution", the court could issue just one global sentence and have just one judgment of conviction. Of course, the trial court entered a separate sentence for each charge, and a separate judgment of conviction for each case, clearly showing these were not just one "prosecution".

Jones argues that the language in §969.03(4) referring to "a prosecution" clearly does and must mean a separate prosecution for each separate and distinct case pending against him. And, therefore, since the separate prosecution for which a deposit was made, namely the Burglary Tools case (16CF687) and the Radio Shack case (16CM761) were dismissed, the money deposited must be returned to the person who deposited it pursuant to subsection (5).

Finally, there appears to be no definitive definition of the term "prosecution". Counsel could find no case law or statute that clearly defined the term in the context of the issue of bail money or of restitution. Jones argues that reading the restitution statute, §973.20 in harmony with the bail statute, §969.03(4), which refers back to §973.20, requires that the term "prosecution" refers separately to each case against a defendant.

The restitution statute says that restitution can be ordered for any crime considered at sentencing. The definition of "crime considered at sentencing" was clearly set forth in §973.20(1g)(a). To argue that the legislature would abandon that clear definition and simply use the term "prosecution" to mean the same thing as any "crime considered at sentencing" in this related statute tortures the language beyond reason.

In order to find that there is only one "prosecution" of Jones, you would have to conclude that the legislature used the undefined term "prosecution" interchangeably with the defined phrase any "crime considered at sentencing", in statutes that refer to each other. This would violate statutory construction rules and produce an absurd result. Rather, the term "prosecution" must mean something else than any "crime considered at sentencing" and the most reasonable interpretation of that word would be for it to mean each separate case being prosecuted against a defendant to its conclusion.

However, since the term "prosecution" does not appear to be defined in the statutes, one can look to other sources. Black's Law Dictionary (Sixth Edition, 1990) defines "Prosecution" to mean:

> A criminal action; a proceeding instituted and carried on by due course

> of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with a crime. U.S. v. Reisinger, 128 U.S. 398, 9 S.Ct. 99, 32 L.Ed. 480. The continuous following up, through instrumentalities created by law, of a person accused of a public offense with a steady and fixed purpose of reaching a judicial determination of the guilt or innocence of the accused.

This definition refers to "A criminal action". This implies a single action, otherwise, it would have been defined as "Any and all criminal actions against a person." It uses terms in the singular, rather than the plural. It therefore does not refer to any and all criminal actions pending against a person at the same time.

C. The Two Cases That Were Dismissed and Read-in Were Separate and Distinct from the Other Cases.

The Burglary Tools case (16-CF-52) and the Radio Shack case (16-CM-761) were probably related to each other, but not to any other cases. In the Radio Shack case, Jones was alleged to have shoplifted items from Radio Shack, and some of those items were apparently found when he was arrested with the Burglarious Tools when he was found in the car with a woman, Maria C. However, he was alleged to have committed the shoplifting alone.

For the Game Camera case (16-CF-687), he was also shoplifting, but that was with an accomplice, Anderson. For the Laundry case (16-CF-736), there was no shoplifting at

all, but a burglary, with two different accomplices, including acts that could be considered theft and criminal damage to property. Finally, for the OMVOC case (17-CF-852), Jones stole a vehicle, completely different from shoplifting or burglary. He was also with a different woman, Michelle S.

The OMVOC case did not appear to be an attempt to get money, but rather merely a crime of convenience, with no forethought. The pickup truck was left unattended with the motor running. There is no way to plan such a crime, whereas the other crimes show planning. While the other crimes appear to have a monetary motive, they were all carried out in a different method, and with different accomplices.

There were different stores and victims in each case, there were different accomplices in each case, and there was a different *modus operandi* in each case. Also, while the first four cases occurred in a relatively short time frame, from January 12, 2016 to January 26, 2016, the last one, the OMVOC case, happened almost a year later, on December 15, 2016.

Finally, the State never attempted to join any of these cases pursuant to §971.12, Stats., so we will never know how a trial court might have ruled on such an issue. But, the

only two that appear to meet the statutory requirements would be the two dismissed and read-in cases, the Radio Shack case and the Burglary Tools case, where no restitution was owed on either case. The rest have different co-defendants, occurred on different dates, with different victims, and have different modes of commission.

These five cases were handled together for the convenience of the court, and not by any request by the defense. They were resolved by a joint plea agreement purely for convenience, and not by any statutory requirement. The cases were never combined or joined in any formal way, but simply followed along with the first one filed by local rule, which requires all new cases against a defendant to be assigned to the same judge presiding over a pending case. (A copy of the Local Rule has been included in the Appendix at page 137.) Since 16-CF-52 was the first case, and was assigned to Judge McGinnis, all of the rest of the cases, when filed, were also assigned to that same Branch.

Any argument that these cases being handled together somehow negates the clear statutory language of §969.03(5) is misplaced. All three of the cases with convictions were separate and distinct from the two cases that were dismissed and read-in. Therefore, the three cases with convictions and restitution owed were insufficiently related to the two

cases that were dismissed and read-in for the bail monies posted on those two cases to be applied to the restitution in the three cases with convictions.

Therefore, because there was a separate prosecution of Jones for each of the cases considered at sentencing; And because the entire complaints in the Burglary Tools case (16-CF-52) and the Radio Shack case (16-CM-761) were dismissed and read-in; And because there is no distinction for the circuit court in sentencing between a complaint that is dismissed and one that is dismissed and read-in; Therefore, the clear statutory language in §969.03(5) requires that the bail monies deposited must be returned to the persons who deposited them, and can not be applied to restitution in distinct and separate cases.

CONCLUSION

For all of the reasons stated above, the defendant, James A. Jones, hereby requests that this court reverse the circuit court's order and remand these cases with directions that the $2,500.00 deposited on Jones' bond in case 16-CF-52, and the $200.00 deposited on Jones' bond in case 16-CM-761 be returned to the persons who made the deposit.

Dated this 12th day of April, 2019.

By:_____
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CERTIFICATION ON FORMAT

I hereby that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a Brief produced using the following font:

Mono spaced font: **Courier New** at 12 point font, which is 10 characters per inch; double spaced; 1.5 inch margins on left side and 1.0 inch margins on other 3 sides.

The length of the brief is 22 pages.

Dated this 12th day of April, 2019.

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CERTIFICATION OF MAILING

I, William J. Donarski, hereby certify that pursuant to §809.80(3), Stats., that I deposited in the United States mail for delivery to the Clerk, by first class mail, postage prepaid the **Brief and Appendix of Defendant-Appellant**, addressed to:

Clerk of the Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

I have enclosed ten (10) copies of this document to the Court of Appeals. I have also served by U.S. mail three (3) copies of the said document upon the Wisconsin Attorney General at the following address:

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

I certify that the packages containing the said documents postage prepaid were deposited in the U.S. postal receptacle on this 12th day of April, 2019.

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CERTIFICATION OF 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 s. 809.19 (2) (a) and that contains:

(1) a table of contents;
(2) the findings or opinion of the trial court;
(3) A copy of any unpublished opinion cited under Wis. State. §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 trial courts 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.

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Dated this **12th** day of **April**, **2019.**

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CERTIFICATION OF ELECTRONIC FILING

I hereby certify that I have submitted an electronic copy of this BRIEF OF APPELLANT-DEFENDANT, 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 12th day of April, 2016.

By:_____
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APPENDIX OF DEFENDANT-APPELLANT

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