

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

State of Wisconsin,

Plaintiff-Respondent,

v.

Appeal No. 2019AP592 - CR
Lower Court Case No.
2017CF000727

Lance L. Black,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT FOR MILWAUKEE COUNTY,
THE HON. JANET C. PROTASIEWICZ, PRESIDING

Reply Brief of the Defendant-Appellant

Submitted by:

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Argument in Reply

The State does not, and cannot, deny three important facts in this case. First, that the circuit court prior to holding a competency hearing stated on the record that it “certainly” was not going to allow Mr. Black's actions to “result in a mistrial.” (99:6; A.Ap. 1) Second, that the doctor who conducted a competency evaluation of Mr. Black testified unequivocally that at that time he was incompetent to proceed. (99:70; A.Ap. 4) Third, that the State introduced no evidence of Mr. Black's competency. (100:2; A.Ap. 11)

A. Competency is a legal determination. Black agrees with that proposition. Nevertheless: “Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning.” *State v. Taylor*, 2006 WI 22, ¶17, 289 Wis.2d 34,710 N.W.2d 466. When a decision is made without real reasoning that is an erroneous exercise of discretion.

B. 1. The trial court prejudged Mr. Black's competency and therefore did not exercise its discretion. The State contends that Black has no authority for his claim this court may overturn the trial court's competency decision. That proposition, however, depends on a “valid factual finding.” (State's Brief at 7). Black contends the trial court's findings were not valid, because it had prejudged him competent. Read in any context, the trial court expressed a view that it would “certainly” not find a

basis in Mr. Black's behavior to declare a mistrial. That the trial court later stated it was "a little bit torn" on the issue of competency does not negate the fact the trial court had already stated that "certainly" there would be no mistrial.

B. 2. The trial court is in the best position to determine competency. However, that determination must be based on the defendant's **present** state of mind. *State v Garfoot*, 207 Wis. 2d 214, 224, 558 N.W.2d 626 (1997). Likewise, the state bears the burden of proving by the greater weight of the credible evidence that the defendant is competent. *Id.* at 221-22.

In this section of argument, the State relies heavily on Mr. Black's state of mind in his first trial. (State's Brief at 9). That is irrelevant to his "present" state of mind in the second trial. The State then cherry-picks statements from Dr. Collins' testimony to show the trial court had a reasonable basis for its decision. Nevertheless, Dr. Collins' ultimate opinion was that Mr. Black was not presently competent to proceed. (99:70; A.Ap. 4).

B. 3. Nowhere in his brief-in-chief does Mr. Black argue the circuit court was required to follow Dr. Collins's opinion of incompetency. (State's Brief at 10). What Mr. Black argued was that the trial court prejudged his competency and that the only evidence adduced at the competency hearing was the testimony of

Dr. Collins. Testimony that was unequivocal in that Mr. Black was presently incompetent to proceed. (99:70; A.Ap. 4).

The State, bearing the burden of proving Black was presently competent, stated it had no evidence to provide on the issue. (100:2; A.Ap. 11). The arguments the State makes here, are snippets of Dr. Collins' testimony that do not go to her ultimate opinion. (State's Brief at 11). Note that where the State argues Dr. Collins "made several admissions," relating to a "lack of psychosis," "lack of objective evidence of mental illness" and "recognition that Black's outbursts were, in part, volitional" and that all this "undercut her ultimate medical opinion that Black was not competent to stand trial," that the State cites nothing in the record. (State's Brief at 11).

What Dr. Collins did say is that: "This is a highly atypical case in that there is not an objective evidence of a mental illness. What I believe we have is a case of a severely personality disordered individual whose paranoid-like perceptions and stressors of this trial are exceeding his capacity to adaptively apply to. He is not psychotic." (99:74; A.Ap. 8).

CONCLUSION

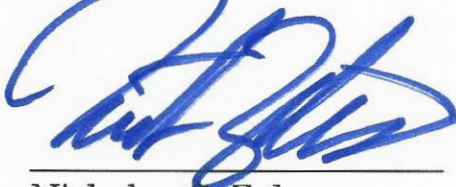
For the foregoing reasons, defendant-appellant Lance L. Black respectfully requests that this court reverse the competency findings and judgment of the

circuit court and remand the case for further proceedings.

Dated at Milwaukee, WI this 23rd day of September, 2019

Respectfully submitted,

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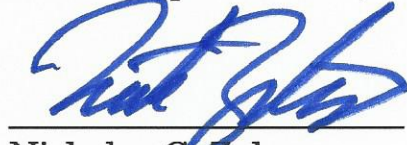
Attorney for the Defendant-Appellant

Lance L. Black

FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a reply brief using a proportional serif font. The length of this brief is 669 words.

Dated: September 23, 2019



Nicholas C. Zales

SBN 1019289

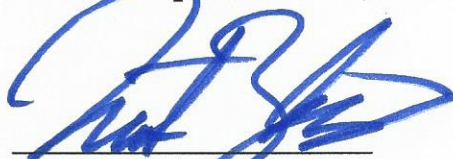
Attorney for the Defendant-Appellant

E-FILING CERTIFICATION

I hereby certify that I have submitted an electronic copy of the reply brief electronically, in this case that 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 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: September 23, 2019



Nicholas C. Zales

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