RECEIVED
01-16-2020
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
CASE NO. 2019AP000928

---

ST. CROIX COUNTY,

Plaintiff-Respondent,

vs.

KELLY M. LAGERSTROM,

Defendant-Appellant.

---

**ON APPEAL OF A JUDGMENT OF CONVICTION ENTERED IN THE ST. CROIX COUNTY CIRCUIT COURT, THE HON. MICHAEL R. WATERMAN PRESIDING**

---

# BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

---

BRIAN FINDLEY
State Bar No. 1023299

**NELSON DEFENSE GROUP**
811 First Street, Ste. 101
Hudson, WI 54016
(715) 386-2694
brian@nelsondefensegroup.com

Attorney for Defendant-Appellant

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**PAGES**

**Cases**



**Statutes**



**Other Authorities**

## ISSUE PRESENTED

1. Where it is uncertain when the defendant last drank, how much he drank, when he last drove his vehicle, or whether he was intoxicated and when he last drove his vehicle, did a State Lab technician lack "sufficient facts or data" to reliably present retrograde extrapolation alcohol evidence?

   The trial court granted the State's request to admit such evidence over the defendant's objection.

## STATEMENT ON ORAL ARGUMENT/PUBLICATION

Mr. Lagerstrom does not request oral argument, and this is not a three-judge case where publication is indicated.

## STATEMENT OF FACTS

The State charged Mr. Lagerstrom with driving with a prohibited blood alcohol content, a violation of Wis. Stat. § 346.63(1)(b), and operating while intoxicated, a violation of Wis. Stat. § 346.63(1)(a), following a 911 call placed when Mr. Lagerstrom's vehicle was found in a snowy ditch in the early morning of February 18, 2018. It is undisputed that the blood draw which occurred at 8 a.m. was well outside of the 3-hour window for admissibility of blood tests conducted pursuant to Wis. Stat. § 885.235(3), given the fact that the vehicle was first spotted empty at around 3:30 a.m. and the State itself argued that Mr. Lagerstrom drove his vehicle between 2:30 and 3:30 a.m. Mr. Lagerstrom testified he did not know when he last drove his vehicle. Despite the blood draw occurring well outside of the statutory time limit for admissibility, the Court allowed retrograde extrapolation testimony over defense objection. The jury convicted of operating a vehicle with a prohibited blood alcohol content but acquitted of a count of operating while intoxicated. The relevant facts are as follows.

At 5:26 a.m. on February 18, 2018, Officer Nick Krueger, a St. Croix County Sheriff's Officer, was called to the scene where Mr. Lagerstrom's vehicle was reported to be off the road in a snowy ditch. Kevin Bonte, who called 911, testified that he is a friend of the defendant's son, Tucker. Mr. Bonte closed the Pump House bar/restaurant in Downing, WI at 2:30 a.m. Sometime after that, he got a call from Tucker. Tucker and the defendant's wife had found the defendant's pickup truck in a ditch in the snow. The car wasn't running, and they searched for Mr. Lagerstrom for several hours. Finally, they called 911. Two minutes after calling 911, they heard Mr. Lagerstrom yelling. They found him on a creek bank hunched over. (52:98-112) It was extremely cold, minus 20 degrees Fahrenheit, and Mr. Lagerstrom was hypothermic and suffering from exposure. Bonte testified that he never told any officer that Mr. Lagerstrom closed the bar down. Rather, he said that he had told them that "I closed the bar and drove home and got the call from his son." (52:105) According to him, Mr. Lagerstrom was not drinking at his bar. (52:103-04) He admitted that he told the officers that he wanted to remain anonymous. (52:105)

Mr. Lagerstrom testified that he had been drinking the Saturday afternoon the day before. He does not remember anything after 3 or 4 o'clock p.m. His first memory is waking up in the hospital the next day. (52:90)

Officer Nick Krueger testified that he had been dispatched at 5:26 a.m. and discovered that Mr. Lagerstrom was suffering hypothermia and exposure when he arrived at the scene. (52:114) In fact, Mr. Lagerstrom was so cold that his temperature did not register on a thermometer. (52:82) His answers were "vague." According to Officer Krueger, Kevin Bonte told him that Mr. Lagerstrom had closed the bar. (52:116) By the time he questioned Mr. Lagerstrom at the hospital, Lagerstrom's temperature had risen to 95 degrees. (52:117) He detected an odor of intoxicants in the room and Mr. Lagerstrom's eyes were bloodshot and glossy. (52:125) He says that Mr. Lagerstrom admitted driving his vehicle into the ditch

and did not drink after leaving the bar. (52:125, 117, 118) Krueger did not administer any sobriety tests and did not administer the HGN (horizontal gaze nystagmus) test because Mr. Lagerstrom was lying on a gurney although he knew that part of the HGN test could be administered to a prone suspect. He did not search the car. He cited Lagerstrom for operating while intoxicated (OWI), and Lagerstrom agreed to the chemical testing of his blood. The blood draw was done at 8 a.m. (52: 141)

Over defense objection, the State presented the testimony of Lorrine Edwards, an Advanced Chemist for the Wisconsin State Lab of Hygiene. The defense argued that the lab tests were not admissible pursuant to statute because even though the exact time of driving was unknown, the blood draw had to have occurred well outside of 3 hours after Mr. Lagerstrom could have driven the vehicle. (52: 151-153) The State relied on ***State v. Giese***, and the trial court agreed, ruling that the testimony goes to the weight of the evidence and not the admissibility. The court allowed the witness to testify. (52:154) Ms. Edwards testified that the longer the time before the blood draw the "more caution" is required. (52: 173) Furthermore, to extrapolate the probable amount of alcohol at the time prior to the blood draw requires a series of assumptions with the "biggest" assumption being that there was no unabsorbed alcohol in the defendant's stomach. This is important because while alcohol is eliminated at an average rate of .015 per hour, absorption can increase the level of alcohol in a person's bloodstream even after commission of an offense. Other limitations arise from not knowing how fast the alcohol was consumed, the time of driving, the rate of absorption and more. As stated by Ms. Edwards, if the suspect is actively drinking, "that calculation … doesn't work." (52:171) She testified that Mr. Lagerstrom likely had BAC levels .19 to .25 at 4 a.m. and .2 to .28 at 3 a.m. (52:168) Consistent with her prior testimony, those estimates relied upon the assumption that Mr. Lagerstrom had finished absorbing alcohol at the time of the

offense, and he had not consumed any alcohol since the time of the offense. (52:171, 165)

The court denied a motion for a directed verdict based on a claim that the State had not proven a time of driving, including how Mr. Lagerstrom got to the bar or when he left. The court issued an instruction specifically requested by the defense. It read:

> If you accept Kevin Bonte's testimony given in Court today that Kelly Lagerstrom was not at the bar and did not close down the bar, then you may not consider the blood test result as it is irrelevant without proof of when Mr. Lagerstrom last operated a motor vehicle.
>
> If you accept Deputy Krueger's testimony given in Court today that Kevin Bonte told the deputy that Kelly Lagerstrom closed down the bar, then you may give the test result the weight you determine it is entitled to receive in the light of all the evidence in the case.

(52:221) The jury ultimately convicted Mr. Lagerstrom of operating a motor vehicle with a prohibited blood alcohol content (hereinafter BAC) but acquitted him of operating a motor vehicle while intoxicated (hereinafter OWI). (52:261)

## ARGUMENT

### I. The court erred when it allowed expert testimony regarding retrograde extrapolation of blood levels, where the blood draw occurred much earlier than 3 hours before the draw, and where the record lacked "sufficient facts or data" to allow reliable and credible expert testimony.

#### A. It was error to admit retrograde extrapolation evidence into evidence where the blood draw was not done timely.

This case is distinguishable from ***State v. Giese,*** 2014 WI App 92, ¶ 26, 356 Wis. 2d 796, 809–10, 854 N.W.2d 687, 693, where this court found retrograde extrapolation to be admissible, because the record lacks sufficient facts and data to

allow reliable testimony. In this case, the chemical analysis of the blood draw was not admissible pursuant to Wis. Stat. § 885.235(3) because the blood was drawn more than 3 hours after any possible time of driving. The chemical blood analysis is also not admissible because expert testimony pursuant to Wis. Stat. § 907.02 requires that expert testimony must be based on "sufficient facts or data" to allow reliable and credible testimony of Mr. Lagerstrom's projected blood alcohol levels at the time of the offense, and the expert did not have enough facts to make valid assumptions. In particular, the State has failed to establish a reliable time that Mr. Lagerstrom drove, the amounts that Mr. Lagerstrom drank, and the last time he drank. Without knowledge of those facts and others, the expert lacked "sufficient facts" to give reliable expert testimony. Therefore, it was error to allow any testimony regarding retrograde extrapolation into evidence.

The statutes allow blood chemical testing into evidence provided the blood has been drawn within 3 hours of the alleged offense. Wis. Stat. § 885.235(1g) provides:

> **885.235(1g)** In any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant or had a prohibited alcohol concentration or a specified alcohol concentration while operating or driving a motor vehicle … evidence of the amount of alcohol in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she was under the influence of an intoxicant or had a prohibited alcohol concentration or a specified alcohol concentration if the sample was taken within 3 hours after the event to be proved. …

The court admitted the evidence of the blood test pursuant to the exception listed in Wis. Stat. § 885.235(3). That statute provides:

> **885.235(3)** If the sample of breath, blood or urine was not taken within 3 hours after the event to be proved, evidence of the amount of alcohol in the person's blood or breath as shown by the chemical analysis is admissible only if expert

> testimony establishes its probative value and may be given prima facie effect only if the effect is established by expert testimony.

In this case, it is undisputed that the blood draw was not taken within 3 hours of the alleged offense. There is disagreement about whether or not Mr. Lagerstrom closed down Mr. Bonte's bar at 2:30 a.m. or not, and there is no eyewitness evidence that Mr. Lagerstrom drove at that time, but even the State concedes that there is no evidence that Mr. Lagerstrom drove later than 2:30 to 3:30—4.5 to 5.5 hours before the 8 a.m. blood draw. As addressed below, it was error to admit the evidence of the blood test even pursuant to the exception listed in Wis. Stat. § 885.235(1g), as the evidence was not permissible expert testimony.

### B. It was error to allow expert testimony where such testimony was not based on reliable facts.

In this case, the evidence should not have been admitted as expert testimony because expert testimony requires more clarity of fact than this case allows. As provided in Wis. Stat. § 907.02(1), witness testimony may be admitted as follows:

> **907.02(1)** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise**, if the testimony is based upon sufficient facts or data**, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

(emphasis added)

In this case, the evidence is too limited, the facts are too insufficient, and there is no data that allows a proper retrograde extrapolation of blood levels. First, the passage of time is a problem. According to the State's expert, passage of more than 3 or 4 hours requires more "caution." (52:174) Furthermore, retrograde analysis is possible only when the analyst assumes no unabsorbed alcohol.

According to her, this is the "biggest" assumption. (52:176) However, many things can affect alcohol absorption including the length of time between the offense and the test; the number of tests given and the length of time between them; the person's weight and gender, the person's tolerance for alcohol, how much the person had to drink; what the person drank; the duration of the drinking spree; the time of the last drink; and how much and what the person had to eat either before, during, or after the drinking. *See e.g.* ***Mata v. State***, 46 S.W.3d 902, 916 (Tex.Crim.App, En Banc., 2001), *overruled on other grounds* ***Bagheri v. Texas***, 87 S.W.3d 657 (Tex.Crim.App.2001)(Improper admission of retrograde extrapolation evidence is not harmless). *See also* ***Burns v. State***, 298 S.W.3d 697, 702 (Tex.App.2009) (concluding that expert's testimony was unreliable due to expert's admission that "he knew none of the factors required by *Mata* when only a single test is available," and because testimony was unreliable, it was irrelevant and "its probative value was greatly outweighed by its prejudicial effect"); *accord* ***Com. v. Petrovich***, 538 Pa. 369, 648 A.2d 771, 773 (1994) (upholding trial court's conclusion that retrograde extrapolation expert's testimony was incomplete and elicited "an expert opinion which is necessarily based upon average dissipation rates, average absorption rates, and the alcohol content of the average drink" (internal quotations omitted)). *See generally* Kimberly S. Keller, *Sobering Up Daubert: Recent Issues Arising in Alcohol–Related Expert Testimony*, 46 S. Tex. L. Rev. 111, 122–29 (2004) (discussing concern in scientific community over the use of retrograde extrapolation calculations that do not employ factors that affect individual absorption and elimination rates, including (1) the type and amount of food in the stomach, (2) gender, (3) weight, (4) age, (5) mental state, (6) drinking pattern at the relevant time, (7) type and amount of beverage consumed, and (8) elapsed time between the first and last drink taken).

In ***Mata***, the Texas Court of Criminal Appeals, sitting En Banc., did an exhaustive review of the literature and science and noted that a single breath test

was not able to tell where a person was on the BAC curve. It will not indicate whether he is in the absorption phase, at the peak, or in the elimination phase. ***Mata***, 46 S.W.3d at 909. Furthermore, single tests require assumptions that absorption is completed, but in fact the alcohol level can go up for some time. ***Mata,*** 46 S.W.3d at 913. The court concluded that retrograde extrapolation can be reliable in a given case, but "a single test conducted sometime after the offense could result in a reliable extrapolation only if the expert had knowledge of many personal characteristics and behaviors of the defendant." ***Mata,*** 46 S.W.3d at 916. Because the expert lacked knowledge of several known quantities and because of the expert's inconsistent testimony, along with a single breath test conducted over two hours after the driving, the State failed to prove that the retrograde extrapolation was reliable.

***State v. Giese,*** 2014 WI App 92, 356 Wis. 2d 796, 854 N.W. 2d 687 is distinguishable because in that case the blood draw was not done outside of the 3-hour window listed in Wis. Stat. § 885.235(3). In ***Giese,*** 2014 WI App 92, 356 Wis. 2d 796, 854 N.W. 2d 687,[1] this court distinguished ***Mata*** and held that in that case the expert testimony about retrograde extrapolation was admissible under ***Daubert.*** In particular, "the expert had more to work with here than a single test result. A number of known facts made the expert's assumptions plausible," including Giese was found lying in the road; he said he had crashed his car 3 hours earlier; there was no evidence of any further drinking or opportunity to drink; and his blood sample was .18. ***Id.*** at ¶25. This court found that ***Mata*** was distinguishable because in ***Mata,*** as opposed to the case before the court, "the circumstances made it difficult to know whether the alcohol was absorbed at the time of the test." ***Id***. at ¶26.

The facts of this case are distinguishable from those in ***Giese*** and are more similar to those in ***Mata***. This court found Giese's case to be distinguishable from

[1] Giese told officers that he had crashed his vehicle "about three hours earlier." ***Giese***, 356 Wis. 2d 796 at ¶4.

Mata's because in ***Mata***, it was "difficult to know whether the alcohol was absorbed at the time of the test." ***Id.*** *at* ¶26 *citing* ***Mata***, 46 S.W.3d at 905. Most importantly in ***Giese*** the police knew the time of offense. They also knew reliably that he had not ingested or had the opportunity to ingest any alcohol since the offense.

In this case, on the contrary, no one knows the exact time of offense, when Mr. Lagerstrom last drank, the amount he drank, when he last ate, how much he ate or drank, and when he drove his vehicle. These are all facts that if known would have made a retrograde extrapolation more reliable. As the analyst herself said, the calculations do not work if the person has been actively drinking, and the "biggest" assumption is that the person's stomach contains "no unabsorbed alcohol." Mr. Lagerstrom has no memory of the time following the previous day and the officers did not search his vehicle to see if there was any evidence of further drinking in the vehicle. Therefore, the expert could not reliably assume that Mr. Lagerstrom had not consumed alcohol recently prior to the test. Without knowing for certain that assumption of no recent consumption was correct, the expert testimony lacked "sufficient facts and data" to be scientifically reliable, and therefore its admission was not permissible according to Wis. Stat. § 907.02. It was error, therefore, to allow expert testimony in this case given the paucity of relevant variables known by the expert.

### C. Admission of the expert testimony regarding retrograde extrapolation was more prejudicial than probative where the testimony was not based on reliable information.

Even if this court finds that the lack of sufficient facts and data goes to the weight and not the admissibility of the evidence, as the trial court did, this court should find that the evidence was improperly admitted as it was unfair and prejudicial. The lack of sufficient facts to make the extrapolation evidence reliable means that the State presented evidence alleging levels of intoxication that

it had not proven and could not prove. Without the test being done timely or without two tests of blood drawn at different times that could have eliminated any confusion or uncertainty about whether Mr. Lagerstrom's body was done absorbing alcohol, the evidence served only one purpose: to imply that Mr. Lagerstrom was intoxicated at prohibited levels without having to or being able to prove it. The analyst testified that her "estimation" was that at 4 a.m. Mr. Lagerstrom's BAC was .19 to .25. She also "estimate[d]" that his BAC was .2 to .28 at 3 a.m. It is true that she did not testify that those were his BAC levels, but she did not provide any reasons to find otherwise. This is fundamentally unfair where her estimations were based on uncertain and therefore unproven "assumptions." Furthermore, the prejudice was entirely unnecessary. Her testimony was not necessary to tell the jury that over time alcohol levels in people who have consumed alcohol usually goes down. That is common knowledge. If therefore, the expert had merely testified that Mr. Lagerstrom's blood level was .152 when tested at 8 a.m. but absorption could still be occurring, then the defendant would have no objection, but that is not what she testified to. She testified in such a manner as to distract the jury from her necessary assumptions and told the jury the expected range of what Mr. Lagerstrom's BAC was at the time of driving. As such her testimony defeated the very purpose of the expert testimony rule which this court has described as: "The goal is to prevent the jury from hearing conjecture dressed up in the guise of expert opinion." ***Giese***, 356 Wis. 2d 796 at ¶19. That is exactly what occurred in this case. The jury heard estimates based on multiple assumptions rather than scientific evidence based on known facts. The evidence is far more prejudicial than probative and therefore should not have been admitted. *See* ***Daubert v. Merrell Dow Pharms, Inc.,*** 509 U.S. 579, 595 (1993) ("Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses.")

Admission of the expert testimony under the facts of this case was fundamentally unfair and should not have been allowed. ***State v. Dist. Ct. (Armstrong),*** 267 P.3d 777 (Nev. 2011) is illustrative. In that case, the Nevada Supreme Court found that retrograde extrapolation was relevant but also affirmed the trial court's decision to preclude such evidence as being unfairly prejudicial where there was only one blood test and where a number of relevant factors were unknown. In that case, Armstrong was in an accident that occurred at 1:31 a.m. and his blood was drawn at 3:51 a.m., more than two hours later (but less than 3 hours later). The court affirmed the preclusion of the evidence because, although retrograde extrapolation is relevant, it "has the potential to encourage a conviction based on an improper basis when the calculation is not sufficiently reliable in a given case." ***Id.***

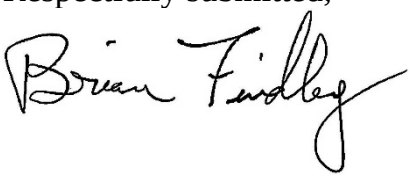
Because of the unreliability of blood tests when the last time of drinking and driving occurred are not known, this court should require more known facts than were presented here before allowing the admission of retrograde extrapolation evidence in BAC/OWI cases. A fairer and more reliable process would require two tests taken at different times whenever the time of offense and/or time of last drinking are unknown. *See e.g.*, ***Armstrong***, 267 P.3d at 784, ("[A] single test conducted some time after the offense could result in a reliable extrapolation only if the expert had knowledge of many personal characteristics and behaviors of the defendant.") Two tests are more reliable and fairer because they identify the rate of absorption as well as the current level of blood alcohol content. Whatever the standard, however, it was fundamentally unfair to allow expert testimony following a single test where most—if not all--other relevant variables are not reliably known.

## CONCLUSION

Since the blood draw was taken hours after any possible offense and since the expert had no knowledge of the time of the offense, of the last time of drinking, of the defendant's rate of alcoholic absorption, and of the amount drunk, she lacked sufficient facts to give proper expert testimony regarding Mr. Lagerstrom's blood alcohol level at the time of the offense. The expert had to make too many assumptions regarding unknown variables, and therefore her testimony was fundamentally unfair and gave the appearance of being science although it was not. Because it should not have been admitted, this court should reverse and should order a new trial with the retrograde extrapolation evidence excluded.

Dated this 16th day of January, 2020.

Respectfully submitted,



BRIAN FINDLEY
State Bar No. 1023299

**Nelson Defense Group**
811 First Street, Ste 101
Hudson, WI 54016
(715) 386-2694

Attorney for the Defendant-Appellant

## 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 3872 words.

Dated this 16th day of January, 2020.

Signed:

BRIAN FINDLEY
State Bar No. 1023299

**Nelson Defense Group**
811 First Street, Ste 101
Hudson, WI 54016
(715) 386-2694

Attorney for the Defendant-Appellant

## 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 16th day of January, 2020.

Signed:

BRIAN FINDLEY
State Bar No. 1023299

**Nelson Defense Group**
811 First Street, Ste 101
Hudson, WI 54016
(715) 386-2694

Attorney for the Defendant-Appellant

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
CASE NO. 2019AP000928

---

ST. CROIX COUNTY,

Plaintiff-Respondent,

vs.

KELLY M. LAGERSTROM,

Defendant-Appellant.

---

**ON APPEAL OF A JUDGMENT OF CONVICTION ENTERED IN THE ST. CROIX COUNTY CIRCUIT COURT, THE HON. MICHAEL R. WATERMAN PRESIDING**

---

# DEFENDANT-APPELLANT'S APPENDIX

---

BRIAN FINDLEY
State Bar No. 1023299

**NELSON DEFENSE GROUP**
811 First Street, Ste. 101
Hudson, WI 54016
(715) 386-2694
brian@nelsondefensegroup.com

Attorney for Defendant-Appellant

# INDEX TO APPENDIX

## CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (13)

I hereby certify that: I have submitted an electronic copy of this appendix, which complies with the requirements of § 809.19 (13). I further certify that: This electronic appendix is identical in content to the printed form of the appendix filed as of this date. A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

Dated this 16th day of January, 2020.

Signed:

BRIAN FINDLEY
State Bar No. 1023299

**Nelson Defense Group**
811 First Street, Ste. 101
Hudson, WI 54016
(715) 386-2694
brian@nelsondefensegroup.com

Attorney for the Defendant-Appellant

## 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; 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 of 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 16th day of January, 2020.

Signed:

BRIAN FINDLEY
State Bar No. 1023299

**Nelson Defense Group**
811 First Street, Ste 101
Hudson, WI 54016
(715) 386-2694

Attorney for the Defendant-Appellant