STATE OF WISCONSIN

COURT OF APPEALS – DISTRICT III

Case No. 2019AP1105 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANGELINA M. HANSEN,

Defendant-Appellant.

Appeal of a judgment and an order
entered in the Outagamie County Circuit Court,
the Honorable Vincent R. Biskupic, presiding

REPLY BRIEF

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

CASES CITED

ARGUMENT

I. Ms. Hansen's act of visiting her children at school did not violate any court order. This Court must reverse her conviction for contempt of court and direct a judgment of acquittal.

Ms. Hansen explained in her opening brief that, as a matter of law, she did not violate the family court's order regarding physical placement. This is because "physical placement" is a statutory term of art, and the simple act of visiting children does not constitute exercising "physical placement" over them. App. Br. 13-19.

The state nevertheless urges this Court to affirm the jury's verdict. None of its arguments have merit.

First, the state observes that courts owe deference to jury verdicts. Resp. Br. 5. There is no disagreement between the parties on this point: juries are the arbiters of credibility, and they select between rational inferences from the evidence presented. Juries do not, however, determine the meaning of statutes; these are questions of law for judges. *See, e.g., Petrowsky v. Krause*, 223 Wis. 2d 32, 34, 588 N.W.2d 318 (Ct. App. 1998). The only way to conclude—from the undisputed evidence—that Ms. Hansen exercised "physical placement" over her children is by applying an incorrect meaning to that statutory term. This Court owes no deference to such an error.

Moreover, the state's "deference" argument makes no sense on its own terms: the jury couldn't have correctly applied the statutory definition of "physical placement" to the evidence. This is because the jury was *never told what that definition was*. Instead, as Ms. Hansen has already noted (and the state does not dispute) it was repeatedly told that the order concerned "visits" or "visitation." App. Br. 4-6. The face of the order shows indisputably that this was incorrect. Deference to the jury's fact-finding role doesn't justify sustaining a verdict founded in such stark misinformation.

The state next argues that various witnesses (including Ms. Hansen) thought the order forbid her to "visit" her children without supervision. Resp. Br. 7-8. That is true, but irrelevant. Ms. Hansen's and her ex-husband's misapprehensions don't change what the order actually said. It should go without saying that one does not "violate" an order by complying with its terms—even if one misunderstands what those terms are and thus erroneously believes oneself to be in violation.

The state suggests that Ms. Hansen's argument is a "legal challenge" to the family court order, and so should have been raised in the family court proceedings. Resp. Br. 8-9. This is claim is specious. Ms. Hansen's argument is that she *complied* with the order's terms, not that those terms should be different. Ms. Hansen is not seeking to alter the order—in fact it's the state that's trying to do so, by

changing the words "physical placement" to "visitation."

The state also says that the family court "presumably" told Ms. Hansen she couldn't visit her children. Resp. Br. 9. There is no support whatsoever for this speculation. Even if there were, it's the *order* that matters, because it's the *order* that Ms. Hansen is charged with violating. If she didn't violate its terms, then she's not guilty. The state can't save the conviction by inventing, from whole cloth, some *other* order.

The state argues that, as the circuit court held, "visitation" is the same thing as "physical placement" under *Rick v. Opichka*, 2010 WI App 23, 323 Wis. 2d 510, 780 N.W.2d 159. Resp. Br. 10. As Ms. Hansen has already explained, that is not what *Opichka* holds. App. Br. 16-18. The two legal terms have distinct meanings; saying "hi" and giving hugs is not exercising "physical placement."

The state finally hypothesizes that Ms. Hansen *might* have exercised physical placement if she'd taken various actions that she did not, in fact, take. Resp. Br. 10. Ms. Hansen happily agrees: if the facts were different, the order might have been violated. But they're not, so it wasn't.

II. Trial counsel was ineffective for failing to challenge the misrepresentation of the court order, and for failing to introduce the interrogation video.

Regarding the ineffectiveness claim about the meaning of the family court order, the state first claims that Ms. Hansen's misunderstanding of the legal term "physical placement" freed her counsel of any obligation "to determine whether Hansen's conduct came within the scope of the order." Resp. Br. 18.

The state is wrong. It is the lawyer's duty (and not the client's) "either to research or correctly interpret relevant portions of the law." *State v. Thiel*, 2003 WI 111, ¶51, 264 Wis. 2d 571, 665 N.W.2d 305. Counsel knew Ms. Hansen was charged with violating a written order; there was no conceivable justification, in preparing a trial defense, for failing to analyze that order's terms—and thus failing to notice that it was being repeatedly misrepresented to the jury. This was plainly deficient performance.

As to prejudice, the state's argument on this point is a brief rehash of its incorrect claims about the sufficiency of the evidence. Resp. Br. 17-18. Ms. Hansen's argument above will likewise serve as her rebuttal.

Turning to the ineffectiveness claim regarding the interrogation video, the state does not dispute Ms. Hansen's argument that the video would have confirmed her testimony that she denied pushing the

officer with her vehicle. App. Br. 20-21. Instead, it argues that confirmation of her use of the word "nudge" would have been damaging because of its dictionary definition. Resp. Br. 18-19. But as Ms. Hansen has already explained, the context of the conversation makes it clear that Ms. Hansen was *denying*, not admitting "nudging" the officer in this sense. App. Br. 21. The state's hypothesized risk doesn't overcome the clear value of this consistent denial to the credibility of Ms. Hansen's version of events.

The state also says there was much other damaging evidence in the video, so it made sense for defense counsel not to use it. Resp. Br. 19. The trial court made the same assertion. (81:6-7; App. 106-07). But, as Ms. Hansen has already noted, App. Br. 12, all of the supposedly damaging material—her untruths to the school officials and her (mistaken) belief that she was in violation of the court order—had already come in. Showing the video wouldn't have changed any of this evidence; it would only have shown that she had consistently denied an act the state said she'd admitted. Failure to do so was ineffective.

CONCLUSION

Because there was insufficient evidence that Ms. Hansen violated a court order (and she in fact did not), Ms. Hansen respectfully requests that this court vacate her conviction for contempt of court and remand with directions that a judgment of acquittal be entered on that count. As to the remaining two counts, Ms. Hansen requests that this court vacate her convictions and remand for a new trial.

Dated this 27th day of December, 2019.

Respectfully submitted,

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,130 words.

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.

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; (3) a copy of any unpublished opinion cited under § 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 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 one or more initials or other appropriate pseudonym or designation 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.

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 27th day of December, 2019.

Signed:

ANDREW R. HINKEL
Assistant State Public Defender