STATE OF WISCONSIN

COURT OF APPEALS – DISTRICT II

Case No. 2019AP1597 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES LEE BALLENTINE,

Defendant-Appellant.

Appeal of a Judgment of Conviction entered in Racine County Circuit Court, the Hon. Mark F. Nielsen, presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

The defendant allegedly sold drugs to a confidential informant during a controlled purchase. The defense claimed that the informant had hidden the drugs from the police before meeting with the defendant, and when he provided the drugs to the police he falsely claimed that he had purchased them from the defendant.

Issue: Whether the defendant could introduce evidence of a prior episode of the confidential informant successfully hiding drugs from the police during a search.

The circuit court held that the defendant could only introduce such evidence if the confidential informant denied a general knowledge of how to hide drugs.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The appeal does not warrant a published opinion, as it involves application of facts to well-established law. Oral argument would be welcomed, to explain how the law applies to the complicated factual issues.

STATEMENT OF THE CASE

I. Introduction

This is a drug case where the State relied on a confidential informant who claimed to have purchased cocaine from Defendant-Appellant James Ballentine during three controlled buys. Ballentine's defense was that the confidential informant – Ballentine's estranged son, Denmark James[1] – framed him in order to get out of his own legal problems.

Before each controlled purchase, police searched Denmark for drugs. Thus, in order to frame Ballentine, Denmark would have had to have hidden the drugs from the police during these searches.

Although this may seem far-fetched, Denmark had a track record of successfully hiding drugs during a police search. In 2015, Denmark was arrested on suspicion of dealing drugs. Denmark was searched and brought to the police station for questioning. While being escorted to the bathroom, Denmark covertly dropped the drugs in a hallway. Police later discovered the drugs and charged Denmark with several drug offenses.

Ballentine sought to introduce evidence of this episode to demonstrate Denmark's ability to hide

[1] To avoid confusion between the defendant, James Ballentine, and his son, Denmark James, this brief refers to the former as Ballentine and the latter as Denmark.

drugs from the police during a search. However, the court limited Ballentine to asking Denmark if he "knows how to conceal drugs on his person." (44:35; App. 110). The court reasoned that the ability to hide drugs from the police was of low probative value because it is "common sense," and that it would be a waste of time to introduce the details if Denmark conceded that he knew how to hide drugs. (44:36; App. 111). According to the court, the probative value would increase if Denmark denied knowing how to hide drugs

The court's ruling was an erroneous exercise of discretion. There is no rational basis for the court's conclusion that the probative value of the prior episode would increase if Denmark denied knowing how to hide drugs. The relevance of other act evidence does not depend on the testimony of the actor, as demonstrated by the frequent use of a defendant's other acts in criminal cases where the defendant exercises their Fifth Amendment privilege not to testify. The details were important to show that Denmark possessed more than a general knowledge of how to hide drugs: he was able to hide drugs from police officers searching from drugs. Finally, the additional dozen or so questions it would have taken to adduce this information would not have substantially lengthened what was a three-day trial.

The State will not be able to show that the error was harmless beyond a reasonable doubt. The State's case depended on Denmark's credibility. The

audio and video recordings of the supposed transaction do not show any money or drugs changing hands or include any statements suggesting a drug deal was occurring. Indeed, the jury acquitted Ballentine of one count of delivery as well as a count of possession, suggesting that they had their doubts about Denmark's credibility.

Accordingly, Ballentine is entitled to a new trial.

II. Procedural history

The State filed a criminal complaint against Ballentine on April 12, 2017, asserting five counts. (1).[2] Specifically, the State charged Ballentine with three counts of Delivery of cocaine (1-5g) on or near a youth center, Wis. Stat. § 961.41(1m)(cm)1r & 961.49(1m)(b)(5); one count of possession with intent to deliver cocaine (1-5 g) on or near a youth center, Wis. Stat. § 961.41(1m)(cm)1r & 961.49(1m)(b)(5), and one count of possession of THC. The complaint alleged that Ballentine, a youth center employee, delivered cocaine to a confidential informant on three separate occasions, and that police executing search warrants found additional cocaine in the youth center and marijuana at Ballentine's home. The State later disclosed that the confidential informant was Ballentine's son, Denmark James. (13; 46:116).

[2] The complaint notes that it is a "reissue" of Racine County Case No. 2016CF604. This case no longer appears online on CCAP, under the policy of removing criminal cases two years after a dismissal.

Prior to trial, Ballentine moved to admit evidence of Denmark's ability to hide drugs from police officers despite being searched. (13). In 2015, Denmark had been arrested, searched, and brought to the Racine Police Department for questioning. (13:1-2). Denmark was taken to the bathroom during a break in the questioning, and surreptitiously dropped drugs that he had hidden somewhere on his person. (13:1-3). Police later discovered the drugs in the hallway leading to the bathroom. (13:3). Denmark was subsequently charged with possession of heroin and THC, among other drug counts, in *State v. Denmark James*, Racine County Case no. 2015CF1565.(13:1)[3]

At a hearing on the motion, the trial court held that Denmark's knowledge of how to hide drugs was relevant. (44:35-37; App. 110-112). However, the court prohibited Ballentine from introducing evidence regarding the Racine Police Department incident, unless Denmark denied during cross-examination that he knows how to hide drugs. (*Id*.)

A jury was selected on September 19, 2017, and the trial was held the next three days. (45-48). The jury found Ballentne not guilty of one count of delivery and of possession of the THC, but found him guilty of the remaining three charges. The court sentenced Ballentine to four years of initial

[3] Ballentine's offer of proof refers to the Racine County criminal case. (13:1). Ballentine asks the court to take judicial notice of the specific drug charges filed in that case and found on CCAP.

confinement and three years of extended supervision on one count, and on the remaining counts imposed and stayed ten year prison sentences for a period of five years of probation. The court issued a corrected judgment of conviction on February 14, 2018, clarifying that probation was to run concurrent to his prison sentence. (38; App. 113).

This appeal follows.

III. Factual Background

The State's primary witness at trial was Denmark James, Ballentine's son. (46:116). Denmark started working for law enforcement after being arrested for selling drugs. (46:112). As a result of his efforts, Denmark received reduced charges and a lower jail sentence. (46:116).

In February of 2016, the Racine Police Department asked Denmark to purchase cocaine from Ballentine. (46:118). Police gave Denmark a hidden camera to record the purchase, though Denmark did not practice with police how to effectively use the camera. (46:120).

The first alleged sale occurred on February 15, 2016, at a youth center where Ballentine worked. (*Id.*) The State played the video at trial. (46:120-123). The video shows Denmark and Ballentine going to a different room in the youth center, but does not show any drugs or money changing hands. (24; Trial Ex. 24). Nor does any of the audio indicate that there was a drug transaction, or any other kind of transaction,

taking place. According to Denmark, that was because Ballentine knew why Denmark was there. (46:120).

The second alleged transaction occurred on February 27, 2016. (46:133). The audio again does not suggest that the two were engaging in a drug transaction. (25; Trial Ex. 31). The parties disputed whether the video showed Ballentine handing Denmark anything.

The third alleged drug transaction occurred over one month later, on April 4, 2016. (46:145-154). According to Denmark, he went into a bathroom at the youth center and purchased drugs from Ballentine. (46:148-150) However, once again, the audio does not suggest that a drug transaction was taking place, and no drugs or money are seen exchanging hands on the video. (26; Trial Ex. 32).

On cross-examination, Denmark admitted that in the past, he had "concealed drugs on [his] person so people can't find them" and that he "know[s] how to do that so they won't be found during a search of [his] person." (46:188). Consistent with the court's pre-trial ruling, Ballentine's counsel did not clarify that Denmark had successfully hid drugs from the police, or other details of the incident at the Racine County Police department. (*Id.*) Counsel later noted that due to the court's ruling prohibiting evidence of such details, he would not be calling certain officers as witnesses. (46:232).

The officer supervising Denmark, Investigator Kupper of the Racine Police Department, admitted that he knew that Denmark knew how to conceal drugs. (47:120). Kupper described the general method of searching confidential informants before they make a controlled buy, stating that it was the same as if he were searching a person while on patrol. (47:74-75). Kupper also testified that people may hide drugs in their anus and that drugs hidden in that manner become covered in and smell like fecal matter. (47:75-76). Kupper then testified that he had no concern that the drugs Denmark provided to Kupper had been previously hidden on Denmark. (47:76).

After the third alleged transaction, police obtained and executed warrants to search the youth center and Ballentine's home. Police found cocaine underneath a sink in the youth center (46:209, and marijuana in the pocket of clothes hanging in a bedroom closet (47:11-12).

The jury acquitted Ballentine of the charges arising from the first alleged drug transaction and the marijuana found in his home. The jury found Ballentine guilty of the second and third drug transactions and of possession with intent to distribute the cocaine found under the bathroom sink.

ARGUMENT

I. Ballentine was entitled to introduce evidence of Denmark successfully hiding drugs from police after being arrested and searched for dealing drugs.

Ballentine's defense – "I was framed!" – may have seemed desperate and implausible to the jury. After all, it meant that Denmark was able to hide drugs somewhere in his clothes or on his body in a way that police could not find them before his meetings with Ballentine. The average jury would likely find it hard to believe that professional law enforcement officials, trained and experienced in searching people for drugs, would have missed drugs hidden on Denmark.

On the contrary, Denmark does have the knowledge and skill to hide drugs from police officers searching his person from drugs, as demonstrated by him successfully hiding drugs from Racine police officers after they arrested him for drug dealing. Although the court acknowledged that Denmark's knowledge and ability to hide drugs on his person was relevant, it unnecessarily and erroneously prevented Ballentine from bringing to the jury's attention the details of Denmark success in hiding drugs from the police. This handcuffed Ballentine's defense, and he is entitled to a new trial.

A. The circuit court erroneously exercised its discretion in holding that the probative value of the details of Denmark successfully hiding drugs from the police would be substantially outweighed by time considerations.

As a general rule, a party may not claim that a person has a particular character trait that caused the person to act in a given manner. Wis. Stat. § 904.04. "Other acts" by a person – that is, acts other than the acts that are the subject of the criminal or civil action – may illustrate the person's character and will offend the rule if offered for that purpose. However, other acts may be offered for myriad purposes other than to show the person's character, such as the person's knowledge, intent, *modus operandi*, etc. Wis. Stat. § 904.04(2).

In *State v. Sullivan*, 216 Wis.2d 768, 782-83, 576 N.W.2d 30 (1998), the court recognized that all "other act" evidence must pass three evidentiary rules. First, as discussed above, the other act evidence must be offered for an acceptable purpose, *i.e.*, not to show the person's "character." Wis. Stat. § 904.04(2)(a). Second, the other act evidence must be "relevant," i.e. it must actually tend to prove or disprove a fact at issue. Wis. Stat. § 904.01. Third, the probative value of the evidence cannot be substantially outweighed by the danger of unfair prejudice, time considerations, or similar factors. Wis. Stat. § 904.03.

When reviewing a decision to exclude other act evidence, "[a]n appellate court will sustain [the] ruling if it finds that the circuit court examined the relevant facts; applied a proper standard of law; and using a demonstrative rational process, reached a conclusion that a reasonable judge could reach." *Sullivan*, 216 Wis. 2d at 780–81. Each step of the *Sullivan* analysis is discussed in turn below.

1. Denmark's hiding of the drugs was offered for a proper purpose.

The court correctly determined that the evidence was being offered for a proper purpose: Denmark's knowledge and capacity to hide drugs from the search of a police officer. (44:35-36; App. 110-111).

Section 904.04 provides that

> evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Wis. Stat. § 904.04(2).

Ballentine did not offer the evidence to show any sort of character trait of Denmark. Instead, it was to demonstrate that he possessed the knowledge and skill to successfully hide drugs during a police search of his person. (44:30-31; App. 105-106).

Demonstration of a person's "knowledge" is explicitly listed as a proper purpose undersection 904.04(2). A person's skill is similarly a proper purpose, rather than impermissible character evidence. It is one thing to know how a magician performs a trick or illusion; it is another matter entirely to have the skill to pull it off. *Johnson v. Misericordia Cmty. Hosp.*, 97 Wis. 2d 521, 550, 294 N.W.2d 501, 516 (Ct. App. 1980), *aff'd,* 99 Wis. 2d 708, 301 N.W.2d 156 (1981) (noting that evidence of doctor's "skill" was not impermissible character evidence).

Importantly, Ballentine was not offering this episode merely to show that Denmark had an untruthful character. A witness's untruthful character is one of the few exceptions to the anti-propensity evidence rule. Wis. Stat. § 904.04(1)(c). However, if a party wishes to attack a witness's character for truthfulness by pointing to "[s]pecific instances of … conduct," the party cannot use extrinsic evidence. Wis. Stat. § 906.08(2). The party is limited to questioning the witness about the specific instance on cross-examination. *Id.* There is no such limitation where, as here, the evidence is being offered to show knowledge, skill, etc., and not the person's "character."

2. Denmark's demonstrated ability to hide drugs from the police was relevant to his defense.

The circuit court correctly concluded that evidence that Denmark successfully hid the drugs was "relevant," *i.e.* that it had a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Wis. Stat. § 904.01.

Denmark had a *motive* to falsely implicate Ballentine as a drug dealer: Denmark had been arrested on drug charges, and the government promised him leniency if he produced evidence that Ballentine was a drug dealer. (46:112, 116). Evidence that Denmark had successfully hidden drugs from a police search of his person would demonstrate that he also had the *means* to falsely implicate Ballentine.

A juror would probably not expect that a person would be able to hide drugs from a searching police officer, and would find Ballentine's defense unlikely. However, Denmark's prior instance of hiding drugs from the police not only demonstrates that it is possible to hide drugs from the police, but that Denmark himself possesses the knowledge and skill to do so. This evidence thus makes Ballentine's defense "more probable" and thus relevant. Wis. Stat. § 904.01.

3. The court's determination that the probative value of Denmark's successful attempt to hide drugs from the police was substantially outweighed by time considerations was an erroneous exercise of discretion.

Where the court erred was in determining that the evidence should be excluded because "its probative value [was] substantially outweighed … by considerations of … waste of time." Wis. Stat. § 904.03. The court's entire analysis is as follows:

> [The prosecutor] concede[s] you can ask [Denmark] whether he knows how to conceal drugs on his person so that they wouldn't be found in a cursory search. And then you get the answer you get. I will tell you if the guy says no, well then it seems to me that the probative value of this evidence far exceeds any prejudicial value that it may have and it comes in.
>
> …
>
> But to this point to some extent I am influenced by the fact that I don't know this evidence is particularly necessary. It seems like common sense to me that people can conceal drugs on their person such they would not be found in the cursory search. That may not be common sense to the jury. That's why you can ask him the question.
>
> If he says no, then I will admit this evidence. However, my analysis at this point is this. A, it's offered for [a] permitted purpose. B, does it tend to prove that. Yes. C., given that it's a fairly mundane area that I think probably falls within

> simple common sense[,] I don't see it compellingly probative unless, as we have discussed, the witness disputes it, at which point it becomes very probative. And it may in fact be gone into by you, A, by confronting him with it on cross-examination. Isn't it true on such and such a date. But B, I would then allow you to present witnesses to the other act as well. …
>
> That's my ruling. You can go into the area. It would be time wasting to present evidence on it if it's not in dispute. You will know that by the time you get to your case because you will have done your cross-examination. If he was conceding the point, we get your case, I won't let you waste time by introducing evidence on [a] conceded point.

(44:35-36; App. 110-111).

The court erroneously exercised its discretion in weighing whether the probative value of the evidence was substantially outweighed by considerations of time. The court did not "examine[] the relevant facts" and employ a "rational process." *Sullivan*, 216 Wis. 2d at 780–81.

First, the court's rumination that a person's ability to hide drugs from the search of a police officer is "fairly mundane" and "falls within simple common sense" is highly dubious. Perhaps a judge experienced in criminal law will have seen the many ways that drugs may be hidden from the search of a police officer. However, the common juror would likely expect that police officers know what they are doing, and are able to find drugs hidden on a person.

Second, the court's reasoning for why the evidence became more probative if Denmark denied knowing how to hide drugs is not rational. Ballentine is unaware of any cases holding that the probity of other act evidence depends on the actor admitting or denying the other act. Indeed, in criminal cases, a defendant's other acts are almost always introduced by someone other than the defendant, due to the defendant's Fifth Amendment right not to testify at all. Simply put, other act evidence is relevant because the other act occurred, not because the actor denies it occurred.

The court may have been reasoning that if Denmark makes a general admission of knowing how drugs can be hidden, nothing can be gained from evidence detailing Denmark's specific instance of hiding drugs from the police. However, Wisconsin courts have soundly rejected this view. A party's right to present a full case generally prevents the other party from attempting to avoid uncomfortable evidence by stipulating to certain elements.

> When a court balances the probative value against the unfair prejudicial effect of evidentiary alternatives, the court must also be cognizant of and consider a party's need for evidentiary richness and narrative integrity in presenting a case. To substitute for such a picture a naked admission might have the effect to rob the evidence of much of its fair and legitimate weight. The persuasive power of a narrative story is an essential ingredient to the State's right to prosecute. Substituting concrete tangible evidence with abstract assertions is an

> unsatisfactory substitute for telling a complete story. …
>
> Evidence thus has force beyond any linear scheme of reasoning, and as its pieces come together a narrative gains momentum, with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict.

State v. Alexander, 214 Wis. 2d 628, 648–50, 571 N.W.2d 662, 670–71 (1997) (quotation marks and citations omitted). *Sullivan* itself held that the details of the other act evidence are what provides its probity. 216 Wis. 2d at 786-87.

The court's limitation of the evidence to the abstract point that Denmark knew how to hide drugs greatly reduced the rhetorical punch of this evidence. Hewing closely to the court's ruling, Ballentine limited his cross-examination of Denmark on this point to whether he had "concealed drugs on [his] person so people can't find them" and that he "know[s] how to do that so they won't be found during a search of [his] person." (46:188). Denmark answered affirmatively to both questions, so defense counsel could not delve further.

The court's ruling thus prevented the jury from hearing numerous relevant details beyond the abstract point that Denmark knew how to hide drugs.

First, Denmark knew how to hide drugs from the police, not just "people." Of course, it would be

more difficult to hide drugs from a member of the lay public than a police officer.

Second, Denmark did not just "know" how to hide drugs from the police, he actually hid drugs successfully from the police. This demonstrates that he did not have just the know-how, but the skill to hide drugs.

Third, Denmark had hidden the drugs after being arrested and searched on suspicion of drug charges. Thus, the arresting officers would have been just as motivated to find drugs on Denmark as the supervising officer in this case, if not more so. Denmark's ability to hide drugs despite this fact further suggests a high degree of skill and knowledge.

Fourth, Denmark hid the drugs from the same police department, suggesting that he knew the specific methods the police department used to search for drugs.

Fifth, Denmark likely did not have much, if any, warning that he was going to be arrested. He thus had more time to hide the drugs before each controlled purchase.

Finally, the manner in which the drugs were found in the Racine Police Department refutes the State's suggestion that the only way to hide drugs from a police search is by inserting them anally. (47:75-76). The drugs were found in the hallway after Denmark had been escorted to the bathroom. (13:1-

3). It is implausible that Denmark would have been able to extract drugs from his anus without the escorting officer noticing. This suggests Denmark had some other method of hiding drugs from the police that he could have used before the alleged controlled purchases.

All of these details give a weight and substance absent from a bare, abstract statement about Denmark's knowledge of how to hide drugs. The details more firmly establish Denmark's proven ability to hide drugs from the police, and make it more likely that he was able to hide drugs from the police when they searched him before he made the alleged controlled purchases from Ballentine.

Finally, the court failed to consider the "relevant facts" concerning how much time it would have taken to question Denmark about the details of the prior incident. *Sullivan*, 216 Wis. 2d at 780–81. In order to properly assess whether the probative value of this evidence was "substantially outweighed by … considerations of time wasting," the court would necessarily have to consider how much time would actually be taken to introduce the evidence. Wis. Stat § 904.03. The court made no such assessment.

Indeed, asking Denmark about the details of his prior instance of hiding drugs from the police would not have prolonged the trial in any significant way. The questioning would amount to perhaps a dozen additional questions, a paltry amount considering the three days of evidence heard during

the trial. Plus, the court was prepared to allow Ballentine to call additional witnesses if Denmark *denied* knowing how to hide drugs. Surely, calling additional witnesses would have prolonged the trial more than asking Denmark additional questions on cross-examination.

In sum, there was no rational basis for the court to prohibit Ballentine from introducing the details of Denmark hiding drugs from the police only if Denmark denied knowing how to hide drugs during a search. The details increased the probity of this evidence, and would not be substantially outweighed by considerations of time.

As a final note although the court twice alludes to the "prejudicial effect" of the evidence as grounds for its exclusion, this appears to be a slip of the tongue. (44:35-37; App. 110-112). Defendants often invoke section 904.03 to exclude other act due to "the danger of unfair prejudice." However, the court's substantive analysis relied on another consideration under 904.03, the "waste of time." Wis. Stat. § 904.03. The court does not explain how the evidence Ballentine sought to introduce was unfairly prejudicial to the State. *State v. Migliorino*, 170 Wis. 2d 576, 489 N.W.2d 678 (Ct. App. 1992) observing that 904.03 applies to the unfair prejudice of a party, not a witness). The court's references to the "prejudicial" effect of the evidence was likely a reflexive use of the more common reason for invoking 904.03. To the extent that the court was actually basing its decision on the evidence being unfairly

prejudicial to the State, the court was erroneously exercising its discretion as it made absolutely no analysis of how the evidence would prejudice the State.

B. The failure to admit the evidence was not harmless.

The State will not be able to prove that the court's error was harmless. An "error is harmless if the beneficiary proves beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *State v. Mayo*, 2007 WI 78, ¶ 47, 301 Wis. 2d 642, 734 N.W.2d 115 (citation and quotation marks omitted). When determining whether an error is truly "harmless," the court considers the totality of the circumstances, including the nature of the defense. *State v. Beamon*, 2013 WI 47, ¶ 27, 347 Wis. 2d 559, 576, 830 N.W.2d 681, 690; *Mayo*, 2007 WI 78, ¶ 48; *see also Jensen v. Clements*, 800 F.3d 892, 903-06 (7th Cir. 2015) (granting federal habeas relief where harmless error analysis by state appellate court erroneously considered only evidence supporting conviction).

Denmark's ability to hide drugs from the police was central to Ballentine's defense. It provided an alternative explanation for how Denmark was able to provide the drugs to the police after he allegedly made the purchases from Ballentine. And while it may seem unlikely in the abstract that Denmark would be able to hide drugs from professional law enforcement officials, the fact that he had done so

before in even more difficult circumstances demonstrates that he has the skill to pull it off.

Further, the video and audio recordings do not show actual drug transactions. Thus, the State's case depended on Denmark's credibility. However, the jury acquitted Ballentine of committing the first drug transaction, signaling that it had significant concerns about his credibility.

Consequently, there is a "reasonable probability" that the outcome of the trial would have been different if the evidence had been admitted.

CONCLUSION

For the reasons stated above, Ballentine is entitled to a new trial

Dated this 11th day of December, 2019.

Respectfully submitted,

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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 5,373 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 11th day of December, 2019.

Signed:

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Assistant State Public Defender

APPENDIX

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