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STATE OF WISCONSIN

COURT OF APPEALS – DISTRICT IV

Case No. 2019AP1977-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GREGORY F. ATWATER,

Defendant-Appellant.

On Appeal from a Judgment of Conviction and Order Denying Postconviction Relief, Both Entered in the Dodge County Circuit Court, the Honorable Martin J. De Vries, Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

> Does Wis. Stat. § 807.13 apply to telephone or video testimony at postconviction proceedings and, if so, did the circuit court err when it denied Mr. Atwater's postconviction motion without a *Machner*[1] hearing solely because trial counsel, who asserted in an affidavit that it would be a "severe hardship" to appear in person, could only appear by telephone or video?

Despite trial counsel's affidavit asserting that traveling to Wisconsin from her home in Missouri for a *Machner* hearing would cause a severe hardship due to family and work responsibilities, the financial costs of traveling to Wisconsin and a medical condition that limited her ability to sit or stand for long periods, the circuit court denied the defense request that trial counsel appear by telephone or video and ordered "The *Machner* motion is denied without a hearing because defendant will not bring trial counsel to the hearing." (78, App. 105).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Atwater does not seek oral argument or publication. The briefs will adequately address the issue raised in this case.

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[1] *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

STATEMENT OF THE CASE

The state filed a complaint on November 12, 2013, alleging two counts of battery by prisoners, repeater, pursuant to Wis. Stat. § 940.20(1). (1). An information with the same two counts was filed on January 9, 2014. (6). On April 16, 2014, Mr. Atwater pled no contest to one count of battery by prisoner. The court imposed 2 years of probation with an imposed and stayed sentence of 18 months initial confinement and 12 months extended supervision. (25; App. 101). Mr. Atwater's probation was revoked on September 29, 2015. (29). An amended judgment of conviction adding sentence credit was entered on May 24, 2017. (44).

Although his direct appeal deadline had passed, Mr. Atwater moved to extend the deadline and filed a late notice of intent to pursue postconviction relief on February 27, 2017. In his motion to extend, Mr. Atwater asserted that he attempted to contact his trial attorney within 20 days after sentencing to inform her of his wish to appeal. Trial counsel did not respond until after the 20-day deadline for filing the notice of intent had passed. Further, trial counsel informed Mr. Atwater that she no longer worked for the State Public Defender and could not file the notice of intent. Trial counsel did not provide Mr. Atwater with any other options. (37; 41). This court granted the motion on May 12, 2017, and this appeal ensued.

Mr. Atwater filed a postconviction motion to withdraw his plea on November 26, 2018. (60). The motion alleged ineffective assistance of trial counsel,

and the circuit court ordered multiple rounds of briefing. (68; 69; 76; 77). On June 25, 2019, the circuit court entered an order denying postconviction counsel's request to have trial counsel testify by telephone (78). On September 25, 2019, the circuit court denied the postconviction motion without a hearing. (83).

Mr. Atwater appeals from the judgments of conviction and the order denying postconviction relief.

STATEMENT OF FACTS

Mr. Atwater was incarcerated at the minimum security John C. Burke Correctional Center. (1; 2). According to the complaint, a few months prior to his release date, Mr. Atwater carried his breakfast tray of pancakes into the dining room just before 7:00 a.m. When correctional officer (C.O.) Julie Nickel asked Mr. Atwater why he was late for breakfast he explained "I overslept and I want to eat before I go to the farm at 7:30 a.m." C.O. Nickel told Mr. Atwater "breakfast hours are listed in the inmate handbook" and he could not eat the pancakes because he arrived too late. Mr. Atwater attempted to finish his pancakes. C.O. Nickel persisted, two other C.O.s arrived in the dining room, and Mr. Atwater eventually put his tray in the dishwasher, declaring "I ate half my pancakes so fuck you all." Mr. Atwater walked back towards his cell. (1:2-3).

C.O. Nickel ordered Mr. Atwater into a holding cell but Mr. Atwater continued towards his own cell while shouting that he would not go into the holding cell. Three C.O.s followed Mr. Atwater down the hall

towards his cell and ordered him to get into the holding cell. C.O. Nickel radioed for assistance and a fourth C.O. arrived in the hallway. Two C.O.s "began escorting" Mr. Atwater towards the holding cell. C.O Nickel opened the holding cell door "so we could talk to inmate Atwater about his aggressive actions and negative behavior." At this point, Mr. Atwater became tense and shouted "I complied and dumped my tray man and I ain't going in that cell." Several other inmates observed this incident unfold. When Mr. Atwater stopped walking towards his cell and leaned against the wall in the hallway, a scuffle ensued as the C.O.s tried to put Mr. Atwater into the holding cell. Six C.O.s were now involved. They tackled, restrained, handcuffed and moved Mr. Atwater into the holding cell. He swung and punched at the C.O.s with open and closed hands and kicked after he was tackled to the ground. Two C.O.s were injured while restraining Mr. Atwater, including C.O. Nickel, whose glasses were broken when Mr. Atwater bucked her off of his back. (1:2-7).

Mr. Atwater entered a no contest plea to one of the two charged counts of battery by prisoner. (93; 25; App. 101).

Mr. Atwater filed a postconviction motion for plea withdrawal based on ineffective assistance of trial counsel. The motion alleged that trial counsel's performance was deficient when she failed to conduct investigations into two matters. First, a C.O. at John C. Burke Correctional Center who was not directly involved in the incident contacted trial counsel before Mr. Atwater entered his plea. This C.O. informed trial counsel of conduct issues regarding the C.O.s involved in the incident and told

trial counsel that the C.O.s violated institutional policy. The C.O. stated the video of the incident that was provided as discovery was from a different angle than the video she viewed at the institution after the incident. She further claimed that C.O. Nickel's report on the incident had to be revised at least four times and had been marked up by supervisors who instructed C.O. Nickel to add things to her report. (60:3-4).

The record confirms that trial counsel had information from the C.O. because trial counsel used this information in her sentencing argument. At sentencing, trial counsel told the court she was contacted by the concerned C.O. Counsel argued that based on this information it appeared that the C.O.s failed to follow proper procedure with Mr. Atwater and that there were concerns about their credibility. (93:46-50).

Second, the postconviction motion alleged that trial counsel had the name of an inmate eyewitness who could have provided his account of the incident. A note from trial counsel's file, and attached to the postconviction motion, confirms that trial counsel was aware of at least one inmate witness. (60:10). However, trial counsel failed to interview that inmate or investigate to determine if there were other inmate eyewitnesses. (60:2-3). The postconviction motion alleged that this inmate witness, along with three other inmate witnesses, would testify that they saw the incident and did not see Mr. Atwater initiate physical contact, resist or throw punches. (60:5-6).

The postconviction motion alleged that Mr. Atwater was prejudiced by counsel's failure to investigate because Mr. Atwater would have insisted

on going to trial had the investigations been pursued because he believed the information would have supported a self-defense claim and/or because it would have called into question the credibility of the C.O.s' descriptions of the incident. (60:3).

After the postconviction motion was filed, the circuit court ordered the parties to file briefs arguing whether or not a hearing was required. The state in its brief conceded that an evidentiary hearing pursuant to *Machner* should be scheduled. (68:1).

Postconviction counsel then filed a motion to allow trial counsel to testify by telephone (71). In that motion, counsel alleged the trial counsel no longer worked for the Office of the State Public Defender and now lived in Missouri. The costs of traveling to Dodge County (time, mileage, meals, overnight accommodations) would not be reimbursed by the State Public Defender. (71:1-2). The state objected to the telephone testimony and the court ordered additional briefing. (76; 77). After briefing, the court entered an order denying the motion to allow telephone or video testimony. (71).

Additional briefing followed regarding the necessity for an evidentiary hearing, including a request by postconviction counsel for the court to reconsider its ruling on trial counsel's testimony. (80; 81; 82). The filings included an affidavit from trial counsel. In that affidavit, trial counsel asserted:

- counsel no longer worked for the State Public Defender's Office;
- counsel was available to testify by telephone or videoconferencing;

- due to substantial family and work responsibilities, and the financial costs (none of which would be reimbursed) associated with traveling the 386 miles to Wisconsin from her home in Missouri for a *Machner* hearing, appearing in person would cause a "severe hardship";

- a medical condition for which she had been under the care of a physician limited her ability to sit or stand for long periods;

- counsel was aware of her ethical obligation to testify truthfully and could satisfy that obligation via telephone or video testimony.

(82:1-2; App. 106-107).

The circuit court denied the defense request that trial counsel appear by telephone and ordered "The *Machner* motion is denied without a hearing because defendant will not bring trial counsel to the hearing." (78, App. 105).

ARGUMENT

I. Wisconsin Statute § 807.13 governs witness telephone testimony in postconviction proceedings. Because an in-person appearance would cause the trial attorney severe hardship, counsel should have been permitted to testify by telephone or video at a *Machner* hearing. The circuit court's denial of the postconviction motion without a hearing solely on the basis that the "defendant will not bring trial counsel to the hearing" was clearly erroneous.

The trial court denied Mr. Atwater's postconviction motion solely on the basis that trial counsel would not appear in person. (78; 83; App. 105; 108). Because the general criminal statute regarding telephone testimony, Wis. Stat. § 967.08, does not contemplate individual witness testimony at postconviction hearings, the civil statute governing telephone and audiovisual proceedings, Wis. Stat. § 807.13, must be applied to the facts in Mr. Atwater's case. The trial court's failure to apply the proper legal standard in Wis. Stat. § 807.13 was clearly erroneous. An application of the criteria in Wis. Stat. § 807.13 shows that there was good cause to allow trial counsel to appear by telephone or video. For that reason, this court should vacate the order denying the postconviction motion and remand for an evidentiary hearing where trial counsel can testify by phone or video.

A. Wis. Stat. § 807.13 applies to witness testimony by telephone or video at postconviction proceedings.

The trial court did not cite any statutory provisions when it entered its orders denying telephone testimony and denying the postconviction motion. (78; 83; App. 105; 108). There are two general statutory provisions that reference telephone proceedings: Wis. Stat. § 967.08 and Wis. Stat. § 807.13. An analysis of the language in each provision shows that Wis. Stat. § 967.08 does not govern witness testimony at postconviction hearings and therefore does not preclude a witness from appearing by phone or video at a postconviction hearing. Wisconsin Statute § 807.13 applies to witness testimony at postconviction proceedings and any request for telephone or video testimony must be evaluated pursuant to this statute.

Statutory interpretation presents a question of law this court reviews de novo. *State v. Alger*, 2015 WI 3, ¶21, 360 Wis. 2d 193, 858 N.W.2d 346. The purposes underlying a statute are useful in ascertaining a statute's meaning. *Sheboygan County Department of Health and Human Services v. Tanya M.B.*, 2010 WI 55 ¶28, 325 Wis. 2d 524, 785 N.W.2d 369. The plain language and purpose of Wis. Stat. § 967.08 make clear that it is intended to address conducting full hearings by phone or video and not the question of whether an individual witness can testify remotely.

Wisconsin Statute § 967.08, entitled Telephone proceedings, appears in the general provisions of the criminal procedure section of the statutes and sets

forth "proceedings referred to in this section may be conducted by telephone or live audiovisual means, if available." The focus of the statute is clearly the types of hearings that can be conducted by phone or video as opposed to whether individual witnesses can testify by phone or video. Subsection (1) describes the role of the court reporter in telephone hearings, notes that the court's ruling at a telephone hearing "shall have the same effect as if made in open court" and sets requirements addressing public accessibility to hearings conducted by phone or video.

Subsection (2) lists which "proceedings" can be conducted by phone: initial appearances, waiver of preliminary hearings, competency hearings and jury trials; motions for extension of time and arraignments if the defendant intends to refuse to plead or intends to plead not guilty. Subsection (3) lists which "non-evidentiary proceedings" can be conducted by phone or video.

The plain language of Wis. Stat. § 967.08 clearly applies to the issue of whether an *entire hearing* can be conducted by phone or video. That is not the issue in Mr. Atwater's case. The only part of Mr. Atwater's postconviction hearing covered by phone or video testimony would be trial counsel's testimony.

State v. Vennemann, 180 Wis. 2d 81, 508 N.W.2d 404 (1993), does not control the decision in this case because *Vennemann* specifically addressed the interplay between Wis. Stat. § 971.04(1) and Wis. Stat. § 967.08. Wisconsin Statute § 971.04(1) sets forth the right of the defendant to be present. *Vennemann* held that a defendant does not have a right to appear in person

at a non-evidentiary postconviction hearing but does have a right to be physically present at certain postconviction evidentiary hearings. *Vennemann*, 180 Wis. 2d at 93, 96.

Unlike *Vennemann*, there was no dispute that Mr. Atwater would be personally present at the postconviction hearing. Unlike *Vennemann*, there was no claim related to Wis. Stat. § 971.04(1).

The decision in *Vennemann* is also consistent with the argument that Wis. Stat. § 967.08 applies to whole proceedings rather than their component parts. The issue in *Vennemann* involved an entire proceeding – a postconviction motion hearing. The court's conclusion that Vennemann had a right to be present and that Wis. Stat. § 967.08 did not authorize his telephone appearance is in no way contrary to the proposition that it was proper to refuse to allow telephone or video testimony of trial counsel at Mr. Atwater's postconviction hearing. The issue presented in Mr. Atwater's case was neither discussed nor contemplated in *Vennemann*.

This court addressed the issue of witness telephone testimony in a jury trial in *State v. Pruitt*, No. 2016AP251-CR (Ct. App. August 18, 2016)(App. 109-117). As an unpublished opinion, *Pruitt* is not binding. *See* Wis. Stat. § 809.23(3). Furthermore, *Pruitt* is factually distinct from Mr. Atwater's case as it does not involve postconviction proceedings. Instead, *Pruitt* involved a defense witness at a jury trial. The defendant asked to have the witness appear by telephone and the circuit court agreed. This court reversed, holding that Wis. Stat. § 967.08 prohibits telephone testimony at a criminal jury trial because jury trials are not among the enumerated

proceedings. Of critical importance to the court were the particular nuances of a criminal trial "juries make their credibility determinations in part by observing the witnesses, their demeanors, and their body language. Allowing a witness to testify by telephone takes these tools away." (App. 114).

Obviously postconviction hearings are fundamentally different proceedings from criminal jury trials. As *Pruitt* noted, a reason for requiring witnesses to testify in person at a jury trial is so the jurors can "decide both the credibility of a witness and the weight to be given to his or her testimony." *State v. Jenkins*, 2014 WI 59, ¶75, 355 Wis. 2d 180, 848 N.W.2d 786 (Crooks, J. concurring). This reasoning does not apply at a postconviction hearing where there is no jury. The reasoning certainly doesn't apply in Mr. Atwater's case, where the postconviction witness is an officer of the court who practiced in Dodge County. Presumably a circuit court judge would have the ability to assess the credibility of an attorney by viewing that attorney's testimony on a courtroom video screen or listening on the telephone.

Whatever merit the *Pruitt* court's statutory analysis may offer in the context of a criminal jury trial, applying that analysis to all postconviction hearings creates absurd results. While postconviction hearings are not included in Wis. Stat. § 967.08 as proceedings that can be conducted by phone or video, it would be absurd and unreasonable to both the state and the defendant to prohibit the circuit court from allowing telephone or video testimony at postconviction. "Statutory language is interpreted…to avoid absurd or unreasonable

results." *State ex rel. Kalal v. Circuit Court for Dane County,* 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

If Wis. Stat. § 967.08 requires all postconviction proceedings to be conducted in person, every oral ruling, every postconviction scheduling hearing, every postconviction status hearing, every oral argument, every sentence credit motion and every legal claim, however perfunctory, could not take place by telephone or video.

The unreasonableness of such a mundane, antiquated and cumbersome rule harms the state as well as the defense. A common postconviction motion is a plea withdrawal motion pursuant to *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). A *Bangert* motion often requires the state to offer testimony from the defendant's trial counsel to refute defendant's testimony and/or gaps in the plea colloquy. For example, if Mr. Atwater filed a plea withdrawal motion pursuant to *Bangert*, and no telephone or video testimony was permitted in postconviction hearings, the state would be responsible for ensuring trial counsel's in-person appearance. If the state failed to either persuade trial counsel to agree to travel to Wisconsin or if the state failed to successfully execute an out-of-state subpoena, the defendant would prevail on his plea withdrawal motion.

Because it is unreasonable to conclude that Wis. Stat. § 967.08 prohibits all postconviction proceedings from being handled by phone or video either in whole or in part, the only conclusion is that Wis. Stat. § 967.08 does not apply to witness testimony at postconviction proceedings.

The analysis then turns to the civil rules of practice, which "shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction." Wis. Stat. § 972.11.

Telephone and video testimony is addressed in Wis. Stat. § 807.13. The scope of Wis. Stat. § 807.13 is more narrowly tailored to witness "testimony" as opposed to the broader "proceedings" addressed in Wis. Stat. § 967.08. Wisconsin Statute § 807.13(2) states "the court may admit oral testimony communicated to the court on the record by telephone or live audiovisual means, subject to cross-examination…" The witness-focus of the statute continues in the list of conditions the court considers when evaluating good cause for telephone testimony: "whether the proponent has been unable, after due diligence, to procure the physical presence of the witness" "the convenience of the parties and the proposed witness" "the cost of producing the witness in relation to the importance of the testimony" "whether the procedure would allow full effective cross-examination" "the importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness" "whether the quality of the communication is sufficient to understand the offered testimony." Wis. Stat. § 807.13(2)(c). The plain language of the statute confirms that it addresses the question of whether an individual witness can testify remotely at a postconviction hearing.

The application of Wis. Stat. § 807.13 to a witness at a postconviction hearing is further supported by Wis. Stat. § 805.15(1). This statute

addresses motions for a new trial and directs "motions under this subsection may be heard as prescribed in s. 807.13." The same principles are involved in a motion for a new trial in a civil case and postconviction motions. It is illogical that one type of post-judgment motion can include telephone and video testimony while another precludes it.

Mandating personal appearances for all witnesses in all postconviction proceedings would have far-reaching and unreasonable consequences. In ineffective assistance of counsel claims, the trial attorney could be retired and live out of state. The attorney could be facing health issues that make travel difficult if not impossible. Would attorneys in those situations have to travel back to Wisconsin at their own expense to provide undisputed testimony that might last less than 20 minutes? The same issues could apply to other potential witnesses. What if the postconviction claim necessitated the testimony of a district attorney, judge or law enforcement officer?

Finally, telephone testimony in this case is Mr. Atwater's request. Mr. Atwater's liberty interest is at stake and he is willing to waive trial counsel's personal appearance.

Wisconsin Statute § 807.13 applies to witness testimony at postconviction proceedings and any request for telephone or video testimony must be evaluated pursuant to the criteria set forth in this statute.

B. The circuit court's refusal to hold a *Machner* hearing based solely on the fact that trial counsel would not appear in person was clearly erroneous.

Applying the criteria in Wis. Stat. § 807.13 to Mr. Atwater's case, trial counsel's "severe hardship" provided good cause to allow telephone or video testimony. Though a determination of good cause is discretionary, the trial court denied the motion without applying any of the criteria in Wis. Stat. § 807.13. *Town of Geneva v. Tills*, 129 Wis. 2d 167, 176, 384 N.W.2d 701 (1986). A circuit court erroneously exercises its discretion if it applies the wrong law or fails to consider the relevant facts. *Burkes v. Hales*, 165 Wis. 2d 585, 590, 478 N.W.2d 37 (Ct. App. 1991).

Pursuant to Wis. Stat. § 807.13(2)(c), the circuit court can permit telephone or video testimony if the proponent shows good cause. The statute lists eight considerations appropriate to the good cause finding:

(1) Whether any undue surprise or prejudice would result;

(2) Whether the proponent has been unable, after due diligence, to procure the physical presence of the witness;

(3) The convenience of the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony;

(4) Whether the procedure would allow full effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination;

(5) The importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

(6) Whether the quality of the communication is sufficient to understand the offered testimony;

(7) Whether a physical liberty interest is at stake in the proceeding; and

(8) Such other factors as the court may, in each individual case, determine to be relevant.

Applying these eight factors to Mr. Atwater's request it is clear there was good cause to allow telephone or video testimony.

As to the first factor, there was no surprise to the state. Postconviction counsel raised the issue of telephone testimony well in advance of the hearing and the court ordered pre-hearing briefing. (71; 76; 77).

Procuring the physical presence of trial counsel presented significant logistical problems. Trial

counsel lived in Missouri. Because she is no longer employed by the State Public Defender, no costs incurred by her travel from Missouri to Dodge County would be reimbursed by the State Public Defender. Trial counsel would not be compensated for her time, mileage, meals or overnight accommodations. (82:1-2; App. 106-107).

Further, in addition to the difficulty of missing work to travel to Wisconsin, scheduling transportation and child care for her young children would create difficulties. (76:3). And trial counsel was under the care of a doctor and placed under restrictions related to long periods of sitting or standing. (82:2; App. 107). These personal and financial issues obviously also impact the third statutory good cause factor: the convenience of the witness. Moreover, there is no inconvenience to the parties if trial counsel appears by telephone or video.

Telephone or video testimony would allow for full cross-examination. The postconviction motion clearly and specifically sets forth the claim. The postconviction motion includes as an attachment the relevant document from trial counsel's file. (60). Trial counsel did not have her file, so she would not have access to documents unavailable to the state. (82:1; App. 106).

The fifth and sixth factors also strongly support telephone or video testimony. As an attorney, it is expected that trial counsel would articulately respond to questioning by telephone or video and the court could satisfactorily assess her credibility. Trial counsel is a professional who practiced in Dodge County. A licensed attorney understands the duty to testify truthfully.

Because this is a criminal case, there is a liberty interest at stake. However, the defendant whose liberty is at stake is the proponent of the telephone testimony. (71).

Finally, as for other relevant factors, it is important to acknowledge that professional witnesses are regularly afforded the courtesy of testifying by telephone. For example, doctors in commitment and competency cases regularly testify by telephone. *See* Wis. Stats. §§971.17(7)(d); 971.14(4). This professional courtesy is likely provided in cases where the inconvenience to the witness would be less than what trial counsel faces in Mr. Atwater's case.

The circuit court erroneously exercised its discretion by failing to apply the relevant facts to Wis. Stat. § 807.13(2)(c). The record shows that traveling to Wisconsin for the postconviction hearing would create a severe hardship for trial counsel. This court should reverse the order denying the postconviction motion and remand for an evidentiary hearing where trial counsel can appear by telephone or video.

CONCLUSION

For these reasons, Mr. Atwater respectfully requests that this court reverse the circuit court's order denying his postconviction motion and remand for a *Machner* hearing where trial counsel can testify by telephone or video.

Dated this 19th day of February, 2020.

Respectfully submitted,

_____

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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 4,390 words.

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 19th day of February, 2020.

Signed:

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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; (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 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 19th day of February, 2020.

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