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STATE OF WISCONSIN

COURT OF APPEALS, DISTRICT I

Case No. 2019AP2138

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOSEPH K. EDWARDS,

Defendant-Appellant.

Appeal of a Written Decision and Final Order Entered November 4, 2019 in Milwaukee County Circuit Court Case No. 16CF713, Denying Motion for Post-Conviction Relief, Circuit Court Jean M. Kies, Presiding

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BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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II. Did the trial court err by holding that, assuming for the sake of argument that the "true threat" paragraph in WIS JI Criminal 1900 should have been included in the disorderly conduct jury instruction, the omission was harmless?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Appellant Joseph K. Edwards does not request oral argument because, consistent with Wis. Stat. (Rule) § 809.22(2)(b), the written arguments can fully develop the theories and legal authorities on each side so that oral argument would be of marginal value.

Publication is not warranted under Wis. Stat. (Rule) § 809.23(1)(a)2 because the issues do not involve the application of established rules of law to a fact situation significantly different from that in published opinions, and do not present other reasons for publication .

STATEMENT OF THE CASE

On May 7, 2016 Joseph Edwards was charged with engaging in "otherwise disorderly conduct" in violation of Wis. Stat. § 947.01(1). The complaint also included a penalty enhancer for possession of a dangerous weapon. A three-day jury trial was conducted on July 9-11, 2018.

The court preliminarily instructed the jury panel during *voir dire* that the complaint alleged that Edwards engaged in "otherwise disorderly conduct." (July 9 at 20).[1] At the close of the State's evidence, the court denied the defense motion to dismiss, stating the evidence showed that Edwards had knocked on S.G's door "and having these kinds of creepy conversations with her" which was "almost … stalker-like behavior." (July 10 p.m. at 57-58). The court then stated: "I think *these statements* alone have shown that Mr. Edwards, if I view the evidence in a light most favorable to the State, there was otherwise disorderly conduct engaged in by Mr.

[1] Trial transcript page references for proceedings on July 9, July 10 a.m., July 10 p.m., and July 11, 2018 will appear throughout this motion as "July 9 at ___, July 10 a.m. at ___, July 10 p.m. at ___, and July 11 at ___," respectively.

Edwards….” (Id. at 58). (Emphasis added).

At the closing instruction conference the court stated that it planned to include language from WIS JI-Criminal 1900 that “otherwise disorderly conduct” may be “*committed by words or acts*,” but it would take out a portion of the standard disorderly conduct instruction relating to threats.[2] (Emphasis added.) Neither the prosecution nor the defense had an objection. (Id. at 77). Later, defense counsel confirmed that he had no objection because “in this case there was no sort of threats being made, as the Court did indicate.” (Id. at 80).

The closing instruction tracked WIS JI Criminal 1900 (July 11 at 11-12), with the *Perkins*-based “true threat” portion deleted. However, the court did instruct, in accordance with WIS JI Criminal 1900, that “otherwise disorderly conduct,” *“may include physical acts or language or both.”* (Id. at 11). (Emphasis added.) The court also instructed, based on WIS JI Criminal 180, that the jury that it could consider the defendant’s “statements.”

> The State has introduced evidence of statements which it claims were made by the defendant. It is for you to determine how much weight, if any, to give to each statement. In evaluating each statement, you must determine three things: Whether the statement was actually made by the defendant. Only so much of a statement as was actually made by a person may be considered evidence. Whether the statement was accurately restated here at trial and whether the statement or any part of it ought to be believed. You should consider that facts and circumstances surrounding the making of each statement along with all the other evidence in determining how much weight, if any, that the statement

[2] Based on *State v. Perkins*, 2001 WI 46, 243 Wis.2d 141, 626 N.W.2d 762, WIS JI Criminal 1900 provides a description of the circumstances in which the court should include the portion relating to statements or conduct constituting a threat: WHERE THE STATE’S CASE RELIES ON STATEMENTS OR CONDUCT THAT MAY CONSTITUTE A THREAT, THERE MUST BE A TRUE THREAT. ADD THE FOLLOWING.”

deserves.

(July 11 at 16-17). Thereafter, the jury returned a verdict of guilty for disorderly conduct while possessing a dangerous weapon (Id. at 44-45).

The court sentenced Edwards on July 13, 2018 to a maximum term of nine months in the House of Correction (July 13 at 23). At that proceeding the court noted that Edwards caused S.G. to be "frightened" (Id. at 18), and that his words were "creepy," and his conduct was "stalking-type behavior," that "caused [S.G.] to feel emotional distress." (Id. at 19).

Defendant's timely post-conviction motion was decided and denied by Circuit Judge Jean M. Kies on November 4, 2019.

STATEMENT OF FACTS

The prosecution's trial evidence showed that on May 16, at about 8:30 p.m., S.G. had arrived home, had parked her car in her garage, and was walking towards her back door, when she exchanged greetings with Joseph Edwards, who was nearby, in which he remarked that he knew her foster son (although she did not have a foster son). This alarmed S.G. and so she continued into her house (July 10 a.m. at 19-21). She then heard Joseph Edwards knocking at her front door, which caused her to be frightened and scared (Id. at 21, 24). She reacted by calling the emergency telephone "911" number, and then by calling her neighbor, Holly Dobbertin, for assistance (Id. at 21). Then she went to a neighbor, Glen Boudwine's home, and met up with Dobbertin and Boudwine. About five or ten minutes later Edwards also went towards Boudwine's home (Id. at 25, 37, 59) while carrying a bag or backpack (Id. at 43, 63-64). Edwards, at least according to S.G. but not Dobbertin, at some point removed a machete from the backpack (Id. at 25). He then started to leave after Boudwine threatened to shoot him (Id. at 45). Police officers arrived (July 10 p.m. at 32), and Officer Letitia Holloway observed that Edwards was then carrying a knife or machete in his hand (Id. at 33); they ordered him to drop it, and he was then arrested.

S.G. testified that she was scared and frightened. But she agreed that Edwards had not made overt or explicit threats, had not followed her to her back door, had not been yelling, had not cursed, and had not kicked the front door (July 10 a.m. at 28-30). She had not asked him to leave and did not tell him that he was scaring her (Id. at 33).

Dobbertin testified that after receiving S.G.'s call she went over to her house, and told Edwards to leave S.G. alone, to which he replied, as he was standing across from the house on the opposite side of the street, that he "just wanted to talk" (Id. at 56). He made no overt or explicit threats (July 10 p.m. at 15). She did not see him display a machete at any time between that verbal exchange and the time when she went over to Boudwine's house and stood outside with Boudwine and his wife for ten to fifteen minutes until the police arrived (July 10 a.m. at 58-59; July 10 p.m. at 15, 19, 25).

Dobbertin also testified that S.G. had previously made similar calls to her and had stated then that she was afraid to go to her window because someone was at her front door. Dobbertin testified that S.G. appeared to be "paranoid." (Id. at 23-24, 27). Dobbertin stated that S.G. had called 911 several times and that she had checked on S.G. at least three times after S.G. called to say that someone was at her front door (Id. at 27).

Officer Holloway testified that, after being dispatched to the S.G. home location on a 911 call, she observed Edwards (Id. at 31), and heard her partner order him to "drop the knife" (Id. at 33). Edwards complied and then was arrested (Id). A machete (as shown in Ex. 2) was placed on police inventory, though later destroyed. She did not know if Edwards had made any threats (Id. at 38) and she had not observed him making threats, yelling, screaming, or cursing (Id. at 52).

Defense witness, SPD investigator Connie Culpepper, testified as to her post-complaint interview of S.G. Culpepper testified that S.G. stated that Edwards had not explicitly

threatened her (Id. at 67). Culpepper testified that when she interviewed Dobbertin, that Dobbertin said that S.G. "is very paranoid" when someone is at her front door (Id. at 69-70).

In his closing argument, the prosecutor argued that Edwards' statements to S.G. while he was at the front door "completely frightened" S.G. (July 11 at 19). In his rebuttal closing, he argued that it was a two-part statement by Edwards (first, when he said he knew she had no husband, and second, when he said he had been watching her) that frightened S.G. and prompted her to call 911 (Id. at 38).

In his closing argument, defense counsel argued that S.G. had "overreacted," that there were no threats, that she had "jumped to a conclusion" about Edwards and that "she assumed the worst of him." (Id. at 26), that she was "paranoid" (Id. at 30), and that S.G. was "oversensitive," (Id. at 23) having called the police numerous times (Id. at 30).

Defense counsel argued that Edwards' statements towards S.G, perhaps were frightening to an oversensitive S.G., but they were not threats (Id. at 27):

> There was [sic] no threats in this case, and there was not one thing the State can prove to you and nothing that was testified to about any sort of threats that were made by Mr. Edwards. . . . And then Holly told you the exact same thing. She had no experiences with Mr. Edwards that constituted any sort of threat.

ARGUMENT

I. The trial court erred when it declined to give WIS JI Criminal 1900's "true threat" jury instruction because: (1) the prosecution's closing arguments claimed that Edwards' statements had frightened S.G.; (2) the court ruled at the close of the State's case that Edwards' statements alone supported the prosecution's charge of disorderly conduct; (3) the court instructed the jury to consider Edwards' statements as evidence; and (4) the court also instructed that disorderly conduct may include verbal acts.

Edward's post-conviction motion (R.) asserted that it was error for the court not to have included guidance from WIS JI Criminal 1900 regarding disorderly conduct based a defendant's statements – to distinguish a "true threat" from statements subject to the constitutional protection of free speech.[3]

Comment 5 to WIS JI Criminal 1900 notes that "[s]peech can be considered 'otherwise disorderly' if it is of a type that tends to disrupt good order. . . . [However, i]f the statements constitute threats, they must be 'true threats.'" The comment was referring to the "true threat" concept discussed in three cases: *State v. Perkins*, 2001 WI 46, 243 Wis.2d 141, 626 N.W.2d 762; *State v. Douglas D.* 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 726; and *State v. A.S.*, 2001 WI 48, ¶¶ 5-8, 243 Wis.2d 173, 626 N.W.2d 712.

There can be no issue that Edwards was charged and prosecuted for engaging in "otherwise disorderly conduct," which WIS JI Criminal 1900 states can be based on a defendant's words or speech.

Yet, in its post-conviction motion decision the trial court held that prosecution had not supported its "otherwise

[3] Under the standard of review in this context this Court will reverse the trial court and order a new trial only if the jury instructions, taken as a whole, misled the jury or communicated an incorrect statement of the law. *See Miller v. Kim*, 191 Wis.2d 187, 194, 528 N.W.2d 72 (Ct.App.1995)

disorderly conduct" charge based on Edward's statements towards S.G.:

> *The instant case is distinguishable from A.S. and Perkins because the State's prosecution for "otherwise disorderly conduct" was not predicated upon a threat but rather upon the totality of the defendant's behavior and all of the surrounding circumstances.* The State did not need to prove that the defendant made a true threat in order to obtain a conviction for disorderly conduct as in *Perkins* or *A.S.* The State only needed to prove that the defendant engaged in "otherwise disorderly conduct" which tended to cause or provoke a disturbance. "Conduct will fall under the 'otherwise disorderly' provision if under the circumstances the conduct is of the type that tends to disrupt good order. The test requires an objective analysis of both the conduct and the circumstances." *AS.*, supra at 198. In this instance, it was sufficient for the State to show that the defendant engaged in creepy, stalker-like behavior and that the victim was fearful for her safety and ran to a neighbor's house because she was in fear of the defendant. The State did not have to show that the defendant's conduct rose to the level of a "true threat" in order to obtain a conviction for disorderly conduct. Consequently, it was not error to omit the true threat portion from the disorderly conduct instruction.

(A. App. 104-105). (Emphasis added.)

In essence, the trial court found that the State had pursued a "stalker-like" case against Edwards within the framework of an "otherwise disorderly conduct" charge.[4] The trial court's recognition that the prosecution had actually shoe-horned a stalking charge into a disorderly conduct charge did not, however, erase the "true-threat-like" basis of the prosecution – that is, the prosecution's evidence of Edward's statements, the prosecution's arguments about the effect of those statements, the court's own findings about the effects of those statements, and the other jury instructions that directed the jury to weigh and consider Edward's statements as evidence related to the charge of "otherwise disorderly

[4] The State may have decided not to mount a formal stalking charge against Edwards under Wis. Stats.§ 940.32 because of the more rigorous elements of the offense under Wis. Stats. § 940.32(2).

conduct."

The trial court erred because it overlooked the express admonition in WIS JI Criminal 1900 that is set out in capital letters, that directs a trial court to use the "true threat" paragraph:

> WHERE THE STATE'S CASE RELIES ON STATEMENTS OR CONDUCT THAT MAY CONSTITUTE A THREAT, THERE MUST BE A TRUE THREAT. ADD THE FOLLOWING.

The test for whether the free speech protections in the "true threat" portion of WIS JI Criminal 1900 should have been included is not "what the State needed to prove" or whether its proof "was sufficient to show" otherwise disorderly conduct; rather *the test is whether the State's case relied on statements by the defendant* that could be construed by the jury either as threatening by their terms, or by their effects.

The State's complaint alleged that Edwards was charged with "otherwise disorderly conduct" precisely, as *A.S.* described, because he had "caused her to fear for her safety." The entire prosecutorial theme throughout trial was that Edwards' words and conduct had scared and frightened S.G.,[5] under circumstances that tended to cause or provoke a disturbance.

At least four other aspects of Edward's jury trial supplied the need for the trial court to include the protective "true threat" language in WIS JI Criminal 1900.

First, the prosecutor argued to the jury in his initial closing remarks that a factual basis for the disorderly conduct charge arose out of statements by Edwards; he stressed that the important evidence was about what Edwards had said to S.G.:

> [H]e started walking towards her, and when he did, he said I'm here to see, I know your son. . . . I'm talking about your foster son. And she didn't have a foster son. So she was kind of creeped out.
>
> * * *

[5] She testified that while Edwards was at her front door, she started crying and she was so "frazzled" that she ran out the back door without her shoes on. (July 10 a.m. at 22).

> And he says you don't have a husband, I know, I have been watching you.
>
> Now at that point she is completely frightened. She calls 911. She calls a friend. And she gets the heck out of there. She runs across the street to her neighbor's house.

(July 11 at 19).

In his rebuttal closing argument he re-emphasized these points that the important evidence was what Edwards had stated and its effects on S.G.:

> [Edwards] tells her I know your son. . . your foster son. She doesn't have a foster son. So she goes inside.
>
> * * *
>
> The defendant asked her what she was doing in her home, and she said we're busy. . . . She only called the cops and she called Ms. Dobbertin after the defendant said you don't have a husband, I know, I have been watching you.
>
> That's when she calls the cops. That's when she calls her neighbor. I think there is two parts to that statement. You don't have a husband includes in it the implicit suggestion that she is alone. And then there is I know, I've been watching you, which I think is obvious in its tone. And it's the combination of you're alone, I now you're alone, I have been watching you that makes her frightened. . . . And that's when she leaves her house. To do what? Not to be alone. . . . That seems to be a logical response to the statement you don't have a husband, I know, I have been watching you.

(July 11 at 35-36).

Second, these prosecution arguments to the jury, that it should consider the defendant's statements and their effects on S.G., had been preceded by the court's specific instruction, based on WIS JI Criminal 180, that the jury could consider the defendant's statements:

> The State has introduced evidence of statements which it claims were made by the defendant. It is for you to determine how much weight, if any, to give to each statement. In evaluating each statement, you must determine three things:

> Whether the statement was actually made by the defendant. Only so much of a statement as was actually made by a person may be considered evidence. Whether the statement was accurately restated here at trial and whether the statement or any part of it ought to be believed. You should consider that facts and circumstances surrounding the making of each statement along with all the other evidence in determining how much weight, if any, that the statement deserves.

(July 11 at 16-17).

Third, despite that trial court's post-conviction ruling, it had acknowledged at the close of the State's case, that it was Edwards' statement (not his non-verbal conduct) that had supplied sufficient evidence to withstand a defense motion to dismiss at that point. The court stated that the evidence showed that Edwards had "these kinds of creepy conversations with her" which was "almost … stalker-like behavior." (July 10 p.m. at 57-58). The court then stated: "I think *these statements* alone have shown that Mr. Edwards, if I view the evidence in a light most favorable to the State, there was otherwise disorderly conduct engaged in by Mr. Edwards…." (Id. at 58). (Emphasis added). If the trial court had found that Edwards' statements could be the sole basis for proving "otherwise disorderly conduct," there was nothing that restrained the jury from doing so as well.

Fourth, the disorderly conduct instruction that the court did give to the jury made it clear that the jury could indeed consider the defendant's statements – i.e., his verbal conduct -- when determining whether Edwards was guilty of "otherwise disorderly conduct." Hence, the trial court's analysis in its post-conviction motion decision that the prosecution's case "was not predicated upon a threat" overlooked how the jury, if it followed the court's instructions, could base its verdict on Edwards speech (i.e., his language or his words alone) alone; and the jury is presumed to have followed those instructions. *State v. Truax*, 151 Wis.2d 354, 362, 444 N.W.2d 432, 436 (Ct.App.1989). The court instructed, in accordance with WIS JI Criminal 1900, that "otherwise disorderly conduct," *"may include physical acts or language or both. . . .* It includes all acts or conduct as are of a nature to corrupt the public morals or tom outrage the sense of public decency *whether committed*

by words or acts. " (Id. at 11). (Emphasis added.)

Edward's defense counsel in effect argued to the jury that the evidence was insufficient to prove that Edwards had made any actionable threats or statements that expressed an intention to act with an intent to do harm. In essence, he argued that the evidence was insufficient to prove a "true threat." But, of course, the jury had not been instructed that it could view as one of the prosecution's theories of disorderly conduct to be a claim that Edwards had made "true threats" towards S.G.

Edward's counsel had contended from the outset that S. G. was hypersensitive and, according to her trusted neighbor Holly Dobbertin, she was paranoid when people knocked on her front door. Edwards' pleas (e.g., to just wanting to talk), his mistaken assertions (e.g., to knowing her foster son), and even his "creepy" statements, as the court and the prosecutor saw them (e.g., he knew she did not have a husband and that she was alone), would not, to a reasonable speaker, be interpreted by a reasonable listener as serious expressions of intent to do harm. Edwards' words may have been annoyingly unpleasant, or they may even have been likely to produce nervous, shivery apprehension in a reasonable person; but "creepy" statements are not the same as statements directly portending harm or injury.

But Edwards was not given the benefit of the WIS JI Criminal 1900's admonition that the jury should not find him guilty based on his language or his words if they did not amount to a "true threat."

II. The trial court erred by holding that the instruction omission was harmless.

Edward's substantial rights were affected because the omission of a "true threat" instruction put him at risk of conviction for having engaged in verbal conduct protected by the First Amendment –- a risk that could have been avoided had the "true threat" instruction been included. It was that very risk that led the Court in *Perkins*, to rule that the jury instruction relating to the charged crime was constitutionally flawed, for failing to shield Perkins from a conviction based on constitutionally protected speech. *Perkins* held that the jury instruction was inadequate, and that the real controversy had

not been fully tried and that the defendant therefore was entitled to a new trial.

Without an instruction relating to the evidence elicited by the prosecution, reversible error resulted here, despite the absence of a requested instruction from the defense. That also was the precise holding in *Perkins*: "[T]his court may reverse a conviction based on a jury instruction regardless of whether an objection was made, when the instruction obfuscates the real issue or arguably caused the real controversy not to be fully tried."

Further, Justice Wilcox, in his concurring opinion at ¶ 55, explained that it is not permissible to apply the harmless error analysis in these situations. "As explained above, where jury instructions are devoid of explanation regarding an element of an alleged offense, . . . there can be no jury verdict on that particular element and, therefore, harmless error analysis—which analyzes cases in terms of the jury verdict—is inapplicable." Here, the jury never considered under the *Perkins* test of whether there was proof beyond a reasonable doubt that Edwards' statements, as the State's evidence and arguments had suggested, were truly threatening, and thereby constituted "otherwise disorderly" conduct.

In its post-conviction decision, the trial court concluded that there was no reasonable probability that the "true threat" instruction, had it been given, would have led the jury to acquit. (A. App. at 5). But *Perkins* indicates that, when a "true threat" instruction would have been warranted but was omitted, it is not appropriate to resort to the harmless error analysis.

But even if the omission of the instruction is subjected to harmless error analysis, Edward's conviction should be reversed. The identical issue arose in *State v. Moulton*, 310 Conn. 337, 78 A.3d 55 (2013) where the defense had not requested and the trial court had not given a "true threat" jury instruction in a breach of the peace prosecution, involving a disgruntled post office letter carrier who complained to an office employee in an angry tone about her supervisors, and who alluded to her returning to work and to shootings by another postal worker five days earlier where several co-workers were killed.

[W]e cannot conclude either that the defendant failed to

> contest the state's claim that her statements constituted a true threat or that the state's evidence on that issue was overwhelming. On the contrary, the primary issue in the case was whether the defendant's statements did, in fact, constitute a serious expression of an intent to commit an act of violence. Moreover, although the jury reasonably could have found that the defendant's comments met that constitutional threshold, the jury also could have concluded that the comments, albeit ill-advised and inappropriate, represented the troubled musings of a distraught employee rather than a true or legitimate threat. We therefore agree with the Appellate Court that, if "the jury [had] been instructed properly, it is reasonably possible that it would have found that a reasonable person in the defendant's position would not have foreseen that her statements would be interpreted as a serious expression of an intent to harm but, rather, as mere banter, jest or exaggeration." *State v. Moulton*, supra, 120 Conn. at App. 344, 991 A.2d 728. In sum, the issue was one for the jury, properly instructed, to decide. We conclude, therefore, that the trial court's failure to instruct the jury on the true threat doctrine was not harmless beyond a reasonable doubt.

State v. Moulton, 310 Conn. 337, 369, 78 A.3d 55, 75–76 (2013). Here, Edwards' defense counsel made the same argument – that Edwards' statements were not serious "true threats."[6] And now, on this appeal, Edwards argues that the instruction omission did deprive him of the First Amendment's free speech protections.

The trial court on post-conviction shifted the analysis by stating that in its harmless error analysis it would look beyond Edwards' "creepy or disturbing remarks to the victim" and would instead consider "other circumstances" such as Edward's approach to S.G. while clothed in black, his banging on her front door, and his subsequent open possession of a machete. The court concluded that when considering "the totality of the circumstances of [Edwards'] behavior," Edwards had not explained how the jury's decision "would have been

[6] Consistent with Justice Wilcox's analysis, the appeals court in *Moulton* found that omission of the instruction was not harmless, even though Moulton's trial counsel had not raised the issue and had not sought a "true threat" instruction. *State v. Moulton*, 120 Conn. App. 330, 340–41 991 A.2d 728, 738 (2010)

any different" had the "true threat" instruction been given. (A. App. at 5-6).

The flaw in this analysis is that the trial court assumed that the jury used the same "totality of circumstances" that it used. The trial court could not safely make that assumption and it was not proper to do so where the jury was allowed, even encouraged, to take a narrower view of the evidence in reaching its verdict. The jury was expressly told that it could consider Edwards' acts *or his words.* Further, it was told that "otherwise disorderly conduct," *"may include physical acts or language or both. . . ."* So the jury was free to render a general verdict on more than one ground, one of which related to speech rather than conduct --- speech that was arguably protected under the First Amendment. The trial court simply declined to take that into consideration and assumed, without any limitation in the general verdict, that its broader view of the evidence was the only view.

But a conviction based on Edwards' words and his language alone would have been permissible only if the jury had been properly instructed about the "true threat" standard. That kind of an omission cannot be excused by the harmless error doctrine. "[W]here a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that may have rested on that ground." *Griffin v. United States*, 502 U.S. 46, 53 (1991).

Here the trial court sustained Edwards' conviction based on a "totality of circumstances" view of the evidence that went beyond the more limited, speech-based form of "otherwise disorderly conduct" that the jury could have considered, although without considering the constitutional test that the speech amount to a "true threat." As a result, the trial court improperly upheld Edwards' conviction using an approach that was not presented to the jury. In *Chiarella v. United States*, 445 U.S. 222, 236 (1980), the Court stated: "we cannot affirm a criminal conviction on the basis of a theory not presented to the jury" and *State v. Wulff*, 207 Wis.2d 143, 152, 557 N.W.2d 813, 817 (1997) adopts this principle.

CONCLUSION

For the reasons stated above, Joseph K. Edwards respectfully requests that this Court reverse the judgment of conviction and remand for a new trial.

Dated January 21, 2020 at Milwaukee, Wisconsin.

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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 5,004 words.

Dated January 21, 2020.

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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 January 21, 2020.

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